

## **Explanatory Memorandum to:**

The Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) (Wales) Order 2013

The Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (Wales) Order 2013

This Explanatory Memorandum has been prepared by the Local Government & Communities Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

## **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) (Wales) Order 2013 and the Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (Wales) Order 2013. I am satisfied that the benefits outweigh any costs.

Huw Lewis, Minister for Communities and Tackling Poverty

12 June 2013

## **1. Description**

The commencement of section 318 will bring local authority Gypsy and Traveller sites within the application of the Mobile Homes Act 1983 (“the 1983 Act”) giving occupiers of those sites greater security of tenure.

These orders apply the implied terms contained in Schedule 1 to the 1983 Act to local authority Gypsy and Traveller sites and make some specific provision for sites in Wales. The implied terms give a number of rights and responsibilities to site owners and residents of local authority Gypsy and Traveller sites.

The orders also make other amendments as a consequence of the amendments to Schedule 1 and as a consequence of the application of the 1983 Act to local authority Gypsy and Traveller sites. In particular, provision is made to provide that jurisdiction for resolving matters under the 1983 Act (apart from certain termination disputes) lies with the Residential Property Tribunal.

These orders do not apply to private Gypsy and Traveller sites.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

The order commencing section 318 of the Housing and Regeneration Act 2008 (the Housing and Regeneration Act 2008 (Commencement No 3 and Transitional, Transitory and Saving Provisions) (Wales) Order 2013 (“the Commencement Order”)) includes transitional provisions for residents with existing agreements to occupy pitches on local authority Gypsy and Traveller sites.

## **3. Legislative background**

The Mobile Homes Act 1983 provides security of tenure for residents of mobile homes sites and gives them other rights and responsibilities. Local authority Gypsy and Traveller sites are currently excluded from the meaning of ‘protected site’ for the purpose of the 1983 Act and do not therefore benefit from the protections of that Act.

Section 318 of the 2008 Act amends the definition of a “protected site” in section 5 of the 1983 Act by removing the exclusion of “land occupied by a local authority as a caravan site providing accommodation for gypsies”. Section 325(3) and (4) of the Housing and Regeneration Act 2008 enables the Welsh Ministers to commence section 318.

Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (Wales) Order 2012

The Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (Wales) Order 2012 (“the Schedule 1 Order”) is made under section 2A of the 1983 Act and sections 229 and 250 of the Housing Act 2004.

Section 2A of the Mobile Homes Act 1983 conferred powers on the National Assembly for Wales to make, by order, such amendments to Part 1 or 2 of Schedule 1 of that Act as it considers appropriate or to any provision in the Act in consequence of such amendments. Sections 229 and 250 of the Housing Act 2004 enabled the National Assembly for Wales to make provision for and in connection with conferring jurisdiction on the residential property tribunal and to make incidental, supplementary, consequential, transitory, transitional or saving provision. So far as exercisable in relation to Wales, these powers now vest in the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

In accordance with section 2A(5) of the 1983 Act, the Welsh Ministers must consult such organisations as appear to them to be representative of the interests affected by any such order and other persons that they consider appropriate. In accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 must consult with the Administrative Justice and Tribunals Council.

The effect of the order is that the implied terms in Schedule 1 of the 1983 Act will apply to agreements in respect of pitches on local authority Gypsy and Traveller sites. The order makes some specific provision for sites in Wales. Chapter 3 of Schedule 1 applies to transit sites and Chapter 4 applies to permanent sites. The order also amends other parts of the 1983 Act and other legislation as a consequence of the application of the 1983 Act to local authority Gypsy and Traveller sites. It provides that jurisdiction for non-termination proceedings relating to these sites lies with the residential property tribunal.

#### The Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) (Wales) Order 2013

The Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) (Wales) Order 2013 is made under the Welsh Ministers’ powers under sections 320 and 321 of the 2008 Act. It makes amendments to the 1983 Act which are consequential on the coming into force of section 318 of the 2008 Act in relation to Wales and the making of related transitional provisions made under section 22 of that Act.

Both of the Orders described above are intended to come into force on 10th July 2013 as section 318 of the 2008 Act is commenced.

#### **4. Purpose and intended effect of the legislation**

This legislation is intended to provide equal security of tenure for Gypsies and Travellers living on local authority sites across Wales. Currently, Gypsies and

Travellers occupy pitches on local authority sites under licences made under the Caravan Sites Act 1968. This Act provides limited protection from eviction and harassment. In order to evict a person from one of these sites, a local authority need only give four weeks notice to terminate the licence, without needing to provide a reason and seek a possession order from the court. Residents of these sites do not therefore have adequate procedural safeguards against eviction.

The making of these orders will ensure that the Welsh Government complies with the judgements in the cases of *Connors v UK* and *Buckland v UK* in which the European Court of Human Rights ruled that the lack of procedural safeguards for Gypsies and Travellers facing eviction from local authority owned sites was incompatible with Article 8 of the European Convention on Human Rights, which provides a right to respect for a person's private, home and family life.

The 1983 Act, by contrast, provides greater procedural safeguards. Under the 1983 Act residents occupy pitches under agreements which include a number of implied terms that are set out in Part 1 of Schedule 1 to that Act. In particular, the implied terms provide that in order to evict a resident a site owner must prove that a term of the agreement has been breached, that it is reasonable to terminate it, and seek a possession order. It also gives a number of other rights and responsibilities to site owners and residents.

The Schedule 1 Order applies new sets of implied terms for agreements relating to local authority Gypsy and Traveller sites. The Order applies most of the implied terms that are contained in the 1983 Act in relation to sites in England with specific provision for Wales where necessary. These terms will ensure that local authority sites are fairly and effectively managed.

The terms deal, in particular, with the following matters:

- A right of limited assignment for the occupiers of permanent pitches is proposed, allowing family members to assign to each other and mutual exchange between residents within a local authority, with the permission of the local authority site owner. The Welsh Government is seeking to prevent the creation of a market in pitches caused by low supply and high demand amongst these communities. This provision should support these aims.
- Changes in pitch fees are regulated through the requirement of annual review dates to prevent changes more frequently than every 12 months and certainty on the date of pitch fee changes to allow effective budgeting. The order also provides a presumption that, after considering sums expended on improvements or any decrease in amenity of the site, local authorities should only increase or decrease the pitch fee in accordance with the change in CPI. This measure of inflation has been chosen as it more closely aligns with the measure used to calculate welfare payments for those who are most financially vulnerable. The proposals should safeguard residents from large increases to pitch fees,

which can have a significant effect on families who are already living in poverty.

- The proposals also include amendments to the responsibilities of local authorities to consult residents on improvements or changes in pitch fees. Currently, the Mobile Homes Act 1983 states that local authorities must consult the occupiers of every mobile home but each mobile home is taken to be occupied by one person. This person is defined as the person whose name appears first on the pitch agreement. It is likely that such person will be the male head of the household in most circumstances, preventing the involvement of other family members in the consultation process. The amended wording now requires consultation with one person per pitch agreement but that this person can be decided by the occupiers of that pitch and is not bound to be the first name on the agreement.
- The order provides that current pitch licences held under the Caravan Sites Act 1968, will be deemed to be agreements under the Mobile Homes Act 1983. The new pitch agreements would be comprised of the amended implied terms under the Mobile Homes Act 1983 and the express terms reflecting the current terms of the licence. This should reduce the administrative burden on local authorities who will have to transfer all of their residents to agreements within 28 days of these Orders being commenced.
- The order provides that jurisdiction for resolving non-termination disputes arising on these sites lies with the Residential Property Tribunal ('the Tribunal'). Currently disputes relating to local authority sites are considered by the County Court but on commencement of section 318 of the Housing and Regeneration Act 2008, these sites will become 'protected sites' under the 1983 Act. The Tribunal currently has jurisdiction for other sites other than local authority sites under the 1983 Act. Due to increased restrictions on access to Legal Aid brought about by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPOA'), the quicker and cheaper nature of the Tribunal process, and the results of consultation with residents of these sites, the order provides that jurisdiction for local authority Gypsy and Traveller sites will lie with the Tribunal.
- The amendments introduce specific rights for occupiers of transit pitches. There are currently no transit pitches in Wales but from time to time such pitches are created. Transit sites are those for which the agreement lasts up to 3 months and the orders disapply various provisions that are not appropriate for transit sites.

The additional overall effect of implementing these Orders will be the strengthening of rights for residents of these sites, including:

- Greater procedural safeguards against eviction, ensuring that the Court is able to fully consider the local authority's decision
- Universal implied terms across all local authority Gypsy and Traveller sites in Wales. This will give certainty to Gypsies and Travellers that they can experience minimum standards, regardless of which site they live on.
- Pitch fees that are regulated and the opportunity to demand documentation with evidence of costs or the right to challenge the pitch fee changes.
- Greater input into changes to sites and management through mandatory consultation on improvements and pitch fees and qualifying residents associations.
- Clear obligations of site owners and pitch occupiers.

To ensure that existing residents of local authority Gypsy and Traveller sites are aware of their rights and responsibilities under the 1983 Act, the Commencement Order will make transitory provision to require local authorities to give a written statement to the existing occupiers of permanent pitches within 28 days of 10 July 2013.

There are currently 365 pitches on local authority Gypsy and Traveller sites in Wales. All occupiers of these pitches will attain equal protection from eviction if these Orders are approved.

## **5. Consultation**

The Welsh Government carried out a consultation relating to these Orders from January to March 2013. Details of the consultation undertaken are included in Part 2 (the Regulatory Impact Assessment) below.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Purpose and intended effect of legislation**

The Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (Wales) Order 2013 and the Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) (Wales) Order 2013 aim to establish the rights and responsibilities placed upon residents of local authority owned Gypsy and Traveller sites. Upon commencement of these orders, together with the commencement of section 318 of the Housing and Regeneration Act 2008, local authority Gypsy and Traveller sites will come within the application of the Mobile Homes Act 1983 (“the 1983 Act”) giving occupiers of those sites greater security of tenure.

These orders contain proposals that the implied terms included within the 1983 Act will be amended to reflect the different circumstances affecting these types of site. For example, Gypsy and Traveller sites sometimes include transit pitches, which families are able to occupy for a set time-period. It would, therefore, be unreasonable to adopt the same security of tenure provisions to these pitches.

By amending the implied terms contained within the Mobile Homes Act, residents will have greater rights, though will not be able to assign their pitch – except in limited circumstances - as is allowed on other types of Park Home. This is a measure to protect those most in need, as there is a chronic shortage of Gypsy and Traveller pitches and those provisions could potentially lead to a market in pitches.

### **Options**

There are two main options associated with these Orders.

#### **1. Do Nothing**

Under this option, section 318 of the Housing and Regeneration Act (HRA) 2008 would be implemented, without any amendments to schedule 1 of the 1983 Act. This is the ‘Do Nothing’ option. Under this proposal, Gypsies and Travellers resident on local authority sites would have the same rights and responsibilities as residents of other types of Park Home.

#### **2. Proposed Amendments to the 1983 Act**

Under the proposed amendments outlined in Part 1 above, the terms included in Schedule 1 of the 1983 Act would be amended to reflect the particular circumstances of local authority Gypsy and Traveller sites. The changes include:

- creating a definition for transit provision and limiting the implied terms which can apply to this form of pitch;
- limiting assignment rights from all types of pitch, except in the form of succession proceedings where there was no relative living with the deceased at the time;

- minor changes to allow the temporary re-siting of caravans for repair work;
- Altering the method of calculating pitch fees to utilise the Consumer Prices Index, rather than the Retail Prices Index; and
- Ensuring that where consultation between the site owner and occupier takes place, voting will be equal and open to all.

## **Costs & benefits**

The changes proposed by the Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (Wales) Order 2013 and the Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) (Wales) Order 2013 will be difficult to quantify in financial terms. This is because the costs and benefits associated with these changes will vary for each local authority and will affect a relatively small number of families.

## **Costs**

### ***Option 1 – Do Nothing***

#### **Transition costs ('One-off' costs)**

##### Agreements for new residents

Under the Mobile Homes Act 1983 an agreement to station a caravan on a site will include certain terms implied by that Act, and any additional express terms. Site owners are required to provide a written statement including these terms and details specific to the agreement such as the parties to it, date, and particulars of the pitch. The form of the statement and implied terms are set out in regulations and authorities will need to add express terms and the details specific to the agreement.

Gypsies and Travellers on local authority sites will currently have licences under the Caravan Sites Act 1968 which set out the terms under which they occupy their pitch. There will be terms in current licences which are not covered by the implied terms of agreements under the 1983 Act, and which local authorities will want to include as express terms, for example relating to behaviour on site or short term absence from the site.

Replacing the current licenses with a new agreement will impose a cost on local authorities. The estimate of this cost is based on the following assumptions:

- i. there are 18 local authority Gypsy and Traveller sites in Wales, with at least one site in 13 of the 22 Local Authorities;



- ii. preparing and completing an agreement for a site will require 4 days input from a local authorities officer with an average daily salary of £95 (equivalent to an average annual salary of £25,000);
- iii. preparing an agreement will require 2 days input from a local authorities lawyer with an average daily salary of £135 (equivalent to an average annual salary of £35,000).

On this basis, the cost of preparing and issuing these agreements in Wales will be £8,450 - £11,700 depending upon whether the Local Authorities with more than one site opt to prepare an agreement for each site or one agreement for all sites.

## **Annual Costs**

### **Local Authorities (LAs)**

#### Agreements for new residents

Under the 1983 Act, LAs will be required to make agreements with new residents and provide them with a written statement of the terms. However, LAs already provide new residents of their sites with a licence under the Caravan Sites Act 1968 which will cover its terms and details specific to the licence. **This requirement should not therefore impose any additional costs on LAs.**

#### Sale or gift of caravan and assignment of agreements

Under the 1983 Act, residents will be able to sell or gift their caravan, and assign their agreement to occupy the pitch, with the approval of the LA for the person to whom they wish to sell or gift and assign. LAs will need to respond to requests for approval within 28 days.

LAs will already be assessing applications for vacant pitches as they arise on sites, for example through seeking references, and should therefore have procedures in place to deal with the approval of a person to whom a current resident may wish to sell or gift their caravan and assign their agreement. If these rights are implemented, it may lead to an increase in pitch assignments as more affluent Gypsies or Travellers could offer to buy pitches and attempt to shortcut the LA pitch allocation policy. **If this was to happen, it would impose additional costs on LAs as they have to assess potential residents and reconcile the changes with their pitch allocation waiting list.**

#### Provision of information

Under the 1983 Act, if requested by a resident, a LA will need to provide details about the pitch and base, including its size and location within the site. However, LAs will be able to charge up to £30 for these details. **This**

**requirement should not therefore impose any additional costs on LAs.**

If requested by a resident, a LA must provide evidence in support or explanation of a new pitch fee, and charges for services or other costs or expenses payable under the agreement, free of charge. LAs will already be required by the 1983 Act to set out proposals for any change to pitch fees prior to the review date. Evidence such as bills, invoices or other documentation, should be readily available in relation to changes to pitch fees and charges for services. **Any additional costs associated with this requirement should therefore be nominal.**

LAs must inform residents, and any qualifying residents' association, of an address in England and Wales at which notices can be served on them. However, the regulations covering the form of the written statement will require an address for the LA to be included in the statement provided to residents, and so **this requirement should not therefore impose any additional costs on LAs above those estimated for the provision of these statements.**

#### Repairs and maintenance

Under the 1983 Act, LAs will be responsible for making certain repairs to pitches, and maintaining any services supplied by them to it, for example, utilities, and will also be required to maintain the common areas of the site. LAs are already responsible for repairs and maintenance on their sites, and this should be covered by pitch fees. For more substantial repairs, applications for grant funding of refurbishment can be made for the Welsh Government's Gypsy & Traveller Sites Grant, which has £1.5 million available for 2013-14. This requirement is not expected to generate significant additional costs for LAs.

#### Consultation

Under the 1983 Act LAs will be required to consult residents about improvements to the site, and any qualifying residents association about matters relating to the operation and management of the site. LAs should already be consulting residents of their sites about improvements and operation and management as a matter of good practice.

We have assumed that:

- LAs will not apply for grant for improvements to 50% of sites (9);
- improvements might be made to these sites on average once every 3 years (3 improvement schemes per year);
- it could take an average of 5 days of an LA officer's time to prepare a letter to residents explaining the proposals for improvement and

consider their responses. £95 per day, for five days = £475;

- it could take half a day of an LA administrative support officer's time to distribute the letter: £77 per day for half a day = £39

**This could therefore lead to combined costs for LAs of £1,542 per year (£514 x 3 sites).**

### Rent reviews and pitch fee changes

Under the 1983 Act, LAs will need to review the pitch fee annually and provide written details of proposals for any changes 28 days before the review date. The majority of LAs are likely to review their rent periodically and will need to inform residents of any changes, **and so this requirement should not impose any additional costs on LAs.**

In determining the amount of a new pitch fee, the 1983 Act requires particular regard to be had to sums spent on improvements to (but not expansion of) the site, any decrease in the amenity of a site; and the effect of any enactment that has come into force since the last review.

The 1983 Act also contains a presumption that the pitch fee will only increase or decrease by a percentage no more than any percentage increase or decrease in the RPI since the last review date, unless this would be unreasonable having regard to factors such as any sums spent on improvements since the last review.

### **Courts**

The implementation of the 1983 Act would create a new legal jurisdiction in relation to resolving non-possession disputes on these sites. This is because the commencement of section 318 of the Housing and Regeneration Act 2008 would bring these sites under the definition of 'protected sites'. The jurisdiction for resolving non-termination disputes on all 'protected' mobile home sites in Wales was conferred on the RPT under the Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (Wales) Order 2012.

Under the 1983 Act, there would likely be an increased cost to the Courts as the new provisions could lead to cases that were not previously heard in relation to these sites, for example, in relation to pitch fee setting.

## **Gypsies and Travellers**

Under the 1983 Act, LAs would be able to charge up to 10% commission if a Gypsy or Traveller on their site sells their caravan and 'assigns' the agreements to live on the pitch.

It is assumed that the average value of a new 20 foot trailer is approximately £30,000 and that the average value on re-sale is approximately £15,000. On this basis, the average commission on re-sale would be £1,500. This figure represents a cost to the Gypsy or Traveller selling the caravan but a benefit to the Local Authority.

The number of caravans sold each year is not known, however, evidence suggests that turnover on many Local Authority Gypsy and Traveller sites is low due to concerns about the availability of pitches on other sites and a desire to ensure access to services such as schools and healthcare. Assuming a turnover rate of 2% per annum on the 365 pitches in Wales, there could be 7.3 sales per year producing an annual cost to Gypsies and Travellers of £10,950.

### ***Option 2 - Amend the Mobile Homes Act***

#### **Transition Costs ('One-off' costs)**

Transition costs in Option 2 are assumed to be far lower than those under Option 1 (£8,450 - £11,700). This is because the proposed amendments to the 1983 Act will automatically deem current licences to be agreements. LAs will still be required to provide written statements to all residents, informing them of their new agreements and inserting the new implied terms under the 1983 Act. Current licence terms will become 'express terms'.

Replacing the current licences with a new agreement will impose a cost on Local Authorities. Under option 2, existing licences will be deemed to be agreements. Therefore, less staff time will be necessary and costs will be lower. The estimate of this cost is based on the following assumptions:

- iv. there are 18 Local Authority Gypsy and Traveller sites in Wales, with at least one site in 13 of the 22 Local Authorities;
- v. preparing and completing an agreement for a site will require 1 day input from a Local Authority officer with an average daily salary of £95 (equivalent to an average annual salary of £25,000);
- vi. preparing an agreement will require 1 day input from a Local Authority lawyer with an average daily salary of £135 (equivalent to an average annual salary of £35,000).

Based upon the above, the Wales-wide cost of this transition should be roughly £2,990 – that is, (£95 + £135) x 13 local authorities.

## Annual Costs

### Local Authorities

#### Jurisdiction

The jurisdiction for resolving non-termination disputes arising on these sites is also proposed to be conferred on the RPT, rather than the County Court. This change is expected to reduce the financial burden on LAs as RPT disputes are usually quicker and cheaper to resolve than through the court system. **This requirement should not impose any additional costs on LAs.**

#### Site owner's responsibility for repairs

The amendments to 1983 Act clarify that the site owner will be responsible for the maintenance and repair of any amenity blocks provided with the pitch. As a matter of course, most LAs do this already but the amendment is intended to prevent possible disputes. **This requirement is not expected to impose any additional costs on the LAs.**

#### Written communications

Due to the low levels of literacy within Gypsy and Traveller communities it is important that LAs ensure that their residents understand the written statement of their agreement. This makes sense to ensure that sites can be managed effectively and to ensure that residents understand their terms. Therefore, LAs must provide alternative versions of the statement where necessary e.g. audio versions. **Some LAs will do this already as a matter of good practice but it may impose an additional cost on those LAs that do not currently do this.**

### Residential Property Tribunal (RPT)

The transfer of jurisdiction from county courts to the RPT will lead to an increase in the workload of RPT (and a corresponding reduction in the workload of courts). However, the Welsh Government does not collect data on the number of disputes that reach the county court each year. It is expected that fairly few disputes per year, excluding possession actions which will continue to be handled by the county court, will be held at the RPT.

The Welsh Government has estimated that there will be one-off transition costs of £7,820 for the production of updated guidance and forms reflecting the addition of these sites to the jurisdiction of the RPT and training for Tribunal members. These costs will be met by the Welsh Government.

An ongoing cost has been estimated as approximately £6,000 per year (based upon 3 cases per year). These costs will be met by the Welsh Government. However, for each of these cases the RPT Service would also receive a fee of £150 per applicant, which would be approximately £450 in a year for three

cases. Where applicants are receipt of certain welfare benefits no fee is payable.

### **Gypsies & Travellers**

#### Assignment

Wales currently has a severe shortage of Gypsy and Traveller pitches and concerns have been expressed that assignment will create a competitive market for pitches with the result that pitches will be sold to the individuals who can afford to pay the most for the pitch. Therefore, the Welsh Government is proposing to prohibit the sale of caravans and agreements. Under Option 2, Local Authorities will not be able to charge a commission upon the sale of a caravan and assignment of rights to a pitch. The estimated cost to Gypsies and Travellers identified under Option 1 will not apply under this option.

Gypsies and Travellers will be able to assign their agreement to family members and through mutual exchange with other pitch agreement holders but there would not be any cost attached to this transfer, except minimal local authority officer time when agreeing to the assignment.

#### Jurisdiction

The transfer of jurisdiction to the RPT may have a financial cost to Gypsies and Travellers who are resident on local authority sites. The new system requires a one-off £150 payment to hear a case, rather than the substantial cost of a county court case. Since the commencement of the LASPOA, many Gypsies and Travellers who were previously eligible for Legal Aid, and would not have to pay court costs, will now not be eligible for support for most non-termination disputes through the County Court. Legal Aid does not apply in the RPT. For those Gypsies and Travellers who are eligible for Legal Aid, this transfer will be detrimental though the costs associated are relatively small. On the other hand, for Gypsies and Travellers who do not meet with criteria to be eligible for Legal Aid, this transfer of jurisdiction will clearly be advantageous.

A further issue is the difficulty that some Gypsies and Travellers might face in trying to represent themselves in front of the RPT. Despite being a more informal setting than the county court, it is likely that LAs will have the support of in-house lawyers to promote their case, where Gypsies and Travellers will have to represent themselves (unless they can afford lawyers). This could be a substantial problem if the Gypsy or Traveller concerned has low levels of literacy. RPT hearings utilise the concept of 'equality of arms' to ensure that parties are on equal footing to present their case, as far as reasonably practicable. This includes the provision of an individual to help read and complete necessary forms if there is a literacy issue and to ensure that legal concepts are understood but they will not present the case for any party. Such support would not be available in the County Court system for cases where parties were not eligible for Legal Aid.

#### Re-siting a caravan

The amended 1983 Act provides local authorities with the opportunity to move residents in the short-term if unavoidable refurbishment works have to be made to the pitch. Though this may cause a small inconvenience to the family affected, the LA is required to reinstate them on the pitch at its earliest opportunity and must find another adequate pitch on another site in the meantime.

## **Benefits**

### **Option 1 – Do Nothing**

#### **Local Authorities**

Under the 1983 Act, Local Authorities will be able to charge a commission of up to 10% on the sale of a caravan and assignment of an agreement to occupy a pitch. As noted above, this is a benefit to Local Authorities and based on turnover of 2% per annum is estimated to be £10,950.

#### **Gypsies and Travellers**

Under the 1983 Act, Gypsies and Travellers will benefit from equal security of tenure as residents of other types of Park Home. The 1983 Act provides greater rights for residents and clarity on LA responsibilities. Most fundamentally, LAs must ensure that any possession actions taken against residents are proportionate and justified.

### **Option 2 – Amend the Mobile Homes Act**

#### **Local Authorities**

Under this option, there will be no financial benefit to the Local Authorities from the commission on the sale of a caravan and the assignment of an agreement to occupy a pitch. However, this option prevents site residents from allocating pitches to potential occupants who are not at the top of the pitch allocation waiting list (except to family members). This option would, therefore, provide LAs with greater clarity on how to allocate vacant pitches and more transparency when dealing with residents.

Local authorities should benefit from reduced costs associated with non-termination disputes as the RPT is a cheaper process than the County Court system.

#### **Courts**

Reduced workload as disputes, excluding possession actions, dealt with in RPT. As a result, reduced expenditure on Legal Aid and general court costs is expected.

#### **Gypsies and Travellers**

Option 2 provides Gypsy and Traveller site residents with greater consistency in what they can expect from local authority sites across Wales. The amendments will create new universal implied terms, with the current terms of licences inserted as express terms.

In addition, the removal of the right to assign pitches – except in limited circumstances - will make the assignment of pitches by LA owners more



straightforward than in Option 1 and removes the risk of a competitive market for pitches developing in Wales. Residents, owners, and those waiting for a pitch, will be able to have confidence that the order on the waiting list is the likely order of allocation.

The amendments include a change in the calculation of pitch fees from using RPI as a measure of inflation to using CPI. This change should slightly benefit residents, as CPI tends to be a lower measure, though this is often fluctuates.

The amendments also introduce altered terms for transit pitches, which will ensure that this type of pitch does not get tied up for permanent occupation because of a shortfall of permanent provision. This is important as it will allow Gypsies and Travellers the opportunity to continue a travelling way of life. Currently there are no transit pitches in Wales but there is potential that this could increase if LAs are given a statutory duty to provide sites under the forthcoming Housing (Wales) Bill.

## Policy Impact Tests

### Competition Assessment

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some businesses/organisation substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of firms?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

The proposed legislation is not expected to have any impact on competition or place any restrictions on new or existing suppliers. The majority of the costs associated with the legislation are expected to fall to Local Authorities as opposed to businesses.

## Consultation

Consultation on the Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (Wales) Order 2013 and the Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) (Wales) Order 2013 took place from 7 January – 29 March 2013.

The three Orders are to be consulted upon together as they will create consequential changes to the Mobile Homes Act 1983 upon commencement of section 318 of HRA.

On-line versions of the consultation document and response forms were provided.

Eleven questions were set out in a document which was available online and which could be returned either in hard copy or by email. There was also a plain English summary of the consultation provided to aid understanding of the proposed changes.

The main aspects of the consultation were:

1. Face-to-face interviews with 78 residents of these sites. Welsh Government officials attended every affected site to ensure that residents were aware of the proposals and given an opportunity to share their views.
2. Stakeholder workshops were held in Wrexham and Merthyr with invited attendees from local authorities and Gypsy and Traveller community representative organisations.
3. Written responses were encouraged from organisations and individuals to share their substantive comments.

We received 14 responses to the consultation from organisations, including 4 Local Authorities. The list of respondents is shown in the table below.

<b>Respondents</b>	
Community Law Partnership	Garden Court Chambers
Children's Commissioner for Wales	Julie Morgan AM (Cross-Party Group)
Community Housing Cymru	Chartered Institute of Housing Cymru
Friends, Families & Travellers	UK Assoc. of Gypsy Women
Flintshire County Council	Torfaen Homes
Wrexham Citizens Advice Bureaux	Rhondda Cynon Taff County Council
Wrexham Multi-Agency Forum	Wrexham County Council

The organisations who were originally invited to respond to the consultation included:

All local authorities in Wales

Welsh Local Government Association

National Association of Gypsy and Traveller Liaison Officers

Cross-Party Group on Gypsies and Travellers  
Traveller Law Reform Project  
Shelter Cymru  
Friends, Families and Travellers  
Irish Traveller Movement in Britain  
Gypsy Council for Education, Culture, Welfare and Civil Rights  
Gypsy Council  
South East Wales Race Equality Council  
North Wales Race Equality Network  
The Valleys Race Equality Council (Valrec)  
Llanelli Multicultural Network  
Cardiff Gypsy & Traveller Project  
Save the Children  
UK Association of Gypsy Women  
Platform 51  
Community Law Partnership  
National Travellers Action Group  
National Federation of Gypsy and Traveller Liaison Groups  
Romani Cultural and Arts Company  
Equality and Human Rights Commission  
Citizens Advice Bureau Cymru  
Race Council Cymru  
Diverse Cymru  
Black Voluntary Sector Network Wales  
YMCA Wales  
Barnardos Cymru  
Planning Aid Wales

These organisations were chosen, in particular, because they have recently worked with Gypsy and Traveller communities in Wales or have a track record of representing these communities in consultation and legal processes. The consultation paper was publicly available on the internet so other organisations were free to respond. A press release was also sent out to increase awareness of the consultation paper.

## **Changes**

Following the consultation process, Welsh Government officials submitted revised proposals for the Minister's consideration. The proposed changes were:

- Allowing limited assignment of pitches to family members and mutual exchange of pitches within a local authority, with the agreement of the local authority site owner;
- Change the measure of inflation when calculating pitch fees from RPI to CPI;
- Amend the responsibilities of local authorities when consulting with residents to make it clear that occupiers of mobile homes can nominate any member of the household to participate and to ensure that families with more than one mobile home per pitch are still only entitled to one vote.

Each of these proposals was raised by respondents to the consultation and have been pursued following careful consideration of any impact that they might have on residents and site owners.