

EXPLANATORY MEMORANDUM TO
THE MOBILE HOMES (SITE RULES) (WALES) REGULATIONS 2014

This explanatory memorandum has been prepared by the Department for Housing and Regeneration 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 Mobile Homes (Site Rules) (Wales) Regulations 2014.

Carl Sargeant
Minister for Housing and Regeneration
2 July 2014

1. Description

1.1 The Mobile Homes (Site Rules) Regulations 2014 (“the 2014 Regulations”) prescribe the procedure that a site owner must use when making, varying or deleting a site rule and prescribe matters to which site rules may and may not relate to. The Regulations establish a process for consulting on proposed changes to site rules, grant appeal rights in respect of disputes arising between a site owner and a mobile home occupier and require local authorities to keep and publish a register of site rules for sites in their area.

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

2.1 None

3. Legislative background

3.1 Section 52 of the Mobile Homes (Wales) Act 2013 (“the 2013 Act”) sets out the regulation making powers that relate to the making, varying and deleting of site rules. The Assembly procedure for these Regulations is the negative procedure.

4. Purpose & intended effect of the legislation

4.1 There are around 3,500 mobile homes on 106 sites in Wales. Site Rules ensure community cohesion and good estate management whilst also ensuring that occupiers of mobile homes are clear as to the rules that apply to them. At present, site rules can be used by site owners to circumvent occupier’s rights or give site owners unfair advantages or economic benefits. For example, rules could require an occupier to notify the site owner of their intention to sell the home, require all visitors to report to the site office or ban estate agents’ sale signs.

4.2 The Mobile Homes (Wales) Act 2013 provides the Welsh Ministers with the power to make regulations with regard to the procedural arrangements for making site rules. These are designed to ensure that site rules are made fairly, that mobile home occupiers are engaged in the process, that the process and the rules are transparent and are available for public inspection having been deposited with the local authority. Once the rules have been lodged with the local authority they will form part of the express terms of the pitch agreements and consequently binding on both the site owner and the residents. If in the future a site owner wants to change the rules this can only be done by following the procedure set out in the 2014 Regulations.

4.3 Site owners will have a year from the coming into force of the 2014 Regulations in which to review existing rules and propose new site rules and consult upon these with home owners and any qualifying residents’ association. Once agreed these new rules will replace any existing rules that were made prior to the commencement of Part 4 the 2013 Act. Once the consultation process with the site occupiers is complete the site owner must communicate the outcome of the consultation with the site occupiers, setting out what the new site rules will be. Once any appeals have been dealt with,

the site owner must deposit any site rules with the local authority, paying a fee for the deposit that the local authority may determine.

4.4 Once deposited, the site rules will form part of the express terms of the pitch agreements and will be enforceable as a contract term. If the site owner does not deposit the rules within the required time period, a home owner and any qualifying residents' association has the right to seek an order from the tribunal requiring them to be deposited.

4.5 In undertaking consultation with the site occupiers, the site owner will be required to use statutory forms to consult on the proposals and in notifying home owners of the consultation outcome and of the deposit made with the local authority. The proposal consultation form will list matters that cannot be included in the proposed new rules.

4.6 Mobile home owners or a qualifying residents' association, who object to the proposed rules, or consider that they have not been made in accordance with procedure, can apply to the Residential Property Tribunal. The grounds on which an appeal can be made are:

- (a) the site rule makes provision in relation to a matter that is not allowed;
- (b) the site owner has not complied with the statutory procedure;
- (c) the site owner's decision was unreasonable, particularly with regard to (i) representations received; (ii) relevant factors relating to the site and (iii) relevant planning permissions or site rules.

4.7 If an appeal is made, the rules cannot be deposited with the local authority until the appeal has been disposed of. If the tribunal allows an appeal, it can direct that the rules be re-made in accordance with the prescribed procedure (where the procedure was not followed) or quash or modify a proposal made by the site owner.

4.8 Any existing rules made before 1st October 2014 will continue to have effect for twelve months following the coming into force of the 2014 Regulations. However, where new site rules are deposited with the local authority before the end of this twelve month period, the existing rules will cease to have effect on the coming into force date of the new site rules. Alternatively, if at the end of the twelve month period, there is still an outstanding appeal in relation to the site rules, the existing rules will continue to have effect until the appeal has been dealt with and thereafter new site rules come into force. Where there is not an appeal outstanding but a site owner has simply not managed to complete the consultation process before the end of the twelve month period, the existing rules will still cease to have effect at the end of the twelve month period. In that case the site will no longer have any rules, until such time as any new rules are made, in accordance with the prescribed procedure.

5. Consultation

5.1 Details of the consultation undertaken are included in the Regulatory Impact Assessment below in Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

1. Options

The following options are considered:

Option 1: Do nothing

Option 2: Voluntary arrangements

Option 3: Introduce Proposed Regulations

2. Cost Benefit Analysis

2.1 The sectors most likely to be affected by the proposals for introducing new procedures for the making, varying or deleting of site rules for residential mobile home sites include:

- Mobile homes industry/site owners - who require consent
- Local authorities (LAs) - who determine site licence applications and approval of site rules, and
- Mobile home residents/the public - who may be affected by the change.

2.2 The following cost and benefit analysis has been undertaken for each of the above sectors.

Cost Analysis for Option 1: Do nothing

2.3 Indirect and direct costs to:

Mobile homes industry/site owners

- The existing procedure for the making of site rules is that they normally form part of the written agreement between the site owner and the resident. Should a site owner wish to amend the site rules there is an industry model requirement that states that the owner should consult with the residents on any changes. The cost of consulting with site residents is estimated at £250 per site, as set out in the Explanatory Memorandum to the 2013 Act. Total annual costs depend on the number of sites amending site rules each year and the proportion of site owners who comply with the model requirement. It is estimated that approximately 10% of the 92 sites in Wales will need to change site rules each year and compliance rates are assumed to be around 50%. On this basis, the total annual cost under the current scenario is estimated to be £1,150.

Local authorities

- There are no identifiable costs to local authorities in relation to the existing system for site rules.

Site occupiers/ Public

- There are no identifiable public costs.

Benefit Analysis for Option 1: Do nothing

2.4 Indirect and direct benefits to:

Mobile homes industry/site owners

- Maintaining the current system for site rules may allow site owners to potentially use the site rules to circumvent the new law or use site rules in an arbitrary and unfair way that could discriminate against certain classes of people living on the site.

Local Authorities

- There is no identifiable benefit to local authorities to maintaining the current system.

Site occupiers/ Public

- There are no identifiable benefits to residents in maintaining the existing system.

Cost Analysis for Option 2 – Voluntary Arrangements

2.5 Consideration has been given to allowing mobile home sites to introduce a voluntary model that would meet the needs of the Act without the need for Regulation.

2.6 Given the issues that the Act seeks to address, the introduction of a voluntary arrangement would not help to address the issues on rogue sites as the owners most likely to sign up to such an agreement would most likely be those who currently comply with the system and not be those where dubious practices take place. On this basis, the costs are unlikely to be significantly different from Option 1.

Benefit analysis for option 2 – Voluntary Arrangements

2.7 The direct and indirect benefits of introducing a voluntary system of site rules are similar to that provided above, in that those sites which chose to adopt the system would see a benefit, but this would not be seen consistently across Wales. Given this, option 2 is not deemed as being a realistic option to take forward.

Cost analysis for Option 3: Introduce the Proposed Regulations

2.8 Indirect and direct costs to

Mobile homes industry/site owners

- The introduction of regulations for the making, varying and deleting of site rules makes it a mandatory requirement to consult with the site occupiers on the site rules and to communicate the result of that consultation with the occupiers. As the existing system requires that site owners consult with their residents, but on a voluntary basis, the costs identified in Option 1 should also apply here (i.e. a cost of £250 per site on which site rules are changed). This cost includes the development and issue of the Proposal Notice and Consultation Response form. This will be an additional cost to those site owners that are not currently complying with the model industry requirements.
- Once agreed, the site rules must be lodged with the local authority who may charge a fee for this. Any fee charged must be reasonable and it is expected that this will be a nominal amount (i.e £50 to £100). Therefore, the introduction of a mandatory requirement to consult and lodge site rules with the LA will cost slightly more than that already stated at Option 1 - approximately £300 to £350.

On the assumption that 10% of the sites in Wales change their site rules in any given year and assuming full compliance, the annual cost is estimated to be £2,760-£3,220. This represents a small additional annual cost compared to Option 1.

Local authority

- Local authorities will be required to maintain a register of site rules for mobile sites in their area. The register should be published online and also available for public inspection at the local authority office. Local authorities will also be responsible for enforcing the Regulations.
- As noted above, local authorities will be able to charge a fee to cover the costs incurred in connection with the duties and responsibilities for the deposit and registration of the rules. Such fees must be reasonable and no local authority will be obliged to charge a fee. The fee is expected to be between £50-£100 for each set of amended site rules.

Site occupiers/ Public

- There are no identifiable costs to the residents or public for introducing a new system for the making of site rules.

Benefit analysis for Option 3: Introduce the Proposed Regulations

2.9 Indirect and direct benefits to:

Mobile homes industry/site owners

- The benefits of the proposed regulations for mobile home owners is that a coherent and consistent procedure is established for site rules for use by all site owners in Wales. The site rules agreed between the

site owner and the site occupiers will be agreed by the local authority and be enforceable as a contract term.

Local Authority

- Site rules accepted for deposit by a local authority will be regarded as having been validly made and enforceable.
- Local authorities will be able to recover their costs for both maintaining a register of rules as well as towards the cost of administration in agreeing the site rules and enforcing site conditions.

Site occupiers/ Public

- The benefits of the proposed regulations are that site residents will be given an opportunity to voice their concerns about the site rules that are being proposed for the site. The new procedures will ensure that all rules are framed in absolute terms to help avoid any doubt as to their purpose and meaning and will ensure that the rules do not discriminate against any particular class of person or restricts any resident from using the amenities of the site or from exercising their rights. Should a resident have a particular grievance in relation to the making of site rules they will be able to appeal to the Residential Property Tribunal to arbitrate in such matters.

3. Analysis of Other Effects and Impacts

Residential Property Tribunal

- 3.1 Both site residents and site owners will be able to lodge appeals with the Residential Property Tribunal in cases of disputes. These may be due to procedural irregularities in the making and consultation of the rules or because rules have been adopted which have not been agreed upon, for example. It is expected that the number of appeals would be approximately one or two per year. It is expected that an application to the RPT for site rules would be fixed at £155 so estimated costs would be approximately £310 a year.

Equality

- 3.2 We consider that these regulations will help to prevent any potential discrimination against any class of person and protect against the use of site rules as a form of intimidation. These regulations should help to protect the rights of mobile home site residents, many of whom are elderly and vulnerable. We do not consider they will have any significant adverse impact on people in rural or remote areas.

Sustainable Development

- 3.3 The proposals will not have any significant adverse impact on sustainable development.

The Welsh Language

3.4 The proposals do not have any adverse implications for the Welsh language.

4. Summary

4.1 Based on the analysis undertaken on all options, it is considered on balance that Option 3, which proposed that regulations for Site Rules are introduced. This option is preferred in order to:

- Provide consistency in the type of site rules that are made in Wales and gives the local authorities a role in approving the rules that exist on sites within their area.
- Ensure that residents' rights are protected and to guard against site rules being used as a tool to restrict residents from use of any amenities on the site or freedom to enjoy their property as they wish.
- Provides both site owners and site residents leave of appeal to the Residential Property Tribunal in cases where there are disputes.

5. Consultation

5.1 A 12 week consultation on the content of the Mobile Homes (Site Rules) (Wales) Regulations 2014 was held between the 10th February and the 6th May 2014. The purpose of the consultation was to seek views on the clarity of the regulations and the prescribed forms. The consultation was published on the Welsh Government website and key stakeholders were contacted directly and invited to take part in the consultation. These included local authorities, mobile home site owners, mobile home occupiers and industry representatives. A number of consultation events were also held where views were gathered.

5.2 In total, 28 formal written responses to the consultation were received to the consultation. Overall, the majority of respondents welcomed the regulations which accurately reflected the provisions of the Mobile Homes (Wales) Act 2013. Some simple and easy to read guidance is being prepared for publication prior to these regulations coming into force. The regulations were also reviewed to ensure clarity and to remove any references which may be open to misinterpretation.

5.3 The summary of consultation responses report and the Welsh Government response to the consultation was published on the Welsh Government website on 18 June 2014. A copy of this document can be requested by mailing:

Mobile Homes (Wales) Bill Team
Housing Policy
Welsh Government
Rhydycar Business Park
Merthyr Tydfil
CF48 1UZ

6. Competition Assessment

- 6.1 A competition filter test has been applied to the proposed amendments. The results of the test suggest that the proposals are unlikely to have any significant detrimental effect on competition.

7. Post Implementation Review

- 7.1 The Welsh Government expect to undertake a review of implementation of the Mobile Homes (Wales) Act 2013 and associated regulations made under the Act in 2015/16. This will help to ensure that the impact of the legislation on site owners, occupiers and local authorities is assessed and that the regulatory process in place is appropriate.