

**EXPLANATORY MEMORANDUM TO THE MOBILE HOMES (PITCH FEES)
(PRESCRIBED FORM) (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 (Pitch Fees) (Prescribed Form) (Wales) Regulations 2014.

Carl Sargeant
Minister for Housing and Regeneration

2 July 2014

1. Description

1.1 The Mobile Homes (Pitch Fees) (Prescribed Form) (Wales) Regulations 2014 (“the 2014 regulations”) prescribe the form of the document that must accompany a pitch fee review notice served under paragraph 17(3) or (8)(b) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013 which proposes an increase in the pitch fee. This form is designed to provide transparency in pitch fee reviews, to help mobile home occupiers understand the amount that they are being charged and to ensure that site owners are not able to add unfair charges onto the pitch fee.

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

2.1 None

3. Legislative background

3.1 Schedule 2, paragraph 23(a) of the Mobile Homes (Wales) Act 2013 states that the document referred to in paragraph 17(4) and (9) (notice which proposes an increase in pitch fee) must be in a form which the Welsh Ministers may, by regulations prescribe. Under paragraph 20 of the Mobile Homes (Wales) Act 2013 prescribes that any proposed increase or decrease to the pitch fee will be calculated by reference to the consumer price index (currently the retail price index). The Assembly procedure for this statutory instrument is the negative procedure. Under section 63(6)(b) of the 2013 Act, these are the first regulations to be made under paragraph 23 of Schedule 2 to the 2013 Act.

4. Purpose & intended effect of the legislation

4.1 There are around 3,500 mobile homes on approximately 105 sites in Wales. The pitch fee is the fee the mobile home owner pays the site owner in return for permission to site their home on the pitch. The payment of the pitch fee is a condition of the written agreement between the site owner and the resident.

4.2 The Mobile Homes Act 1983 governs the contractual arrangements between residents and site owners. The provisions (set out in Schedule 1 of the 1983 Act) are restated in Schedule 2 of the 2013 Act and provide site residents with security of tenure so that a licence (pitch agreement) can only be terminated on the authority of a court and the court can only authorise termination on specific grounds. Schedule 2 of the Mobile Homes (Wales) Act 2013 (“the 2013 Act) also implies certain terms into the pitch agreement so that both parties are aware of their respective repairing liabilities. The site owner is required to keep in repair the site, its facilities and services. It is implied into the pitch agreement that the site owner must consult with residents and any qualified residents’ association about any proposed improvements to the site.

4.3 The implied terms include how and when pitch fee reviews are conducted and what can be included in the review. Reviews are annual and when calculating any increase or decrease to the fee the pitch fee any proposed increase or decrease to the pitch fee will be calculated by reference

to the Consumers Price Index (CPI) since the last review, unless this would be unreasonable having regard to the matters set out in paragraph 18(1), of the implied terms which are:

- The costs of improvements to the site which benefit the site residents and which have been consulted on and agreed to by the majority of residents;
- The effect of any decrease in the amenity of the site (or that of the adjoining land under the ownership of the site owner) or reduction in or deterioration of any services to the site which has occurred since 1 October 2014 (and continues to occur).
- The reduction in services that the owner supplies to the site, pitch or mobile home and any deterioration in the quality of those services.

4.4 Certain costs are excluded from being included in a pitch fee review.

- Any costs incurred by the owner in connection with expanding the protected site.
- Any costs incurred as a result of enforcement action undertaken by the local authority in relating to licensing under Part 2 of the Mobile Homes (Wales) Act 2013.
- Fees paid by the site owner to the local authority for a site licence application or for changes to the site licence conditions.

4.5 Paragraph 17, of Schedule 2 of the 2013 Act makes it a requirement that any notice of review of the pitch fee should include clear information to the residents about the proposed increase to the pitch fee and how the figure has been worked out. Regulating pitch fee reviews ensure that site owners are sufficiently funded to meet their obligations to manage and maintain the sites whilst at the same time residents are protected from unreasonable increases to the pitch fee. (It should be noted that site owners have other income strands, including commission on mobile home sales and also the proceeds from homes they sell directly.)

4.6 The prescribed form provides transparency that will prevent unlawful increases being included in reviews, reduce the opportunity for exploitation, ensure that the correct rate of CPI is applied to the calculation of pitch fees and allow for the application of a consistent process of pitch fee reviews throughout Wales. Having been given all the necessary information about how the pitch fee is calculated, a resident will be better placed to make a decision about whether to agree with the proposal or not.

4.7 Occupiers are not obliged to pay any increase in the pitch fee, which cannot be imposed. If a resident does not agree with the proposed pitch fee and the site owner wishes to pursue it they would need to apply to the Residential Property Tribunal to determine the appropriate fee. In the meantime the existing pitch fee remains payable (as per paragraph 17(11) of Schedule 2 of the 2013 Act). An occupier can also apply to the tribunal although this is more unusual. If no application to the tribunal is made the pitch fee review ends for the year with no change implemented.

4.8 The prescribed form sets out:

- The proposed new pitch fee and the date it is proposed to take place.
- The calculation of the new pitch fee including the current fee, the CPI adjustment, recoverable costs and relevant deductions.
- Information about what to do if the resident disagrees with the proposed pitch fee.
- Information about the matters that can and cannot be included in a proposed review of the pitch fee.
- Site owner's consultation obligations
- Site Owner's repairing and maintenance liabilities
- Occupiers repairing liabilities
- Guidance regarding reviews, late reviews and the effect of the pitch fee review notice.

4.9 Failure to use the form in connection with a review means that the review is of no effect and the site owner is not entitled to any increase in the pitch fee.

Consultation

5.1 A 12 week consultation on the content of the Mobile Homes (Pitch Fees) (Prescribed Form) (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 draft Regulations and the prescribed form. 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 and officials are preparing Guidance explaining changes made in the 2013 Act.

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. Regulatory Impact Assessment (RIA)

6.1 No separate Impact Assessment has been prepared for this instrument as to the likely costs and benefits of complying with these Regulations since it

does not place any regulatory burden on businesses or local authorities. The impact assessment prepared for the Mobile Homes (Wales) Bill 2013 is still relevant and a copy may be obtained from the Department of Housing, Welsh Government, Rhydycar Business Park, Merthyr Tydfil, CF48 1UZ.