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Evidence of the British Holiday & Home Parks Association and the National Caravan Council (The NCC) to the Regulated Mobile Home Sites (Wales) Bill

BH&HPA

1. The British Holiday & Home Parks Association (BH&HPA) is the UK's national representative body of the parks industry. Across the UK, BH&HPA members own and manage 2,926 holiday, touring, residential and mixed-use caravan parks accommodating 389,831 pitches. These include 988 residential and mixed-use parks which include 48,663 residential pitches.

2. In Wales, BH&HPA members own and manage 420 parks providing 54,110 pitches for caravan holiday home and lodges, touring caravans, motorhomes, tents and residential park homes. Members own and operate 49 residential and mixed-use parks which include 1,490 pitches for residential park homes in Wales.

The National Caravan Council (The NCC)

3. The NCC is the trade association representing the collective interests of the touring caravan, motor home and caravan holiday and residential park industries in the UK. The industry has a turnover approaching £3 billion, employs in excess of 100,000 people and serves over one million caravanners and over 250,000 holiday and park home residents. Our members include over 90% of the UK manufacturers of caravans, motor homes and holiday home and park homes along with the leading park owners, motorhome and tourer dealers, and supply and service companies many of whom are actively involved in buying and selling new and used products to and from consumers.

4. To respond to the questions of the National Assembly's Communities, Equality and Local Government Committee consultation:

General

1. Is there a need for a Bill to amend the arrangements for licensing and make provision for the management and operation of regulated mobile home sites in Wales? Please explain your answer.

5. Yes.

6. Both associations have long supported the principle of a fit and proper licensing regime, as measures are necessary to prevent those who abuse park home owners from continuing to purchase and manage residential parks. The misery they cause tarnishes the reputation of the entire industry.

7. The majority of park owners are decent people who are conscientious in their provision of a valuable housing option. In the words of the Minister for Housing, Huw Lewis AM: 'there are reputable professional site owners and managers who act responsibly with the interests of site residents at heart.'

8. An effective regime which is a sufficient deterrent to rogue activity is in the industry's interest, as much as the interests of park homeowners. However, this must not be so expensive or so bureaucratic as to drive good park owners from the industry.

2. Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum? Please explain your answer.

9. The associations support the objectives of the Bill.

10. Our concerns are of a practical, legal and economic nature with regard to the detail of the Bill towards meeting its stated objectives, with one exception.

11. That exception is that whilst proposing protections from 'sale blocking' for today's homeowners, the Bill does not propose effective protections for their buyers or for communities already resident on a park.

12. Such protections are necessary to ensure:
    - buyers are informed of the rights and responsibilities which come with their purchase of a park home such as, for example, the costs involved and any Age Rules on a retirement park
    - where homeowners have chosen to live within a community of retired people that this is preserved
    - clear procedures are in place to administer the sales process.

13. Removing the park owner's involvement in private sales eliminates the opportunity for 'sale blocking'. However, it also removes the park owner's role in ensuring buyers have the information they need and the nature of the community on the park is preserved. Therefore, whilst introducing protections for the seller, protections are also necessary for the purchaser, homeowners already residing on the park and the park business.

3. In your view, will the licensing and enforcement regime established by the Bill be suitable? If not, how does the Bill to need to change?

14. As stated above, the associations have long supported the principle of a fit and proper licensing regime. However, this support is given with the caveat that a workable solution must be identified that is both practical and sufficient to deter the rogues.

15. The enforcement regime proposed by the Bill closely mirrors that for Houses in Multiple Occupation (HMOs) under the Housing Act 2004. We recommend modifications to the Bill's proposals on practical and legal grounds reflecting:
    - the fundamental differences between an HMO (where tenants reside usually on fairly short-term occupation with no financial investment in the premises) and a residential park, where homeowners have invested considerable sums and are resident for many years
    - the need to avoid creating duplication with the site licensing regime under the Caravan Sites and Control of Development Act 1960 (to which the Bill proposes no changes).

Section 4

16. We welcome the proposals with regard to the 'Collaborative discharge of functions', allowing local authorities to share and develop expertise in Regulated Mobile Home Site licensing. This collaboration would permit economies of scale, thereby reducing costs over the 92 sites identified for regulated site licensing and avoiding unnecessary duplication of licensing where one person is responsible for the management of several regulated mobile home sites in Wales.

17. ***We recommend collaboration between licensing authorities should not be an option; it is a requirement for the successful implementation of the Bill's proposals.***

Section 5

18. The Bill does not propose amendment to the Caravan Sites and Control of Development Act 1960. Therefore, the fit and proper licensing and enforcement regime for Regulated Sites under the 2012 Bill would work in parallel with the licensing and enforcement under the 1960 Act. This was confirmed to the Assembly by the Bill's sponsor Peter Black AM on 7 November: 'residential sites still have to be licensed under the Caravan Sites and Control of Development Act 1960'

19. We welcome this as the regime needs to separate the park infrastructure issues of a site licence, from the fit and proper management issues of a regulated site licence. In its effect, the new licensing regime proposed by the Bill should be that of a personal licence.

20. This separation also ensures that the site licence regulating the park infrastructure would endure as the owners and managers come and go over time. This safeguards the interests of homeowner as well as other stakeholders, such as, significantly, banks lending to park businesses and finance providers lending to homeowners.

21. However, it is essential to avoid any duplication creating 'double jeopardy' whereby a park owner could be prosecuted twice for the same offence under two separate licences, or where the conditions of the site licence under the 1960 Act are repeated (perhaps not word for word) by the regulated site licence. We suggest this would give rise to confusion and possible unfairness.

22. For example, the 1960 Act and the 2013 Bill both address the maximum number of mobile homes, facilities and equipment on the site:

1960 Act - conditions for a Site Licence	**Bill -** matters to be considered when granting a Regulated Site Licence
5(1)(a) *'the total number of caravans which are so stationed at any one time'*	7(3)(a) *'that the site is reasonably suitable for the stationing of not more than the maximum number of mobile homes …'*
5(1)(f) *'facilities, services and equipment'*	10(3)(c) and (d) *'facilities and equipment'*

23. Whilst the Housing Act 2004 addresses the maximum number of households in a HMO, we question the necessity to twice regulate for the number of park homes on the same park. Legislation giving rise to 'double jeopardy' could be subject to legal challenge.

24. ***We recommend that a 2012 Regulated Site Licence should focus on the fit and proper management standards of the park (which would automatically require adherence to the conditions of the Site Licence under the 1960 Act). Therefore any breach of the 1960 Site Licence would be a matter for consideration as to the fit and properness of the park management.***

25. ***However, for the reasons given above, we recommend that Regulated Site Licence conditions under the Bill should not duplicate (with the possibility to conflict with) 1960 Site Licence conditions.***

Section 6

26. 6(2) seeks applications to identify '(a) the person who is the owner of the regulated site (or, if the site is owned by more than one person, all those persons)', and '(b) the person who is to be the manager of the site.'

27. However, one person may be the owner of several regulated sites in Wales. The collaboration suggested in section 4 is therefore essential:
    - to ensure that any breach of the fit and proper requirements in respect of one regulated mobile home site is transmitted through the system and impacts on that person's ability to own and manage all other regulated mobile home sites in Wales
    - and, on grounds of efficiency and cost, to avoid duplication of applications and vetting of a single person who owns several regulated sites.

28. ***We recommend that Section 6 is modified such that the owners of several regulated mobile home sites are identified through the application process, streamlining the vetting process and that their Regulated Site Licence should apply the same fit and proper management standards and any subsequent sanctions across all regulated mobile home sites within their control.***

Section 7

29. Section 7(1) gives the site licensing authority the power to refuse the application for a regulated site licence. In these circumstances, if he/she continues to use the site as a regulated site, the park owner would be guilty of an offence under section 22. The homeowners on such a park would need protection.

30. While it might be assumed the park owner would sell the park in such circumstances, if this does not happen for whatever reason, the legislation does not provide a mechanism for a receiver or manager to be appointed in these circumstances.

31. 7(3)(a) and 7(5) addresses the maximum number of mobile homes. This is a matter for a 1960 site licence and, as above, the conditions of the two licences should not be duplicated so creating double jeopardy.

32. 7(3)(d) requires that the 'proposed manager' is fit and proper. There are many park managers already employed in Wales. The Bill needs to address their employment protections if they are not found to be fit and proper under the new regime.

Section 8

33. Section 8 also addresses the maximum number of mobile homes. As above, this is a matter for a 1960 site licence and, as above, the conditions of the two licences should not be duplicated.

34. It will be important to ensure clarity between the 'prescribed standards' under 8(3) of the Bill, and the Model Standards published by Welsh Ministers under the 1960 Act, again to avoid duplication.

4. Are the Bills proposals in relation to a fit and proper person test for site owners and operators appropriate, and what will the implications be?

Section 9

35. In assessing whether a person is fit and proper under 9(2):
    - evidence needs to take into consideration the management of ***all*** sites within that individual's control
    - considerable care is necessary to ensure criteria are proportionate. Breaches/offences may be absolute and while 'guilty' the park owner, despite due diligence, may not have contributed to the offence. For example:
        - despite the park owner's best efforts, a resident's actions can place the park owner in breach of his site licence conditions (such as by erecting an extension to the home within the required separation distance).
        - a Fire Point vandalised after the park owners' inspection, just a short time before the environmental health officer visited the park.

36. Under 9(2)(c), the site licensing authority 'must have regard … to any evidence' that the park owner has contravened certain areas of law. We suggest that such evidence should be

limited to cases where the court or a tribunal has made a finding. Without such a definition to a decision of a court of tribunal, the licensing authority could have to consider and weigh allegations as evidence of legal breaches.

37. Even if this definition were added, we recommend that guidance should be provided about the relative weight that should be applied to findings in the civil courts, tribunals or those administering codes of practice. There are questions of degree that should be considered. Without taking account of civil cases which can be trifling or serious, the spectrum of offences would include from an administrative oversight in the nature of a minor regulatory infringement to the commission of serious crime.

38. Issues could arise under section 9(2) in respect of 'spent offences' where it would assist if the Assembly's intention was clarified.

39. ***We recommend***

- ***assessment as to the fitness of a park owner or park manager should take into account <u>all</u> sites within that individual's control***
- ***the regulated site licensing authority should be charged with assessing the weight to be given to any of the evidence collated under 9(2) and 9(3). Offences should not be viewed in an absolute fashion and alleged breaches of the law which are not supported by the finding of a court or tribunal should not be taken into account.***

40. We applaud the inclusion of 9(3)(a) requiring the consideration of a park owner's current and previous associates to prevent the passing of management responsibilities between members of the same rogue 'gang' in order to circumvent the protections proposed.

41. Guidance would be necessary:

- under 9(5)(a) to avoid creating an unnecessary bureaucratic burden on the majority of competent and professional park owners to prove their competence
- and under 9(5)(c) again to avoid an unnecessary bureaucratic burden given the complexity of management structures and funding arrangements.

42. We question the relevance and practicality of including 'competence', 'management structure' and 'funding arrangements' as criteria under 9(5). The issues arising from the unscrupulous minority within the industry are concerned with attitude (and lack of morality) rather than with competence, management and funding. Failures in attitude/morality are evidenced by conviction for harassment or attempts to defraud (under 9(2)) rather than any managerial, competence or funding issues.

43. Guidance would be necessary under 9(5)(a) and (c) to avoid creating a costly, bureaucratic burden on the majority of competent and professional park owners to prove their competence, management structures and funding arrangements. Guidance would also assist present and future park owners to establish whether they are likely to be able to obtain a regulated site licence.

44. We believe that as proposed, the Bill would seem to be asking park owners to prove and authorities to judge the absence of incompetence, the absence of failures in management or

funding. The approach should be to assume competence etc. unless there is clear evidence to the contrary.

45. ***Unless Welsh Ministers are able to issue the clearest guidance as to the objective application of criteria such as 'sufficient level of competence', suitable 'management structures ' and 'funding arrangements', we recommend that the criteria under 9(5)(a) and (c) should not be used. The main focus of the regime should be to drive out those with rogue and criminal attitudes and behaviours, as evidenced by convictions under the legislation listed under 9(2)(a) and (c).***

Section 10

46. Care is necessary under 10(2) and (3) to prevent 'such further conditions as the authority considers appropriate' from duplicating conditions of the Site Licence under the 1960 Act.

45. For example, the 'facilities and equipment' of Section 10(3)(c) and (d) of the Bill duplicates the 'facilities, services and equipment' of Section 5(1)(f) of the 1960 Act.

46. There is logic in the inclusion of 'facilities and equipment' in the Housing Act 2004 for HMO licensing, but this does not apply to residential parks where this aspect is already regulated under the 1960 Act. Instead, perhaps a requirement of a Regulated Site Licence under the Bill should simply be for the management of the park to adhere to the site licensing conditions under the 1960 Act.

47. Conditions 10(3)(a) and (b) mirror those for HMOs:
    - 10(3)(a) 'restrictions or prohibitions on the use or occupation of particular parts of the site by persons occupying it'
    - and 10(3)(b) 'reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the site'

    However, whilst perhaps relevant to an HMO, we would question their relevance to a community of owners who have invested in their homes on a park.

48. Care will be essential to ensure that homeowners' interests are not compromised through the application of licence conditions. Again there should be safeguards to ensure guidance to be provided by Welsh Ministers under 10(5) does not contradict or duplicate the Model Standards published by Welsh Ministers under the 1960 Act, not least so as to avoid the potential for double jeopardy.

49. ***As above, we recommend that 2012 Regulated Site Licence conditions should not duplicate or contradict 1960 Site Licence conditions; neither should Welsh Ministers' guidance under 10(5) contradict or duplicate the Model Standards published by Welsh Ministers under the 1960 Act.***

Section 11

50. 11(1) states that a licence may not relate to more than one regulated site.

51. ***We recommend that in assessing fitness to manage, a licence should not relate to more than one person, but should address all regulated mobile home sites within that individual's control. This would ensure the most effective use of the licensing authorities' resources and that there is an incentive for the licence holder to apply fit and proper management across all parks in their control.***

52. Given the passage of time and the severity of the implications for the park business and homeowners if a regulated site licence is not renewed, we would propose a requirement for the licensing authority to remind licence holders as their licence period approaches its end.

53. ***As a safeguard, we recommend a requirement for the site licensing authority to give the licence holder not less than 6 months' notice in writing of the date on which the licence will expire.***

Sections 11 and 12

54. We note the requirement for a 'standard written statement' and 'statement of any rules' to be annexed to a site licence application and thereafter becoming part of the licence. Variation to the terms of these documents thereafter is governed by the requirements of Section 12.

'standard written statement'

55. Whilst the requirements with regard to variation of terms implied into all agreements by the Mobile Homes Act 1983 are clear, the Written Statement also contains Express Terms agreed between the park and home owner. These are not normally 'standard' across all homes on a park.

56. This is because homeowners enter into agreement with the park upon first purchase of a home. Over time, different versions of the written statement (implied and express terms) have been in use.

57. ***Implied Terms***: When the Implied Terms have been changed by Parliament or by the Assembly in the past, there has been no requirement to issue existing homeowners with a new or updated written statement.

58. ***Express Terms***: It is very unlikely that a park owner would propose and home owners would agree to vary express terms which are already in place, so the express terms in most agreements will be those agreed upon first purchase of the home. Over time, park owners may have updated the express terms proposed to new customers purchasing a home from the park, sometimes in order to comply with changes in the law. Therefore, the express terms in place in agreements on a park may differ.

59. As terms of an individual contract, express terms could not be varied without the agreement of both parties to that contract. We foresee practical difficulties and the potential for legal

challenge for an authority seeking to vary individual express terms under 12(2) through a variation of the licence, without a procedure for seeking individual agreement.

60. ***We recommend modification to the Bill to recognise that express terms of agreements under the Mobile Homes Act 1983 are not standardised across all homes on each park.***

'statement of any rules'

61, We applaud the objective to ensure park rules are deposited with the licensing authority, to order to provide clarity for all parties particularly as it is proposed to remove the park owner's involvement in the private sales process.

62. However, a procedure is necessary, akin to that proposed under section (9) of the English Mobile Homes Bill, to ensure that the rules to be incorporated within the regulated site licence are properly established.

63. ***We recommend modification to the Bill to include a procedure akin to that proposed under section (9) of the English Mobile Homes Bill to protect homeowners' interests.***

12(9) 'a relevant person'

64. There is no definition of 'a relevant person' who can apply to vary a site licence. This definition is necessary to clarify where licensing authority resources should be expended in considering such applications and to avoid vexatious applications. A 'relevant person' should be limited to homeowners on the park or any Qualifying Residents Association.

65. ***We recommend tight definition of those 'relevant' persons who can apply for variations to a regulated site licence, limited to homeowners on the park or any Qualifying Residents' Association, in addition to the park owner.***

Section 14

66. It is not clear from the face of the Bill how the Register of Licences proposed interacts with the register already in place under the 1960 Act. The Explanatory Memorandum states that it will 'replace' the register under 1960 Act, but this is not legislated for and would seem inappropriate.

67. ***We recommend a central register of Regulated Site Licences across Wales, thereby a single listing of all individuals deemed fit and proper to own and manage a residential park. This would be separate from the registers of 1960 site licences held by each Local Authority.***

68. ***This central register would assist in managing a system whereby recognition as fit and proper in one area would count as recognition in all areas of Wales, and revocation could apply across all parks in an individual's control.***

Section 16

69. To avoid any potential for abuse and to meet the requirements of natural justice, the list of appeals which a park owner could make to the Residential Property Tribunal should include:
    - the inappropriate application of fixed penalties under Section 23
    - the inappropriate requirement to carry out works, or to pay for works undertaken by the licensing authority under section 18. We make some comments about the terms of an appeal under section 18 below.

70. ***In addition to those criteria listed in Section 16, we recommend a park owner should be able to appeal to the Residential Property Tribunal where:***
    1. fixed penalties are inappropriately applied,
    2. or works are inappropriately required or charged for by the licensing authority.

Section 18

71. We applaud the ability of the licensing authority to execute necessary works where the park owner has failed to respond to proper notice. However, as above, we recommend that there should be the opportunity for the park owner to appeal where this measure is deployed inappropriately.

72. Section 18(4)(a) provides that "the **extent** of any works required to ensure compliance with the condition in question" (our emphasis) may be referred to the appeal tribunal. In restricting an appeal to the "extent of any works" the Bill does not provide an appeal against the question whether the service of the notice is justified by matters amounting to breach of condition and this should surely be the starting point for the appeal process.

Section 19

73. The appointment of an Interim Manager would be a necessary step to protect homeowners where the licensing authority is minded to revoke the Regulated Site Licence. This amounts to the suspension of the park owner's livelihood. To avoid potential legal challenge, there should be a requirement for the Interim Manager to account for funds received and expended, and for any surplus to be returned to the park owner.

74. ***We recommend that the Bill is modified to take account of the rights of the park owner following the suspension of his/her business through the appointment of an Interim Manager.***

75. Under 19(6), the appointment of the Interim Manager ceases when either the site licence is revoked or when the licence expires at the end of the five year period or indeed if the term of the manager's appointment under the terms of that appointment expires earlier. However, no manager can be appointed when the site licence has been revoked or has expired. No provision is made for that contingency. How would homeowners' interests be protected in this eventuality?

76. While the assumption may be made that the former site licence holder will sell the park, that may not be the case (for example, in today's market there may be no buyer, or more

accurately, no buyer who would be considered fit and proper). Therefore, if the park remains in the same ownership, but the option of an Interim Manager is no longer available, the park owner would be in breach of the obligation to hold a regulated site licence.

77. Also, would the licensing authority have to take similar action in relation to the 1960 Act in terms of convictions, revocation of the site licence etc.? The appointment of an Interim Manager would not necessarily qualify the manager to hold the licence under the 1960 Act so the position might be reached where the park is run by the Interim Manager but the responsibility for compliance with 1960 Act site licence conditions remains with the park owner, as holder of that licence. We would suggest it would be appropriate to amend the 1960 Act to make it plain that an Interim Manager has responsibility for adherence to the requirements of the Site Licence under the 1960 Act.

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78. Considerable work is needed to ensure the interests of homeowners are protected and there is a pragmatic means to ensure the exit of a park owner who is not deemed to be fit and proper. We don't believe section 19 achieves this.

79. ***We recommend work is necessary to propose protections for homeowners' interests where the site licence has expired so that, as drafted, there is no longer the opportunity for the licensing authority to appoint an Interim Manager.***

We recommend that it should be made clear that an Interim Manager has responsibility for adherence to the requirements of the Site Licence under the 1960 Act.

Section 23

80. As above, there are concerns that the duplication between site licensing under the 1960 Act and this Bill. Fixed penalties would appear to apply to breach in respect of the park infrastructure, properly addressed through the 1960 site licence.

81. There is concern that the use of fixed penalties could be abused, and therefore a balance is required through a right of appeal

82. For example, there is no opportunity for the recipient to make representations to the licensing authority with regard to the penalty, or for the licensing authority to withdraw the penalty notice if they subsequently felt it was inappropriate.

83. Section 23 reads like the powers as judge and jury would be vested in one 'authorised officer' with no opportunity for appeal. The list of issues where the park may appeal to a Tribunal under section 16 should include fixed penalty notices.

84. The question of degree should also be addressed and the weighting to be accorded to breaches of conditions. Consider the examples of a Fire Point vandalised after the park owners' inspection, just a short time before the environmental health officer visited the park, or a homeowner's actions causing the breach.

85. ***We recommend there should be a right of appeal against the inappropriate use of fixed penalties and guidance provided as to the weighting to be accorded to breaches of conditions.***

Section 25

86. To be effective and deter rogue operators, the punishment for operating a residential park without meeting the fit and proper person criteria needs to be severe.

87. However, we question the legal application of some aspects of section 25 and the protection of homeowners' interests in these circumstances.

88. The repayment of pitch fees (25(5)(c)) and any commission (25(5)(b)) are akin to the provisions for the repayment of rent in the case of an unlicensed HMO.

89. However the repayment for the purchase of a park home (25(5)(a)) needs clarification as to the ownership of that park home following repayment, as well as protections for the customer who would presumably incur costs in seeking an alternative home.

90. ***We recommend that the Bill should explicitly address the rights of homeowners where a park becomes an 'unlicensed regulated site' through the loss of the licence. Their continued right to station the park home on the land should be explicitly protected.***

Section 29

91. Care would be necessary to prevent management regulations duplicating or contradicting model standards or site licence conditions under the 1960 Act.

5. Are the amendments to the contractual relationship between mobile home owners and site owners which would result from the Bill appropriate? If not, how does the Bill need to change?

92. Our most important concern with the drafting of the Bill is the removal of the park owner from the assignment sales process, without the introduction of protections for the purchaser, park community and park business. There is a great imbalance in providing protections for the seller from an unscrupulous park, without also providing protections for the other parties impacted by the sales transaction.

93. Purchasers usually have no previous experience of park homes. Protections are necessary to ensure purchasers:
    - can review the Written Statement that would be assigned to them with their purchase, including making them aware of the Implied Terms, outlining their rights and responsibilities
    - understand their financial obligations in terms of future payment of the pitch fee, commission on resale and utilities' charges etc.
    - are aware of, and can comply with, any requirements of the Park Rules (for example relating to age, pets, children, maintenance of the home etc.).

94. Evidence shows that 'buyer beware' does not work.

95. We also have concerns for the procedure on private sales given that none is proposed by the Bill. In practical terms, the park owner needs to be informed:
- of the date of assignment so that that final meter readings can be taken,
- of the departing homeowner's address for service for the billing of final utilities and any arrears of pitch fees,
- of the date of birth of the incoming purchaser and all occupiers (to ensure compliance with any Age Rules)
- of any pets to occupy the home (to ensure compliance with any Pet Rules)
- of any cars or commercial vehicles the purchaser wishes to keep on the park (to ensure compliance with any Parking Rules)
- of the purchase price (to ensure the accurate calculation and payment of the commission payment)

and so on.

96. The English Mobile Homes Bill proposes a series of procedures and measures to protect seller and buyer, as well as the community on the park and the park business. We are most concerned that such protections are not proposed in Wales. We can foresee a purchaser inadvertently making a serious mistake in buying a home, for example, without being aware of an Age Rule or a Pet Rule. Where that happens, other residents will look to the park owner to take action to preserve the character of the park and the inadvertent buyer will be the loser.

97. Equally, without a procedure for private sales, there is no clarity as to how commission would be paid. This lack of clarity would inevitably lead to confusion, probably to the detriment of the park business and purchaser, whilst the departing seller would have disappeared. In simple practical terms, a procedure is necessary to ensure the reading of utility meters, billing of pitch fees etc is transferred from seller to buyer on the appropriate date.

98. Clarity avoids confusion and would reduce the potential for conflict.

99. ***We recommend that the Bill is modified to include protections for both parties in a sale, as well as the community on the park and the park business, akin to those proposed in the English Mobile Homes Bill.***

6. In your view, how will the Bill change the requirements on site owners/operators, and what impact will such changes have, if any?

Licensing

100. The immediate impact of the Bill will be for park owners to apply for a regulated site licence. Without the detail of the regulations, it is difficult to be certain what this will require. However, for example, to demonstrate 'management structure' and 'funding arrangements', it might involve writing a business plan, justifying their financial position and seeking references etc.

101. The consequences of failing to obtain a licence are draconian so parks are not likely to cut corners in the process. Therefore, many will seek advice from solicitors or surveyors or

accountants etc. These will all be completely new expenses for the park business and the application process will have to be repeated at least every five years.

Park home sales

102. A new procedure will be necessary when a homeowner sells and assigns a home, to ensure all new occupants meet the requirements of the park rules and establish whether commission is paid and any action needs to be taken subsequent to the purchase of the home in respect of the new owner.

103. Given there are no protections currently proposed for purchasers, it is likely that if any new homeowner takes occupation in breach of age or pet rules, the park owner will need to take action in response to other owners desire to maintain the character of their park. This will inevitably give rise to allegations of ruthlessness against a good park owner and create tensions and animosities within a park community.

104. As above, without a procedure for private sales, there is no clarity as to how payments around the sale should be administered. Deprived of pitch fee, and commission income, the business would inevitably suffer.

Economics

105. This Bill makes it explicit that a park owner must not pass on any costs of the Bill, through the pitch fee review. General maintenance costs will inevitably increase ahead of CPI which takes no account of housing costs. In addition, there will be the costs of the Bill, whilst income will not keep pace even with inflation given the proposal to tie the pitch fee review to the CPI.

106. Overall therefore, the Bill's proposals will reduce the profitability of park business, though to what extent is unclear. The overwhelming majority of residential parks are operated by micro-businesses – these are not sophisticated 'multi-million pound businesses' as described in the Debate introducing the Bill to the Assembly, but more usually a husband-and-wife team. In today's stagnant housing market, the economics of some are becoming increasingly marginal.

107. Where small business economics are marginal, the loss of income to the business would inevitably lead to some exiting from the industry. The effectiveness of the new regime in deterring rogues would then be truly tested, as to whether parks coming onto the market are purchased by the well-known rogue operators, or the industry attracts 'fit and proper' investors. In either case, the experience of good park owners will be lost.

108. If the impact on the industry's economics is severe, that will to the detriment of all parties as the value of a homeowner's asset in their park home relies upon the quality of the park upon which it is sited.

7. Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons.

109. Yes, although the final decision in respect of any termination of an agreement should rest with the Court. In this way, the RPT would develop greater expertise and provide a quicker, more affordable route to justice for all parties.

110. In addition, the Bill does not provide for appeals against the imposition or alteration of site licence conditions under the 1960 Act to be dealt with by the RPT and these remain to be dealt with by the Magistrates' Court.

111. ***We recommend the modification of the 1960 Act for appeals against the imposition or alteration of site licence conditions to be dealt with by the RPT.***

8. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

112. We are aware of legal opinion received from the Solicitor General of the need for the Bill reforming park homes law in England to take account of the European Convention on Human Rights. It is logical therefore to expect the same advice would apply in Wales and any legal challenge would be a barrier to the implementation of the Bill.

113. We have addressed above other areas where we recommend the Bill should be modified to avoid barriers to its implementation.

Powers to make subordinate legislation

9. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)? In answering this question, you may wish to consider Section 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill.

114. The regulations required are substantial. Full consultation will be essential towards ensuring the regulations are proportionate and recognise the interests of park owners and homeowners. Sufficient lead time and advance guidance and information will be essential to allow homeowners and park business to prepare and adjust to what represent major changes in the way the law works for their parks.

115. As outlined above, we have a series of concerns, amongst other with regard to the need for guidance, objective standards and to ensure 'regulated site licensing' does not duplicate and contradict site licensing under the 1960 Act.

Financial implications

10. In your view, what are the financial implications of the Bill? Please consider the scale and distribution of the financial implications. In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which includes an estimate of the costs and benefits of implementation of the Bill.

116. It is not possible to accurately cost proposals until regulations have been laid. However, we are concerned that the costs involved with the Bill have been underestimated.

117. Costs could greatly be reduced if one 'fit and proper' licence applied to an individual park owner or manager, with its application across all residential parks in their control, giving a single application process, a single vetting process, a single register and a better deterrent against abuses.

118. The Bill proposes that all licensing costs should fall on park business with no opportunity for them to be recouped, whilst at the same time the proposal to align the review of the pitch fee with the Consumer Prices Index will further erode income to the business over time. Park owners naturally question the justice of this since homeowners are also the beneficiaries of the proposed regime.

119. For example, who should pay for the policing of Qualified Residents Associations by the licensing authority? Is there justice or logic for these costs falling on the taxpayer, the park owner or the residents who form the Association and benefit from its qualification?

120. The Explanatory Memorandum confirms that for more work is necessary to establish the costs of the proposals, and without the detail of the regulations to implement the Bill, it is impossible to accurately estimate.

Other comments

11. Are there any other comments you wish to make about specific sections of the Bill?

Section 30 – Qualifying Residents' Associations

121. We have concerns with regard to the changes to the provisions for Qualifying Residents' Associations. As drafted section 30(1) reads as if the threshold for approval of a QRA is over 50% of members. Establishment and recognition of a QRA is dealt with by paragraph 28 of the Implied Terms and it is very clear there that the right to be recognised arises where more than 50% of the **homes** on a park are represented, rather than 50% of the occupiers on a park.

122. It seems that a significant change is proposed and this provision of the Bill is a disconnect from paragraph 28 of the Implied Terms.

123. Such a change would of course mean that associations representing a minority of homes on the park might qualify for recognition.

124. Consider a park with six homes: two occupied by couples and four occupied by single people, so eight occupiers in total. If the two couples formed an association, they would

represent 50 per cent of the occupiers, although they would occupy only 33 per cent of the homes and contribute only 33% of pitch fee income.

125. Such a scenario could lead to multiple qualifying associations on a single park which could contradict one another, particularly if a park community become factional. This would be divisive and create management difficulties to the detriment of homeowners.

126. ***We recommend that the Bill is modified so that the criteria to qualification for a residents association (30(1)(a) and 30(3)) ensure that 50% per cent of the homes on a park are represented, as currently outlined within the Implied Terms under the 1983 Mobile Homes Act in Written Statements in Wales.***

We also ask that the Assembly consider who should meet costs for qualifying a residents association; the only logical response is sure the homeowners who form that association of which, as currently drafted, there could be several established and qualifying on a single park.