

**Communities, Equality and Local Government Committee
Regulated Mobile Homes Sites (Wales) Bill
RMHS 23 The City & County of Swansea**

Consultation Questions

General

Q1 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.

Swansea Council welcomes the Bill and amendments to the legislation relating to mobile homes in Wales. The current legislation is, in many ways, outdated and lacks satisfactory enforcement powers: it is cumbersome and not effective. The licensing regime is something we have used with houses in multiple occupation (HMOs) since changes in the Housing Act 2004 took effect in 2006. We see how licensing could have benefits for mobile home sites and welcome the additional controls that would be placed upon licence holders, which in turn would give greater satisfaction for residents of mobile home sites.

Q2 Do you think that the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum? Please explain your answer.

The Bill does appear to deliver the stated objectives. IT seeks to introduce a new licensing regime and the proposals cover terms and conditions of a licence as well as a fit and proper person test (further comments on this are included in response to Question 4). The Bill proposes new and increased powers for local authorities which should be more workable and productive than existing powers.

The introduction of a new code of practice by Welsh Ministers would be welcomed along with management regulations and the proposals relating to security of tenure for home owners appear to be more satisfactory than existing arrangements.

Q3 In your view, will the licensing and enforcement regime established by the Bill be suitable? If not, how does the Bill need to change?

It appears that only the owner of the regulated site can be the licence holder: Section 6(2) says that the licence application must identify the person who is the owner and who is to be the manager and Section 7(2) says that the authoritymay grant a licence to the person who is the owner (or the persons who are the owners) of the site.

In some cases the owner will be a person or persons remote from the regulated site who do not take an active role in its operation and who actually

employ others to carry out this role on a day to day basis, not just as managers, but in practical terms as site operators.

The Bill, as drafted, will specifically preclude such other persons as being the licence holder.

It would be helpful for clarification as to whether this was the intention of the Bill or whether this has been an oversight (further comments are also included in response to Question 4).

This is also not clear in Section 22 where offence relating to regulated sites may be committed by the owner or person who has control or manages the site.

Section 10(1) requires the licence holder to ensure that copies of the licence (including standard written statement and rules) are prominently displayed at a place on the site which is readily accessible to occupiers. It may be a practical and helpful suggestion to include in the Bill that the licence holder should also provide copies of the licence to site home owners at their request.

A maximum term for a licence of five years seems appropriate with the ability to review, vary and revoke at any time during that term, depending on circumstances.

Section 18 deals with the local authority's ability to carry out work in default. This seems clear where a licence has already been issued and subsequently it becomes apparent that work is needed for the licence holder to comply with the licence conditions. In such a case the authority may serve notice in writing on the licence holder requiring the licence holder to carry out the works in question and the authority may carry out work in default if the licence holder fails to complete the work within the specified time period.

Clarification is needed as to the procedure when a licence holder fails to complete the work required a licence conditions by the specified time when the licence is first issued. Does an additional notice have to be served on the licence holder or merely a notification by the authority that the licence holder has failed to comply with the licence conditions and the authority is going to carry out the work? (This would of course be in addition to any legal proceedings the authority may instigate for the licence holder failing to comply with the licence conditions.)

The ability for an authority to charge for preparing and serving a notice under Section 18(1) is welcomed although not without its own risks relating to debt recovery.

The power for a local authority to appoint an interim manager **instead** of revoking the licence is an interesting proposal. There may be potential conflicts here as the licence holder still retains responsibility for the regulated site and has to comply with the licence conditions, but the interim manager may be under specific directions of the authority. The Bill says that if the

licence is subsequently revoked the appointment of the interim manager ends, but what would then happen to the site and the home owners in occupation?

Whilst the powers of entry etc for officers contained in Section 21 are welcomed clarification is sought on the hierarchy for authorisation.

The maximum penalty of level 5 on the standard scale for a person fails to license a licensable site seems low and would not necessarily be a deterrent, particularly when viewed alongside the maximum fine of £20,000 for the parallel offence relating to HMO licensing under the Housing Act 2004. However, the introduction of an unlimited financial penalty on conviction on indictment is welcomed and one which will have to be tested by the Courts.

Section 10(4) says that a licence may not include conditions imposing restrictions or obligations on a particular person other than the owner unless that person has consented to the imposition of the restrictions or obligations and yet Section 22(3)(d) says that an employee or agent of any of the persons referred to in paragraphs (a), (b) and (c) commits an offence if that person knowingly causes or permits any failure to comply with any condition of the licence.

Is there to be an offence for providing false or misleading information on a licence application?

The Bill's proposals for fixed penalties introduce a new element into any housing work. The imposition of a fixed penalty for failure to comply with a licence condition will clearly penalise the person directly but will not necessarily encourage improvement except for the expectation that the licence holder will not be caught again. These must be used appropriately and their use be monitored to ensure that they are being used effectively. They should not be used for serious breaches.

If the fine is not paid there is the need for additional enforcement and debt recovery, which is itself costly.

Section 23(3) says that the person cannot be convicted of the offence if the fixed penalty is paid by the relevant time. However, if the fixed penalty is paid and the licence contravention then continues could a new date of offence be noted and other enforcement action, including legal proceedings, be taken if appropriate?

The introduction of a range of enforcement notices which the authority could serve in cases of breaches of licence conditions or failure to comply with a management code of practice would be a positive step forward.

Q4 Are the Bill's proposals in relation to a fit and proper person test for site owners and operators appropriate and what will the implications be?

Section 9 talks about the fit and proper person status of the owner of the regulated site or the manager or anyone involved in the management of the site. There is no mention of a site operator.

Prior to granting a site licence the authority must be clear on who the persons are who will be involved in managing the site, both in order to determine that the proposed management arrangements for the site are satisfactory (as required in Section 7), but also relating to their fit and proper person status.

There will need to be a requirement on site owners to notify the authority of any changes in persons involved in the management of the site. This may be time consuming and costly (can a licence variation fee be charged by the authority in such circumstances and will there be a penalty for not informing the authority of such changes promptly?)

It seems overtly restrictive that the fit and proper person test is relevant to whether a person is fit and proper to be the owner of a regulated site (Section 9(1)(a)). It is not clear how the Bill could remove the ownership of land and also leaves no option for an alternative licensee if the owner failed the fit and proper person test. This would leave home owners on an already licensed site in a precarious position if the owner was subsequently found not to be fit and proper or if a new application was refused and would also place licensing authorities in the position of having to appoint an interim manager or taking over the management of a site rather than being able to work with the owner to find an alternative solution.

Has consideration instead been given to the option to determine that an owner may not be considered a fit and proper person to be the licence holder and then they could nominate another suitable person, such as a manager to be the licence holder with appropriate financial resources etc as in the Housing Act 2004 for the licensing of HMOs?

Paragraph 62 of the Explanatory Memorandum says that it will be open to local authorities to request evidence of a person's criminal convictions. It should be noted that many of the housing related offences referred to in the Bill, whilst criminal, are not centrally recorded and so authorities would be dependent on an applicant's self-declaration or local knowledge within the authority.

Q5 Are the amendments to the contractual relationship between mobile home owners and site owners which result from the Bill appropriate? If not, how does the Bill need to change?

The amendments seem appropriate.

Q6 In your view, how will the Bill change the requirements on site owners/operators and what impact will such changes have, if any?

Site owners will need to be more open about their business arrangements: company details, employees (if there are any) and how an individual site is managed.

There will be financial implications as they will now have to pay for a licence which is a new requirement. If prosecuted for an offence under the Bill there is also the possibility of additional financial penalties in fine and costs, but also with home owners being able to apply for repayment orders.

With the introduction of the fit and proper person requirements, a new Code of Practice and hopefully, management regulations, it will be clear to site owners what their obligations are and what enforcement and penalties may be applied. This should introduce a more transparent system for regulating sites for all involved.

Q7 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.

Yes, the Residential Property Tribunal (RPT) should have jurisdiction to deal with disputes relating to mobile homes, but it is important that offences under the Bill should be criminal offences and should be pursued through the court system.

The RPT, providing it is properly resourced, has the ability to adjudicate on disputes within a relatively short timescale and in a more informal manner than the court system which may encourage residents with issues to seek proper settlement, even taking into account the changes that are proposed for the RPT as part of the judicial system in England.

The RPT for Wales already has a role in housing matters, but unlike the RPT in England, does not publish any of its decisions under the Housing Act 2004 online. This would assist everyone involved, not just local authorities, in being aware of and understanding decisions and, whilst the decisions are not case law, would benefit future enforcement and determinations in the future. This is particularly important when new legislation is being introduced.

Q8 What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

With the introduction of any new legislation there is a need for education, training, publicity, changes to procedures, data recording and resources. Welsh Government will have a role to play in this and this is mentioned in the Explanatory Memorandum to the Bill.

It will be crucial that site owners and home owners are informed about the implementation of the provisions and what it actually means for them. This must be done at a national level with back-up at a local level.

There will need to be a run-in period for all site owners to submit their licence applications: may be a 'period of grace' after the introduction of the legislation.

The Bill's requirement for collaborative discharge of functions will mean local authorities having a new approach to site licensing. This will require ratification through Councils' political procedures and clarification as to how this will work on a practical basis.

Q9 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)?

Additional subordinate legislation would be welcome, particularly relating to licence applications, a code of practice and management regulations.

Q10 In your view, what are the financial implications of the Bill? Please consider the scale and distribution of the financial implications.

The estimate of costs and benefits included in Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment) are broadly accepted. It is clear that there will be costs to all parties involved, but the current licensing regime is outdated and needs to be replaced to raise standards and security across the country.

From a local authority's perspective it may be more straightforward for those who are operating a busy HMO licensing regime as they will have some tried and tested licensing procedures which could be a good foundation for the new regulated sites licensing processes.

It is important that site licence fees are set at a level which contribute largely to the costs of the regime although it is doubtful that a new licensing scheme would be self-financing.