

HCS 13

National Assembly for Wales

Communities, Equality and Local Government Committee

Holiday Caravan Sites (Wales) Bill

Response from: British Holiday & Home Parks Association

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Consultation on Holiday Caravan Sites (Wales) Bill
Evidence of the British Holiday & Home Parks Association

19 May 2014

1. The British Holiday & Home Parks Association (BH&HPA) is the representative trade body of the parks industry in the UK. 1,877 BH&HPA members own and manage 2,922 parks accommodating 385,056 pitches across the UK, including 423 parks with 53,912 pitches in Wales¹.
2. Over 70% of Wales' tourist bed stock is provided by camping/caravanning (touring and static) establishments: 399,124 tourist beds in 1,322 establishments². The turnover and visitor expenditure as a result of Wales' holiday and touring park industry is some £727m per annum. Its economic impact to Wales has been calculated as a GVA contribution of £317m per annum, supporting 10,645 direct and indirect jobs in Wales, with further employment sustained in other areas of the UK³.

General principles

3. The industry has given qualified support to Mr Millar AM's objectives. Mr Millar AM has engaged with us in the development of his Bill and whilst the requirements now proposed are more pragmatic than the earlier version upon which we were consulted, considerable grave concerns remain.
4. For example, the industry recognises the need to modernise site licensing for holiday parks under the Caravan Sites and Control of Development Act 1960 including in order to provide local authorities resources for their licensing work. However rather than modernising the system, the Bill proposes radical reform.

¹ BH&HPA database, April 2014

² Welsh Government Bedstock Data : Situation as at March 2013 -

<http://wales.gov.uk/docs/drah/publications/Tourism/bedstock2012en.pdf>

³ Economic Impact Assessment of the Holiday Park Industry in Wales, British Holiday & Home Parks Association / VisitWales study September 2011

5. Such sweeping change creates risk for the industry and its contribution to the Welsh economy. Given the magnitude of the changes proposed, they should not be enacted in the absence of an evidence base for the problems the Bill seeks to address, nor without proper evaluation of their costs and impact. A more cautious approach is necessary to give knowledge and experience to safeguard the economics of the industry and the employment it sustains, whilst ensuring a regulatory system to safeguard the industry and its consumers for the future.
6. The Bill modifies and applies the requirements of the Mobile Homes (Wales) Act 2013 to holiday and touring parks. However, protections designed for housing vulnerable elderly residents are inappropriate when applied to tourism businesses and would create a disproportionate burden.
7. Whilst residential parks trade in a relatively stable market, consumers of and investors in tourism businesses can simply decide to take their custom and/or investment elsewhere. Flexibility is essential to respond to the volatility of the holiday market. Tourism is price sensitive and regulation should not disadvantage Welsh park businesses' ability to compete.
8. Despite incorporating elements of industry best practice amongst its proposals, when viewed in the round, the whole is greater than the sum of its parts. Combined, the measures would create a disproportionate burden of uncertain cost and unknown impact.
9. The regime for residential parks upon which the Bill is based will not be commenced until October, so its costs and consequences for residential parks are as yet unknown. If the Bill is enacted, Wales's holiday and touring parks would be unique in the UK to be trading under such a complex regulatory regime as is proposed. There is considerable potential for unintended consequences – and therefore high risk - in applying such an untested, burdensome system to the sector which is central to Wales' tourism economy. In the absence of evidence, we also question the justification for such a complicated – and therefore costly - regime.

Licensing (Part 2)

10. As above, the Bill tailors the licensing regime for residential parks to the industry. Yet, there is no justification for the application of, for example, £500 fixed penalty notices, fit and proper person licensing and interim managers to a microbusiness - say a husband-and-wife team - receiving holidaymakers on a touring park for short breaks. It is the market rather than regulation which ensures standards as their business survival depends on their park infrastructure and customer service. However, regulation could increase their prices making them less competitive, or uncompetitive.
11. To address some aspects of the licensing regime proposed:
 - 11.1. **11 Duration of site licences** - We are greatly relieved that the Bill does *not* propose time-limited site licences as this would severely undermine lenders' confidence and therefore jeopardise industry investment, as well as remove customers' access to credit.
 - 11.2. **21 Fixed Penalty Notices** - Both the Mobile Homes (Wales) Act 2013 and the Bill refer to Local Authorities' use of fixed penalty notices where a breach of site licence condition is identified. For residential parks, the maximum penalty is set at £200, for holiday and touring parks, the Bill proposes £500. This is a disproportionate penalty for a minor breach of a site licence. The rationale for Fixed Penalties is to provide the putative offender the opportunity to avoid prosecution by payment of the penalty. However, this principle falls down when the level of penalty is set at up to £500. Natural justice dictates this level of fine should only be levied following independent judicial scrutiny (a fair hearing) and that there should be an appeal mechanism. A £500 fee is open to abuse as it creates too much of an incentive for councils to maximise revenue, whilst being sufficient to cripple a small business. In addition, setting the penalty at such a high level means that many businesses would opt for prosecution, thereby defeating the object.
 - 11.3. **33 Fit and Proper Person Licensing** – There is neither evidence of the efficacy of a fit and proper person regime for tourism businesses, nor of the need for one. The same

regime must be applied to micro-businesses, say managing a tiny family touring park with pitches for six touring units and a corporate business running many parks across the UK with thousands of pitches. For a husband-and-wife team managing a micro-business, there is no evidence to justify a fit and proper person regime. Equally staff changes within corporate business would necessitate frequent re-testing of the fitness of park managers, creating cost, unnecessary work for local authorities and reducing the flexibility of corporate groups to deploy their management staff across parks within their group.

12. Without evidence in justification and whilst parks in Wales compete with those across the border and with all other tourism businesses in Wales, we fear the proposals can only place Wales' parks industry at a competitive disadvantage. For example, there is no suggestion there should be similar licensing requirements on the providers of bed and breakfast accommodation or holiday villages, whilst self-catering holiday properties are specifically to be exempted from the licensing requirements of the Housing (Wales) Bill.

Residence test (Part 3)

13. The Bill's primary objective is to 'address unlawful occupation of caravans'. However, there is **no** authoritative research as to the extent of residential misuse of holiday parks across Wales. The only research study of the issue was conducted by Sheffield Hallam University relating to the East Lindsey local authority area in Lincolnshire⁴. The report makes clear that the circumstances in East Lindsey are unique and so its findings cannot be extrapolated to the whole of Wales.
14. Anecdotal reports indicate that there may be a problem away from tourism 'honeypots' in Wales, and particularly in areas of both over-supply of caravan pitches and the presence of multiple deprivations (see appendix). In these circumstances, economic and social factors may drive individuals to seek the cheapest forms of residential accommodation. However, in the absence of a clear evidence base, we question both the regulatory burden the Bill proposes and the enforcement approach which may raise issues with regard to homelessness/rehousing for the consumers it targets.
15. The Residence Test outlined in Part 3 reflects industry best practice in that park owners check and maintain an up-to-date register of their customers' home addresses. However:
- a good park would **not** seek proof of residence every 12 months from all customers as is proposed by the Bill (46.). For example where the customer is evidently absent and responds to correspondence at their home address, an annual demand for paperwork is clearly superfluous and contrary to the principles of good customer service.
 - equally, a good park owner would **not** 'whistle blow' a good customer to the local authority in the case of a short term 'failure' of the Residence Test, particularly if there were extenuating circumstances such as a family bereavement.
16. Further, both consumers and park owners could 'pass' the Residence Test proposed, despite residential mis-use of the park. For example, the consumer could simply register with a financial institution and on the electoral roll at a relative's address in order to provide the evidence required, despite residing in their holiday caravan. This could be with, or without, the collusion of the park owner.
17. The Residence Test proposed by the Bill would not therefore achieve its objective, but its repeat every year would create considerable cost and would generate bad feeling between Welsh holiday parks and their customers (customers who would have the option to take their business elsewhere).

⁴ 'THE CARAVAN COMMUNITIES OF THE LINCOLNSHIRE COAST', Centre for Regional Economic and Social Research, Sheffield Hallam University with East Lindsey District Council <http://www.shu.ac.uk/research/cresr/sites/shu.ac.uk/files/caravan-communities-lincolnshire-coast.pdf>

18. Instead of a requirement on the park owner to serve as ‘*gatekeeper of public services*⁵’, where Local Authorities identify breaches of planning/site licence holiday-use requirements, they should employ the enforcement tools already available to them, on a case by case basis.

Holiday caravan agreements (Part 4)

19. The requirements of the Bill reflect industry best practice in providing customers written Agreements setting out the important terms agreed between consumer and park business.
20. However, the terms the Bill proposes to imply into all such agreements are wrong:
- 20.1. 56 (3)(d) proposes that the park should provide copies of the most recent utility bills to the consumer, ***whether or not*** the consumer has any interest in those bills. Whilst the law already requires the provision of such evidence where utilities are recharged to the consumer, the Bill goes further in requiring the business to divulge commercially-sensitive information ***whether or not*** those utilities are recharged to consumers. This is wrong.
- 20.2. Industry members are also concerned that the requirement of 56(3)(e) for statutory consultation on operational matters would create unnecessary cost, bureaucracy and an incentive for litigation and so impact on their flexibility in developing their business. It could also drive down standards and act as a barrier to investment. Without the necessary flexibility, the industry in Wales would be trading at a disadvantage to their English competition as well as other holiday providers in Wales.

Protection from harassment (Part 5)

21. Whilst the industry wholeheartedly embraces protections against harassment for park customers, we do not understand why the Bill seeks to duplicate the protections against harassment which are already in place for park customers under the Eviction Act 1977.

Barriers to implementation

22. Perhaps the greatest barrier to implementation of the Bill would be a shortage of local authority human resources to implement the complex licensing regime. It seems the new law could be introduced during the early days of commencement of the Mobile Homes (Wales) Act 2013, as well as the licensing of private rented sector landlords under the proposals of the Housing (Wales) Bill.
23. Scarcity of resources to implement licensing (based on a housing model) to 1,322 tourism businesses would create a considerable barrier. Are there sufficient competent enforcement officers available in Wales?

Unintended consequences

24. Only with hindsight can a clear picture of unintended consequence be established. However, the following may be envisaged:
- 24.1. ***Competitive disadvantage*** - The single most important unintended consequence would be the competitive disadvantage created by the Bill's requirements for holiday and touring parks in Wales. The costs and red tape of the proposals are both sufficient to drive customers and investment to competition in England.
- 24.2. ***Unfair competition*** – Like the 1960 Act, parks operated by local authorities and the recreational parks operated by the Exempted Organisations (such as the Caravan Club and Camping & Caravanning Club) are excluded from the Bill's requirements. Given the unknown costs and impact of the regime proposed, this creates potential issues of unfair competition between the public and private sector and between commercial and consumer-operated recreational parks. An expensive licensing regime applied to parks would also

⁵ Jocelyn Davies AM, National Assembly for Wales, 19 March 2014

create unfair competition with other tourism businesses, e.g. chalet parks, holiday villages, self-catering, B&B, hotels etc.

- 24.3. **Disadvantage for small business** - Further, the costs of the licensing regime would create a disproportionate burden on small parks businesses. For example, the costs to evaluate whether a park manager was 'fit and proper' would be the same, whether that manager was responsible for six or 600 pitches.
- 24.4. **Homelessness** - In the absence of an evidence base, the impact of the Bill's proposals on any consumers unlawfully occupying their caravans is impossible to assess but any made homeless should nevertheless be a consideration for the Assembly.
- 24.5. **Market/Reputational damage** – There are also concerns that caught in the cut-and-thrust of Welsh politics, the publicity surrounding the passage of the Bill may damage the reputation of Welsh holiday parks. There is a responsibility on the Assembly and its Members to protect Welsh jobs and businesses.

Financial implications

25. The Bill proposes complex requirements to be applied to over 1,300 park businesses, providing over 70% of Wales tourist beds. We consider the figures outlined in the Explanatory Memorandum considerably underestimate these costs.
26. For example, Para 203 of the Explanatory Memorandum suggests the cost for the fit and proper person checks can be based on the costs of Criminal Record Checks. However, the Fit and Proper Person test is a more subtle assessment, requiring the exercise of discretion, rather than a search of a criminal conviction database. The Criminal Record Check would be the first step before the local authority should identify and assess '*all matters which it considers appropriate*' and any trading standards and housing (including caravans) '*contraventions*' (which are not stored on a single database). It would require liaison with each local authority in Wales (and perhaps across the UK) in order to establish whether any relevant enforcement had been undertaken against each applicant. To suggest that such work could be achieved for between £25 and £44 is either to propose that the test is meaningless, or that local authorities would not follow the requirements laid out in the Bill. (See also 24.3 above which describes the disadvantage to small businesses from the fixed costs of the licensing regime.)
27. Para 204 of the Explanatory Memorandum suggests the average cost of conducting the first residence test would be £100 per park. This £100 would need to cover staff time and costs in contacting all customers to request two 'proof of residence' documents, explain the need for these documents, chase where no response is received, then copy these documents to establish the register. £150,000 is the estimate for the cost of this work across the industry in contacting, chasing, and then following up with some 70,000 caravan owners. The figures simply don't add up!
28. Further, in the absence of an evidence base, the Explanatory Memorandum cannot evaluate costs to Local Authorities in enforcement against caravan owners, nor of supporting any made homeless through the application of the Bill's requirements.

Subordinate legislation

29. 21(3)(b) states Ministers '*may*' regulate to restrict the application of fixed penalty notices. Given the proposed maximum penalty of £500, we consider it essential Ministers *must* regulate to prevent abuse (see 11.2 above).

Conclusion

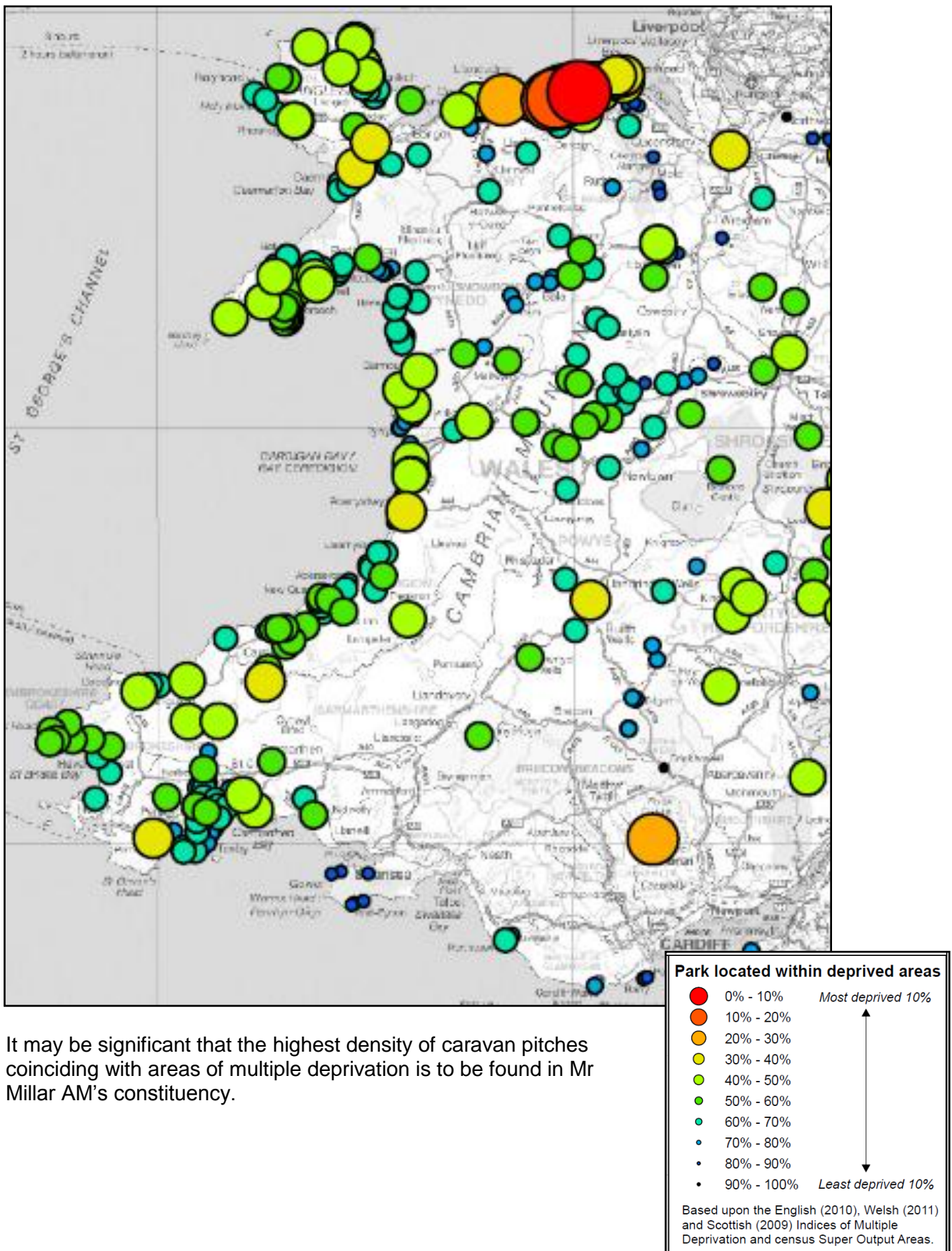
30. As indicated above, the industry has given qualified support to the objectives of the Bill and appreciates that it contains many elements of industry best practice. However the Bill also seeks

to tailor a regime designed to provide protections to vulnerable residents in their homes, to a tourism business and does so in the absence of an evidence base.

31. Whilst modernisation of the current regulatory regime would be likely to give benefit and receive industry support, the Bill's proposals to introduce a complex and inappropriate regulatory burden would place Wales's holiday and touring parks at competitive disadvantage, risking the jobs they sustain. Therefore, we underline our grave concerns at the un-costed regulatory burden the Bill proposes. The principles of better regulation should apply.

APPENDIX

Holiday parks with static caravan pitches in BH&HPA membership, mapped against areas of multiple deprivation (2012)



It may be significant that the highest density of caravan pitches coinciding with areas of multiple deprivation is to be found in Mr Millar AM's constituency.