

EXPLANATORY MEMORANDUM TO
THE RESIDENTIAL PROPERTY TRIBUNAL PROCEDURE AND FEES
(WALES) (AMENDMENT No.2) 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 Residential Property Tribunal Procedure and Fees (Wales) (Amendment No. 2) Regulations 2014.

Carl Sargeant
Minister for Housing and Regeneration
25 June 2014

1. Description

1.1 These Regulations are titled the Residential Property Tribunal Procedures and Fees (Wales) (Amendment No. 2) Regulations 2014 (“the Amendment No. 2 Regulations”). These Regulations make amendments to the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012 (“the Principal Regulations”) primarily as a result of the introduction of the Mobile Homes (Wales) Act 2013 (“the 2013 Act”).

1.2 As well as restating provisions regarding applications to the Residential Property Tribunal (“RPT”) (previously set out in the Mobile Homes Act 1983), the 2013 Act introduces new grounds for applications to the RPT. In addition, the Mobile Homes (Site Rules) (Wales) Regulations 2014 (“the Site Rules Regulations”) which are being made under the 2013 Act and laid in July 2014 under the negative procedure will introduce further applications to the RPT. The Amendment No. 2 Regulations will ensure that applications which can be made to the RPT under the 2013 Act and the Site Rules Regulations are covered by the Principal Regulations.

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

2.1 None

3. Legislative background

3.1 These Regulations are made under section 250(2) of and Schedule 13 to, the Housing Act 2004 (“the 2004 Act”).

3.2 Section 250(6)(g) of the 2004 Act provides that where any regulations are made by virtue of paragraph 11(3)(b) or 12(3)(b) of Schedule 13 to that Act, the regulations shall be subject to the approval of the Assembly.

3.3 Paragraph 11(3)(b) of Schedule 13 to the 2004 Act provides that where the Principal Regulations include provision requiring the payment of a fee in respect of applications, appeals or transfers of proceedings to, or oral hearings by, the RPT, the fee payable shall not exceed £500, or such other amount as may be specified in the Principal Regulations. Paragraph 14(f) of the Schedule to the Amendment No. 2 Regulations amends regulation 47 of the Principal Regulations to increase the fees in respect of such applications to the tribunal. As a result of this increase in fees, the affirmative procedure is triggered in relation to these Regulations.

3.4 Paragraph 12 of Schedule 13 to the 2004 Act provides that the RPT may determine that a party to proceedings is to pay the costs incurred by another party to the proceedings in certain specified circumstances. For example where a party has not provided information as required by the RPT, or where the party has, in the opinion of the tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. Paragraph 12(3)(b) provides that the amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed £500, or in the case of an application to a tribunal under the Mobile Homes Act 1983, £5,000, or such

other amount as may be specified in the Principal Regulations. Paragraph 10 of the Schedule to the Amendment No. 2 Regulations amends regulation 35 of the Principal Regulations to set the maximum amount of costs that may be determined to be paid in respect of an application under the 2013 Act or the Site Rules Regulations at £10,000. As a result of this increase in the maximum amount of costs, the affirmative procedure is triggered.

3.5 Whilst it is only paragraphs 10 and 14(f) of the Schedule to the Amendment No. 2 Regulations that trigger the affirmative procedure, as a result, the entirety of the Amendment No. 2 Regulations are subject to the approval of the Assembly.

4. Purpose & intended effect of the legislation

4.1 These Regulations amend the Principal Regulations following the introduction of the 2013 Act. As the 2013 Act consolidates existing provisions regarding applications made to the RPT these Regulations ensure that references to the Mobile Homes Act 1983 in the Principal Regulations are replaced with references to the equivalent provision in the 2013 Act.

4.2 The 2013 Act also introduces new grounds for applications under the 2013 Act, as do the Site Rules Regulations which are being made in July under the 2013 Act. Amendments to the 2012 Regulations are required to ensure that applications made to the RPT under the 2013 Act and the Site Rules Regulations are subject to relevant rules and procedures when the provisions come into force on 1st October 2014.

4.3 In addition to updating the statutory references in the regulations, there have been changes made to the maximum costs that may be awarded to a party in certain specified circumstances and to the level of fees that apply for applications. The maximum level of costs that a tribunal may require a person party to proceedings to pay the costs of another party in certain circumstances has been increased from £5,000 to £10,000 in respect of the applications that could be made under the 1983 Act, and will now be made under the 2013 Act. The maximum amount of costs that can be awarded by the RPT under the new applications in the 2013 Act will also be set at £10,000. It is not anticipated that the costs of a case before the RPT will exceed £10,000, therefore the RPT will have discretion to award the amount it considers reasonable in those specified circumstances.

4.4 The fees for making an application are to increase by between £5 and £15:

- Specified applications under the Housing Act 2004 and the Housing Act 1985 are to increase from £150 to £155;
- Fees for applications under the Site Rules Regulations will be charged a fee of £155;
- Fees for applications previously made under the 1983 Act and restated in the 2013 Act are to be increased as follows. Applications with one reference are to be increased from £150 to £155, for two

references from £200 to £205, three references from £400 to £410 and four or more references from £500 to £515;

- New applications introduced in the 2013 Act follow the same scale.

4.5 The number of 'references' contained in an application is, in the case of an application concerning one pitch or mobile home, the number of provisions in the 2013 Act to which the application relates. In the case of an application made in respect of more than 1 pitch or mobile home, it is the number of pitches or mobile homes to which the application relates. The uplift in application fees mirrors the increase undertaken in England and thus ensures a consistent approach to charging for Tribunal applications.

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: Introduce Proposed Regulations

2. Cost Benefit Analysis

2.1 The sectors most likely to be affected by the amendments to the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012 include:

- Mobile homes industry/site owners
- Local authorities
- Mobile home occupiers/the public

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 There are no additional costs associated with this option. However, doing nothing means that new grounds for application to the RPT under the Mobile Homes (Wales) Act 2013 will not be able to be possible in accordance with the procedures that exist for the RPT currently. This would mean that applicants, respondents and the RPT itself would not have to follow a set procedure, and the RPT would not be able to charge a fee for the application. This would mean that the practical implementation of the Mobile Homes (Wales) Act 2013 would be jeopardised.

2.4 Under the existing regulations, applications can be made to the RPT by local authorities and mobile home site owners. Applications made to the RPT are currently charged between £150 and £500 depending on the detail of the case. Specified applications under the Housing Act 2004 and the Housing Act 1985 will be charged a fee of £150. Specified applications under the Mobile Homes Act 1983 with one reference are charged at £150, £200 for two references, £400 for three references and £500 for four or more references. There are no identifiable public costs.

Benefit Analysis for Option 1: Do nothing

2.5 Indirect and direct benefits to:

Mobile homes industry/site owners

- There are few if any benefits from this option. For site owners and the mobile homes industry more generally, a decision not to introduce the new Regulations would mean that new grounds to appeal to the Tribunal under the Mobile Homes (Site Rules) (Wales) Regulations 2014 would not be subject to the procedures and fees set out in the Principal Regulations. This would make it more difficult for applicants who are site owners to know what to do in making an application, and in knowing what to expect when an application is made against them.

Local Authorities

- For local authorities, a decision not to introduce the new Regulations could mean that local authorities could turn down a site owner's application for a site licence or attach unfair conditions to a site licence. A site owner would find it more difficult to have recourse to a Tribunal in the case of a dispute.

Site occupiers/ Public

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

RPT

- This option may also make it more difficult for the RPT to operate efficiently as applications under the 2013 Act or the Site Rules Regulations would not be subject to the procedures set out in the Principal Regulations.

Cost analysis for Option 2: Introduce the Proposed Regulations

2.6 Indirect and direct costs to

Site owners, occupiers and local authorities

- The introduction of the proposed Regulations will ensure that applications made to the RPT for all cases set out under the 2013 Act and the Site Rules Regulations will follow the same procedure and be subject to the specified fee. The costs identified in Option 1 are to increase by between £5 and £15, depending on the detail of the case. Fees for applications made with one reference are to be increased from £150 to £155, for two references from £200 to £205, three references from £400 to £410 and four or more references from £500 to £515. The increase of between £5 and £15 for existing grounds for application represents a small additional cost compared to Option 1.
- Information from the Residential Property Tribunal for Wales indicates that there are approximately 12 cases per year for mobile homes. The regulatory impact assessment for the Mobile Homes (Wales) Bill

estimated that the new grounds for appeal would result in approximately 15 appeals from 92 sites (over 15% of sites) over the course of 5 years. This is an increase of 3 cases per year. Therefore, it is estimated that there will be a total of 15 cases heard a year.

- Therefore, based upon an additional three cases heard a year and given that application fees range from £155 to £515 per case in preparing for and attending the Tribunal, the additional cost to site owners, local authorities or occupiers associated with these new appeals is £465 - £1,545 per annum.
- The increase in application fees would also apply to the 12 cases that are currently heard each year (on average). The increase in the costs for existing applications (12) would be between £60 - £180 per annum (12 cases x increase of £5 - £15).
- Combining the current and additional cases, the total additional cost is £525 - £1,725 per annum. The distribution of these costs between site owners, local authorities or occupiers will depend upon which party makes the application to the RPT.
- The maximum sum that a tribunal may require a person who is party to proceedings to pay towards the costs of another party in those proceedings in certain circumstances has been increased from £5,000 to £10,000 in respect of the applications made under the 2013 Act.

Public

- There are no identifiable costs to the public for introducing the proposed Regulations.

Benefit analysis for Option 2: Introduce the Proposed Regulations

2.7 Indirect and direct benefits to:

Mobile homes industry/site owners

- The benefits of the proposed Regulations for mobile home site owners is that a coherent and consistent procedure for new applications to the RPT under the 2013 Act or Site Rules Regulations is established and applied consistently across Wales. The proposed Regulations will ensure that site owners will be able to appeal to the RPT under each of the grounds as set out in the 2013 Act and according to the set procedure. The change in fees will also ensure consistency in charging with those charged by the First-Tier Tribunal in England for those businesses that own sites on each side of the border.

Local Authority

- The benefits of the proposed Regulations for local authorities is that a coherent and consistent procedure for new applications to the RPT under the 2013 Act or the Site Rules Regulations is established for use

by all local authorities in Wales. The proposed regulations will ensure that local authorities will be able to appeal to the RPT under each of the grounds as set out in the 2013 Act, and have knowledge of the procedure that will be followed when applications are made against them.

Site occupiers/ Public

- There are no identifiable benefits to site occupiers or the public for introducing the proposed Regulations.

3. Analysis of Other Effects and Impacts

Equality

- 3.1 We consider that these Regulations will help to prevent any potential discrimination against any class of person and ensure that disputes between site owners and local authorities can be effectively arbitrated. These Regulations should help to protect the rights of both mobile home site owners and local authorities and help to ensure a consistent standard of tenure for mobile home 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

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

The Welsh Language

- 3.3 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 2, which proposes that these Amendment No 2 Regulations that make amendments to the Principal Regulations are introduced, is the preferred option. This option is preferred in order to:
- Provide site owners, site occupiers and local authorities with knowledge of the relevant procedures and fees and consistency of what to expect if a claim is made against them in all cases where there are disputes under the 2013 Act and the Site Rules Regulations.
 - Ensure that the costs of applications made to the Tribunal are recovered and provide consistency in charging across all applications to the RPT, so that the fees are in line with those charged by the First-Tier Tribunal in England. The increase in fees for applications are minimal and will have little impact on stakeholders.

5. Consultation

5.1 When the Principal Regulations were made in 2012, the Administrative Justice and Tribunal Council (AJTC) were consulted in writing on the proposed amendments however the AJTC was formally abolished by the UK Government in August 2013 and the requirement to consult under the Tribunals, Courts and Enforcement Act 2007 was repealed. As the non-statutory body that replaced the AJTC, the Committee for Administrative Justice and Tribunals Wales (CAJTW) the Lord Chief Justice for England and Wales were formally written to and invited to comment on the proposed regulations. Wider consultation was not considered necessary as the changes are technical and the impact of them is considered to be of a relatively minor nature. The consultation ended on 13th June 2014 and no issues were raised regarding the draft regulations.

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 business, charities or voluntary organisations in ways which raise issues related to competition.

7. Post Implementation Review

7.1 The Welsh Government expect to undertake a review of implementation of the Mobile Homes (Wales) Act 2013 in 2015/16. This will need to ensure that the impact of the legislation on the Residential Property Tribunal is assessed and that the regulatory process in place is appropriate.