

Constitutional and Legislative Affairs Committee
Supplementary report: Mobile Homes (Wales) Bill
1 July 2013

Introduction

1. The Regulated Mobile Home Sites (Wales) Bill was introduced by Peter Black AM on 24 October 2012. We issued our report on this Bill on 22 February 2013. Following the Assembly's agreement to the Bill's general principles on 13 March 2013, the Bill was significantly amended during the Stage 2 proceedings that took place in the Communities, Equality and Local Government Committee on 13 June 2013. A total of 105 amendments were passed, all of which were tabled by the Minister for Housing and Regeneration, Carl Sargeant AM ("the Minister"). This included changing the Bill's name to the Mobile Homes (Wales) Bill.

2. On 17 June 2013, the Minister wrote to the Chair, setting out the changes to the Bill as a consequence of the Stage 2 proceedings. The letter is attached at Annexe 1.

3. We took evidence from the Member in charge, Peter Black AM and the Minister on 24 June 2013.

Our view

4. We note that the Member in charge and the Welsh Government have worked closely together.

5. We also note that the Bill, as amended at Stage 2, is a significant piece of legislation but that the main changes do not affect the key policy features of the Bill as initially introduced and that Peter Black AM is content with its provisions.

6. The Bill, as amended, now consolidates legislation relating to mobile homes in a single stand-alone Bill for Wales and we welcome this approach. In our view, the Bill is much clearer (without compromising the Member in charge's original intentions) and makes the legislation relating to mobile homes much more accessible to stakeholders.

7. Nevertheless, we are disappointed that the Bill as currently drafted has an imbalance between the new provisions that have been included and those that have been transposed from legislation drafted as far back as the 1960's, without much effort to modernise and update them. While we acknowledge the time and resource implications of this approach, we do feel that this represents a missed opportunity to improve the legislation in this policy area as a whole. In our view, it would be good practice to improve legislation when seeking to consolidate legislation, rather than simply transposing it without giving serious thought to how it sits within the new Bill.

8. In this regard, we note that the Minister is reviewing some of the language currently contained in the Bill, with a view to tabling amendments that modernise it where possible. We welcome his commitment to do this.

9. During our evidence session, the Minister also gave a commitment to provide a note about the provisions for sales and gifting of mobile homes in the Bill. This note is attached at Annexe 2.

10. Overall, and subject to our views above, we are content with the delegated powers contained in the Bill and the procedures that apply to them.

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/CS/0521/13

David Melding AM
Chair
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17th June 2013

Dear David

Mobile Homes (Wales) Bill

In its Stage 1 report on the Regulated Mobile Home Sites (Wales) Bill (“the original Bill”) your Committee recommended that if the current Bill were changed significantly following Stage 2 proceedings, it would scrutinise the Bill further with a view to providing a supplementary report prior to the start of Stage 3 proceedings.

You will be aware that the Government tabled over one hundred amendments at Stage 2, developed in conjunction with the Member in Charge, Peter Black AM. Following scrutiny on 13 June the original Bill has changed significantly.

As a consequence the Bill, now called the Mobile Homes (Wales) Bill, restates the Caravan Sites and Control of Development Act 1960, the Mobile Homes Act 1983 and the Caravan Sites Act 1968 and incorporates additional provisions from the Bill as introduced and elsewhere. We believe that the result is a more comprehensive Bill, where provisions regarding residential mobile homes and sites can be found in one place within the Welsh statute book. Without this consolidation, those affected would have had to read across these three Acts and the Mobile Homes Act 2013.

Overall the Bill retains provisions which:

- establish a new, 5 year licensing regime for residential mobile home sites in Wales;
- ensure that in order to be granted a site licence, an owner and in some cases a manager will need to satisfy local authorities that they are a fit and proper person.
- end the effective ‘veto’ currently held by mobile homes owners over the sales of mobile homes on their land;

enable Local Authorities to charge fees for site licences and thereby fund an enhanced regulation and enforcement regime. (The ability to charge a fee for a site licence application is replicated from the Mobile Homes Act 2013, but maintains the policy intent of the Assembly Bill as introduced);

enable Local Authorities to better enforce the conditions of site licenses using new fixed penalty notices, compliance notices, powers to take action and the ability to charge costs of work required back to site owners;

enable site owners and residents to appeal to the Residential Property Tribunal in certain circumstances.

Other changes include:

enabling Local Authorities to issue fixed penalty notices up to the maximum fine on level 1 of the standard scale for minor breaches of a site licence condition. This will be possible as an alternative to issuing a compliance notice;

including firearms offences within the list of evidence for the fit and proper person test;

requiring mobile home owners to display utility bills in a prominent place for residents to view, providing transparency of charges;

requiring mobile home owners to consult with residents upon any change of use of the protected site, for example, from a residential home site to holiday home site.

In addition to this the Government took the opportunity to consider the provisions of the Mobile Homes Act 2013, which amends the legislation in respect of mobile home sites in England, and has included some of these in the Bill. These will ensure a consistent approach and workability of the legislation in practice by:

strengthening provisions regarding breaches of condition where an owner has failed to comply with a condition of the site licence;

giving owners the right to appeal to the Residential Property Tribunal rather than the Magistrates Court against a condition attached to a site licence that they feel is unduly burdensome;

providing new regulation-making powers to set procedural requirements to be followed in connection with the sale and the gifting of a mobile home;

ensuring that where an offence is committed and the site owner/manager is part of corporate body, that both the individual officer as well as the corporate body may be guilty of the offence;

providing for the Residential Property Tribunal to give a direction in respect of compensation;

increasing fines from level 1 to level 4 on the standard scale, where there is a willful obstruction of local authority officers to enter the site;

making it an offence to knowingly provide misleading information or make a false representation

Following Stage 2 the subordinate legislation powers in the Bill have also changed considerably. For your information I am enclosing a copy of the draft subordinate legislation table to be included in the revised Explanatory Memorandum to be tabled under Standing Order 26.27.

The Bill now contains a great deal more detail on its face, in line with the first recommendation of your committee at Stage 1, for example with regard to local authority obligations relating to site licences and breaches of the conditions of site licences. We have done so by broadly continuing the approach in the 1960 Act so as to:

remove Welsh Ministers' powers to make regulations in respect of the revocation of site licences;

remove the duty on Welsh Ministers to make provisions with regard to licence applications;

enable Local authorities to administer their own application procedures and review their own fees for an application in line with a published policy.

With specific regard to your second recommendation at Stage 1 to set out in detail standards for the stationing of mobile homes, I believe that the Bill now does this. Sections 9 to 14 set out how a local authority can set the standards for the stationing of mobile homes.

With regard to recommendations 3 to 7, as stated above, the Bill now preserves a *single* licensing regime with some new provisions added, such as a fit and proper persons test. There are no powers for Welsh Ministers with regard to grant or refusal of licenses or appeals and other determinations, with the detail of these restated from existing law on the face of the Bill. We have responded to recommendation 6 by ensuring that the level of fixed penalties are not set by Ministers but are aligned to the standard scale.

During Stage 1, the then Minister for Housing, Regeneration and Heritage expressed concerns about the number of subordinate legislation provisions and said that the Welsh Government would aim to reduce those powers where there was existing provision in law. The benefit of the approach taken by the Welsh Government is that most of the regulation making powers in the Bill are now either restated from existing law or are necessary technical provisions, such as commencement.

The new powers relate to two key policy areas – the procedures around the setting of site rules (sections 52 and 53) and the procedures around sales and gifting (Schedule 2). In including these we have looked to ensure that the regulation making powers have clear principles attached to them, as per the recommendations of your committee at Stage 1. As a consequence of doing this, the actual number of regulations has increased. Nevertheless, these only refer to two new policy areas, considered to be key to the application of the legislation.

I trust the above is useful to you and I look forward to giving evidence to the Committee on 24 June. I am copying this letter to Peter Black, AM.



Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration

Power to make subordinate legislation

The Bill makes a range of provisions for subordinate legislation. The following table sets out in relation to each provision:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;
- the appropriateness of the delegated power; and
- the applied procedure (affirmative, negative, no procedure) if any.

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 29(5)	Welsh Ministers	Regulations by statutory instrument	The evidence to be considered by local authorities when deciding if someone is a fit and proper person is set out on the face of the Bill. Suitable for regulations as it provides Welsh Ministers with the ability to amend this section to vary the list of evidence to be considered.	Affirmative	Amends an Act of the Assembly and relates to a requirement on members of the public to demonstrate they are a fit and proper person.
Section 50(1)(e)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it provides the flexibility to set out requirements for the content of written statements in addition to those on the face of the Bill	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 52(1)	Welsh Ministers	Order by statutory instrument	Suitable for order as it provides the flexibility to amend the implied terms of mobile home agreements set out in Schedule 2, except those in paragraph 10	Affirmative	These regulations have the ability to change terms of mobile home agreements.
Section 53(2)	Welsh	Regulations	Suitable for regulations as it will enable Welsh	Negative	These regulations

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Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
	Ministers	by statutory instrument	Ministers to set out administrative details regarding the making of site rules which govern the proper management and conduct of sites.		will prescribe technical matters of detail which may change from time to time.
Section 53(2)(b)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out other matters which site rules may cover, beyond the management and conduct of sites.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 53(3)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out the time period after which site rules made under existing legislation will cease to have effect once this section of the Bill comes into force.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 53(4)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding the time period following commencement of consultation with occupiers that a site rule comes into force.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 53(5)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding the time period following commencement of consultation with occupiers that a variation of a site rule comes into force.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 53(5)(a)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding the procedure to be followed to delete a site rule.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 53(6)	Welsh	Regulations	Suitable for regulations as it will enable Welsh	Negative	These regulations

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
	Ministers	by statutory instrument	Ministers to set out administrative details regarding the time period following commencement of consultation with occupiers that deletion of a site rule comes into force.		will prescribe technical matters of detail which may change from time to time.
Section 53(6)(a)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding the procedure to be followed to delete a site rule.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 53(7)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding how occupiers are notified of proposals to make, vary or delete a site rule.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 53(8)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out matters that cannot be included in site rules.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 53(9)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding how disputes regarding the making, varying or deletion a site rule or their deposit with a local authority are to be resolved.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 53(11)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding the keeping of a register of site rules by local authorities and the charging of fees for the deposit of site rules.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Section 58(2)	Local	Order	Suitable for order as it will enable local authorities to	No procedure	Local order, not

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
	Authorities		make an order prohibiting the stationing of a mobile home on specified areas of common land.		made by statutory instrument.
Section 59(3) –	Welsh Ministers	Order by statutory instrument	Suitable for order as it enables Welsh Ministers to make consequential, transitional, transitory and saving provisions	Affirmative if amending primary legislation Negative if amending other legislation	Affirmative procedure is appropriate where orders affect primary legislation Negative procedure is appropriate for other orders which make technical provision only.
Section 61(4) –	Welsh Ministers	Order by statutory instrument	Suitable for order as it will enable Welsh Ministers to amend administrative details regarding the size of mobile homes covered by the Bill.	Negative	These orders will prescribe technical matters of detail which may change from time to time.
Section 65(2) –	Welsh Ministers	Order by statutory instrument	Suitable for order because this provision enables Welsh Ministers to provide for commencement of the Bill.	No procedure	These orders will be confined to commencement and are technical in nature.
Schedule 1 paragraph 3(2)	Welsh Ministers	Order by statutory instrument	Suitable for order as it will enable Welsh Ministers to amend administrative details regarding the size of certain sites which are not to be a regulated site.	No procedure	These orders will prescribe technical matters of detail which may change from time to time.
Schedule 1 paragraph 14(1)	Welsh Ministers	Order	Suitable for order as it will enable Welsh Ministers to specify that exemptions contained in Schedule 1 do not apply in specified areas, at the request of a local authority	No procedure	Local order, not made by statutory instrument.
Schedule 2 paragraph 8(4)	Welsh Ministers	Regulations by statutory	Suitable for regulations as it will enable Welsh Ministers to set out the maximum commission rate	Negative	These regulations will prescribe

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
		instrument	new occupiers will be required to pay site owners under new agreements.		technical matters of detail which may change from time to time.
Schedule 2 paragraph 8(6)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding the procedures for the sale of mobile homes, assignment of agreements and payment of commission where a new agreement is in place.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 9(5)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding the content of a notice of sale required where other agreements are in place.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 9(7)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out the grounds on which an application for a refusal order preventing a sale of a mobile home and assignment of an agreement	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 9(8)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out the maximum commission rate new occupiers will be required to pay site owners under other agreements.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 9(10)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding the procedures for the sale of mobile homes, assignment of agreements and payment of commission where an agreement other than a new agreement is in place.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 10(2)(a)	Welsh Ministers	Regulations by statutory	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding	Negative for first regulations	These regulations will prescribe

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Schedule 2 paragraph 11(2)(a)	Welsh Ministers	Regulations by statutory instrument	the information, and form it is to take, that an occupier must provide a proposed occupier before the completion of a sale of a mobile home and assignment of an agreement. Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding the evidence of family connection an occupier is required to provide a site owner when they are proposing to use exercise their entitlement to gift a mobile home and assign an agreement to a family member.	Negative	technical matters of detail which may change from time to time. These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 11(5)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding the procedure to follow when gifting a mobile home and assigning an agreement to a family member where a new agreement is in place.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 12(5)(b)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding information, other than evidence of family, to be included in a notice that an occupier must serve on a site owner when proposing to gift a mobile home and assign an agreement to a family member where an other agreement is in place.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 12(7).	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out the grounds on which an application for a refusal order preventing the gift of a mobile home and assignment of an agreement	Negative	These regulations will prescribe technical matters of detail which may change from time to time.
Schedule 2 paragraph 12(9)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding the procedure to follow when gifting a mobile home and assigning an agreement to a family member where an other agreement is in place.	Negative	These regulations will prescribe technical matters of detail which may change from time to time.

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Schedule 2 paragraph 22(a)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable Welsh Ministers to set out administrative details regarding the form the notice a site owner must serve on an occupier informing them of a proposed change in pitch fee.	Negative for first regulations	These regulations will prescribe technical matters of detail which may change from time to time.

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration



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26 June 2013

Dear David,

On the 24th June I undertook to send your committee a note regarding the provisions for sales and gifting of mobile homes in the Mobile Homes (Wales) Bill (the Bill). This was in response to the concerns raised by Suzy Davies AM that, when their veto over sales was removed, site owners would have no opportunity to 'vet' the character of new site residents.

Under current legislation, an occupier of a mobile home is entitled to sell the mobile home, and assign the agreement to a person approved of by the owner, whose approval must not be unreasonably withheld.

Where the owner receives a request, he must within 28 days approve the person unless it is reasonable for him not to do so, and serve on the occupier notice of his decision whether or not to approve the person. The site owner cannot give his approval subject to conditions. If approval is withheld, reasons must be specified. The site owner can therefore "veto" the sale if they disapprove of the prospective buyer provided they serve notice on the occupier to that effect and give reasons.

It was one of the core provisions of the Bill as introduced by Peter Black that a veto on sales (the site owner's approval) should not apply to agreements between site owners and occupiers.

However, when developing its Stage 2 amendments the Government took account of recommendation 11 of the Communities, Equality and Local Government committee's Stage 1 report that the removal of the owner's right to approve the sale of a mobile should not create unintended consequences for the owner, the buyer or the site residents. As a consequence paragraphs 8 to 10 of schedule 2 of the Bill distinguish between new and existing agreements on the sale of a mobile home and assignment of the agreement.

In respect of new agreements, the occupier is entitled to sell the mobile home and assign the agreement without the site owner's approval. The new occupier must as soon as

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reasonably practicable, notify the owner of the completion of sale and assignment of the agreement and the new occupier is required to pay the owner a commission on sale of the mobile home at a prescribed rate. The "veto" will therefore be removed in respect of new agreements.

The position is slightly different for existing agreements. Where the agreement is not a new agreement, the occupier is entitled to sell the mobile home and assign the agreement without the owner's approval if the occupier serves on the owner a notice of proposed sale naming the person to whom the occupier proposes to sell to and either one of 2 conditions are satisfied. The first of those conditions is either within 21 days the occupier does not receive notice from the owner that he has applied to a Residential Property Tribunal (RPT) for an order preventing sale ("a refusal order"). The second condition is that within 21 days the owner applies to a RPT for a refusal order and the occupier received notice of the application from the owner and the tribunal rejects the application.

As a result of Government amendments, Schedule 2 provides a right of appeal in respect of existing agreements, and in such cases, the owner may apply to the Residential Property Tribunal (RPT) for a refusal order within 21 days of being notified of the proposed sale. Where agreements already exist therefore, site owners will still be able to apply to the RPT for a refusal order if they have legitimate grounds for appeal against a sale or gift. The Welsh Ministers may prescribe the grounds for appeal.

However, and to conclude, site owners will not be able to do this in respect of new agreements. In such cases, the occupier is entitled to sell the mobile home and to assign the agreement to the person to whom the mobile home is sold (the new occupier).

Where site residents do not conduct themselves in an acceptable manner, I believe that there are other provisions in the Bill that will enable site owners to tackle this. For example, Part 3 of the Bill sets out the procedure by which a site resident may be evicted from a site and Part 4 provides for the setting of site rules which relate to the conduct of the site.

As a result of Government amendments, the site rules (when made) form part of the express terms of the agreement between a site owner and an occupier. We believe that this is much fairer system, whereby new residents make a formal and binding commitment to abide by site rules, rather than a judgement being made at an interview by a site owner (on a basis determined by them.)

I trust the above is useful to you. I am copying this letter to Peter Black, AM.

A handwritten signature in cursive script, appearing to read 'Carl Sargeant', written in black ink.

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration