

# **Holiday Caravan Sites (Wales) Bill Explanatory Memorandum**

This Explanatory Memorandum has been prepared by Darren Millar AM and is laid before the National Assembly for Wales.

## **Declaration on Legislative Competence**

In my view the provisions of the Holiday Caravan Sites (Wales) Bill, introduced by me on 17 March 2014 would be within the legislative competence of the National Assembly for Wales.

**Darren Millar AM**

**Member in charge of the Bill  
March 2014**

## Contents

Part 1: Background and Purpose of the Bill	4
Introduction	4
Legislative background	5
Purpose and intended effect of the legislation	7
Context	7
Current position	9
Purpose of the legislation	15
Consultation	24
Power to make subordinate legislation	40
Territorial application	42
Cross border issues	42
Summary of the main differences between the Mobile Homes (Wales) Act 2013 and the Holiday Caravan Sites (Wales) Act 2014.	43
Part 2: Regulatory Impact Assessment	50
Estimate of Costs:	51
Option 1 – Do nothing – continue with existing arrangements.	51
Option 2 – Voluntary Scheme	52
Option 3 - Introduce a Bill – preferred option	53
Summary of costs	63
Unintended consequences	66
Equality considerations	68
Part 3: Explanatory Notes	69
PART 1 - INTRODUCTION	69
PART 2 - LICENSING	70
PART 3 - RESIDENCE TEST	85
PART 4 - HOLIDAY CARAVAN AGREEMENTS	88
PART 5 - PROTECTION FROM HARASSMENT	90
PART 6 - SUPPLEMENTAL AND GENERAL	90
SCHEDULE 1 - SITES WHICH ARE NOT HOLIDAY CARAVAN SITES	92
SCHEDULE 2 - EVIDENCE FOR THE PURPOSES OF THE RESIDENCE TEST	92
SCHEDULE 3 - TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS	92
Annex A - References	93



## **Part 1: Background and Purpose of the Bill**

### **Overview**

1. The Holiday Caravan Sites (Wales) Bill will modernise the regulatory framework for holiday caravan sites in Wales, raise standards in the sector and tackle the minority of site owners and caravan occupiers who flout the current law.
2. The Bill will modernise the licensing regime for holiday caravan sites. Local authorities will be given new duties and enforcement powers so they can ensure that holiday caravan sites are safe and well managed; breaches of licence conditions will be tackled robustly by a combination of statutory enforcement action and fines that provide an effective deterrent.
3. The Bill seeks to end the permanent residential use of holiday caravans by requiring owners and long-term occupiers to demonstrate that their main residence is elsewhere, and by giving local authorities powers to deal with occupiers who fail this test.
4. The Bill will also give caravan owners and long term occupiers a legal right to a written statement of the terms and conditions under which they occupy their pitch, and prescribe a number of implied terms that will apply to all holiday caravan agreements.

### **Introduction**

5. On 24 April 2013 Darren Millar AM was successful in the ballot held under Standing Order 26.87 for the right to seek leave to introduce a Member Bill. His proposal related to holiday caravan sites. On 19 June 2013 the National Assembly for Wales agreed that Mr Millar could lay a Bill to give effect to the pre-ballot information he provided.
6. This Explanatory Memorandum has been prepared and laid in accordance with Standing Order 26.6. It sets out the background to the provisions and scope of the Bill.
7. In this Explanatory Memorandum the term “holiday caravan site” includes sites with static caravans, touring sites and mixed use sites where there may be residential mobile homes, commonly called park homes, as well as holiday pitches, tourers (caravans that are towed

from site to site) and motor homes. A mixed use site will need to be licensed under both this Bill and the Mobile Homes (Wales) Act 2013.

## Legislative background

8. The National Assembly for Wales' Standing Orders provides for Bills to be introduced by backbench Assembly Members, as well as the Welsh Government, where the National Assembly has legislative competence in a policy area.
9. The legislative competence enabling the National Assembly for Wales to make an Act in relation to holiday caravan sites is contained in Part 1 of Schedule 7 to the Government of Wales Act 2006 ("the 2006 Act"). In particular, subject 11 (Housing) specifically includes residential caravans and mobile homes; subject 12 (Local Government) specifically includes the powers and duties of local authorities and their members and officers; subject 17 (Tourism); and subject 18 (Town and Country Planning) specifically includes caravan sites. The relevant headings from Part 1 of Schedule 7 to the 2006 Act are reproduced below with the relevant subjects highlighted:

### **Subject 11: Housing**

Housing. Housing finance except schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits. Encouragement of home energy efficiency and conservation, otherwise than by prohibition or regulation. Regulation of rent. Homelessness. **Residential caravans and mobile homes.**

### **Subject 12: Local government**

Constitution, structure and areas of local authorities. Electoral arrangements for local authorities. **Powers and duties of local authorities and their members and officers.** Local government finance.

"Local authorities" does not include police authorities [police and crime commissioners].

Exceptions—  
Local government franchise.

Electoral registration and administration.  
Registration of births, marriages, civil partnerships and deaths.  
Licensing of sale and supply of alcohol, provision of entertainment and late night refreshment.  
Anti-social behaviour orders.  
Local land charges, apart from fees.  
Sunday trading.  
Provision of advice and assistance overseas by local authorities in connection with carrying on there of local government activities.

### **Subject 17: Tourism**

Tourism

### **Subject 18: Town and Country Planning**

Town and country planning, including listed buildings [and conservation areas]. Caravan sites. Spatial planning. Mineral workings. Urban development. New towns. Protection of visual amenity.

Exception—

Development consent under the Planning Act 2008

There are no general restrictions or exemptions to those restrictions in the 2006 Act.

Minister of the Crown functions in the Caravan Sites and Control of Development Act 1960, the Caravan Sites Act 1968, and the Caravan Sites Act 1968 have been transferred to Welsh Ministers by the National Assembly for Wales (Transfer of functions) Order 1999 except for the Treasury functions under paragraph 6 of the second schedule to the Caravan Sites and Control of Development Act 1960.

The Treasury functions under paragraph 6 of the Second Schedule to the Caravan Sites and Control of Development Act 1960 relate to Orders regarding commons and Crown land in limited circumstances.

## Purpose and intended effect of the legislation

### Context

10. In 2013 the National Assembly for Wales passed the Mobile Homes (Wales) Act 2013 (the 2013 Act). That legislation will, when fully commenced, provide a modern legislative framework for park home sites in Wales that will benefit site owners, park home residents and also the local authorities responsible for licensing sites.
11. Holiday caravan sites were specifically excluded from the 2013 Act. This was because Peter Black AM's original proposal focused solely on residential mobile homes – holiday caravans would have been beyond the scope of that Bill. However, this Bill will modernise the licensing regime for holiday caravan sites, and also strengthen and clarify rights for both holiday caravan owners and site owners. The Bill therefore adopts a similar framework to the 2013 Act in many areas. A table showing the main differences between the 2013 Act and this Bill is provided on page 43.
12. The holiday caravan industry in Wales is far larger than the park home industry. While there are around 3,400 park homes in Wales, there are estimated to be approximately 70,000 holiday units of which 64 per cent are owned static units (i.e. caravans, lodges, chalets etc.), 8 per cent are rented static units and 27 per cent are touring pitches (for caravans, tents, trailer tents and motor homes).<sup>i</sup>
13. Holiday caravans are not intended, or in most cases designed, for permanent occupation. In some parts of Wales, as is the case elsewhere in the UK, there is evidence of a growing use of holiday caravans as permanent residences. As well as often being in breach of planning conditions, site licence conditions and individual licence agreements this has a generally negative impact on the local community and can result in underfunding of public services as much of this population is “hidden” from official statistics. This Bill will ensure holiday caravans are used for holiday purposes rather than as a source of permanent housing.
14. This Bill has been developed in cooperation with both the British Holiday and Home Park Association (BH&HPA) and the National Caravan Council (NCC) which together represent the majority of sites in Wales. The Bill has been drafted to address many of the concerns

expressed through an extensive consultation process comprising two formal written consultations, three formal meetings with groups of site owners across Wales, and also engagement with the National Association of Caravan Owners (NACO). The Bill therefore safeguards the interests of the industry and recognises the significant positive economic impact it has on the Welsh economy. However, it also seeks to address problems caused by a minority of site owners, most of whom will not be members of reputable trade bodies or adhere to any voluntary code of practice, and holiday caravan owners who fail to act appropriately.

15. The Bill will make provision for local authorities to gain appropriate and proportionate licensing and enforcement powers to allow them to address the issue of unlawful occupation while continuing to allow the industry in Wales to thrive. By providing the ability for local authorities to charge fees, the Bill will, for the first time, enable improved, regular and consistent monitoring of site licence conditions across all of Wales.
16. A new requirement in the Bill is that local authorities will in future have to consult with any public authority with responsibility for flood risk management when considering what conditions to impose in a site licence. Recent flooding in Wales has demonstrated the significant risks associated with flooding for some holiday caravan sites, particularly in coastal areas.
17. The Bill proposes applying a number of the provisions contained within the Mobile Homes (Wales) Act 2013 to holiday caravan sites whilst recognising that holiday sites, and the holiday caravan industry, operates within a different context to the residential mobile home sector.
18. The pre-ballot information submitted by Mr Millar highlights the main issues that this Bill will seek to address:
  - *unlawful occupation of caravans*
  - *the powers available to local authorities to address unlawful occupation of caravans*
  - *the resources available to enforce operating conditions on holiday caravan park licences*
  - *the fitness of persons operating/owning holiday caravan parks*
  - *abuses by some holiday caravan park owners of holiday caravan owners on their sites*



- *the cost of providing public services to those who use holiday caravans as their main home*

19. The Caravan Sites and Control of Development Act 1960 will no longer have any application in Wales. The Residential aspect of the 1960 Act has already been removed by the Mobile Homes (Wales) Act 2013 in relation to Wales. This Bill will therefore disapply the remaining aspects of the 1960 Act in relation to Wales.

## **Current position**

### *Site licences*

20. Local authorities are currently required to grant a caravan site licence under the 1960 Act providing the relevant planning permission is in place. Operating a caravan site without a licence is a summary offence which carries a fine up to level 4 on the standard scale, currently £2,500.

21. The provisions of the 1960 Act mean local authorities have limited powers to refuse to grant a licence. A licence must be issued by the local authority within two months (or longer by agreement between the parties) of the application providing the appropriate planning permission is in place, and providing the applicant has not had a site licence revoked within the previous three years.<sup>ii</sup> When a licence is issued, it is issued for an indefinite period unless the planning consent is time limited. This means that some site licences will have been in place for many decades and are not subject to any statutory periodic review.

22. Local authorities can attach conditions to a site licence. In attaching conditions to a licence, the local authority should have regard to the model standards for caravan sites issued from time to time by Welsh Ministers. Model Standards specifically for holiday caravan sites were last issued in 1989. The Model Standards are what should normally be expected as good practice on sites. They make provision for the layout, provision of facilities, and equipment on sites. Site licence conditions may, but are not required to, include occupancy restrictions and may specifically limit the use of the site to only holiday purposes. Planning conditions can also impose similar restrictions.

23. Local authorities have limited enforcement powers under the 1960 Act should there be a breach of a licence condition. Moreover, there is no duty on the local authority to take any enforcement action or to undertake periodic inspections; local authorities have no power to serve enforcement or compliance notices in relation to the site licence, although they do have the power to prosecute the site owner. When a site owner/operator has been convicted for the third time of breaching a licence condition, the local authority may request that the court revokes the licence.<sup>iii</sup>
24. Unlike other local authority licensing functions, including the licensing of park home sites and licensing of Houses in Multiple Occupation, the local authority may not charge a fee for processing or issuing a licence. This denies local authorities a source of revenue through which to fund their licensing activities.
25. A site must have the appropriate planning permission before a licence can be issued under the 1960 Act. Planning conditions can limit the use of the land to a fixed period of the year, effectively imposing a “closed season”. This restriction will vary between areas, and between sites, but it is common to restrict occupation of caravans to a specific period of the year. Planning conditions could also, for example, prescribe a time-limit on occupation by the same occupier and impose a restriction on when that person may return. However, not all planning conditions will necessarily limit the use of a caravan site to “holiday” purposes<sup>iv</sup> and there are practical difficulties in doing so; for example, many holiday caravans are used as second homes so it is not unusual for prolonged periods of occupation. As noted in a report to Denbighshire County Council’s Environment and Scrutiny Committee in June 2010, not having a condition that restricts occupation to holiday use can present a number of difficulties:

As such we now have a number of Caravan Sites that restrict opening for only 2 months of the year, but no controls restricting the use of each caravan to only “holiday”. It is therefore possible to reside in a caravan on such sites for 10 months of the year as the “main residence” and vacate the site for 2 months to live with friends/family/rent local accommodation elsewhere/have an extended foreign vacation etc. without being in breach of any planning “law/permission”. Under such circumstances the occupier of the caravan considers themselves “residents” of the County and uses all the facilities, although may not be liable to pay Council Tax as they reside on a Caravan Site, with limited opening albeit for 10 months of the year.<sup>v</sup>

26. Welsh Government Technical Advice Note 13 (TAN 13)<sup>vi</sup> outlines national planning policy in relation to tourism. TAN 13 specifically notes that conditions can be imposed restricting the occupation of caravans to holiday purposes or seasonal use.
27. As a result of this Bill, it is expected that Local Planning Authorities will in future ensure that any permissions granted for holiday sites are expressed to be granted for holiday use only.
28. A survey of all 22 local authorities to support the development of this Bill revealed from the 18 responses that were received, no formal enforcement action had taken place in the last five years for breaches of licence conditions.

### ***Rights of caravan occupiers***

29. Although it is industry best practice, there is no legal requirement for a written agreement between the owner of a holiday caravan and a holiday caravan site owner. However, in many cases, a caravan owner is likely to have signed an agreement with the site owner which will give them permission to site their caravan on a pitch for a fixed period. This agreement will usually outline specific conditions such as the pitch fee, any other service charges and the rate of commission that will be charged by the site should the caravan owner sell their caravan to a new owner.
30. In September 2005 the Office of Fair Trading published guidance on unfair terms in holiday caravan agreements<sup>vii</sup> and in 2008 both the British Holiday and Home Park Association and the National Caravan Council agreed with the OFT to offer fairer terms and conditions to consumers buying holiday caravans sited on holiday parks.
31. This resulted in the adoption of an industry model licence agreement which explicitly states that the caravan must not be used as a permanent residence and that the site owner will be able to take steps to end the agreement if this condition is breached. Adoption of the model agreement is voluntary and as a result its adoption by the industry is inconsistent, and sites are not required to use the agreement, even where the site owners are members of the industry bodies who developed it.
32. The site owner's insurance is unlikely to cover situations where caravans are used as main residences. For example, there would be

no obligation on the site owner to rehouse caravan occupiers temporarily in the event of flood or fire. One reason for this is that insurance companies would consider that a holiday caravan may not be built to same standards as a main residence (which includes residential park homes). Any warranty provided with a holiday caravan may also be invalidated by permanent occupation.

33. In addition to a licence agreement, sites will often have park rules which would cover local arrangements such as speed limits.

### ***Occupation of holiday caravans as an only or main residence***

34. The most significant study that has been undertaken into residential use of holiday caravan sites was carried out by the Centre for Regional Economic and Social Research at Sheffield Hallam University in 2011. The research focused on the Lincolnshire coast.<sup>viii</sup> That area of England is reputed to have one of the largest concentrations of static caravans in Europe and there seems little reason in principle why some of the key findings would not be transferable to Wales, in particular the north Wales coast where there is also a high concentration of holiday caravans.
35. The Lincolnshire research identified that around 2,700 people (1,400 households) in holiday caravans should be regarded as full-time residents, with nearly 90 per cent owning their own caravan. With around 25,000 static caravans along the Lincolnshire coast, this equates to over five per cent of the holiday caravan population at any one time being in permanent occupation.
36. Research undertaken during the development of this Bill has also identified evidence of permanent residential occupation of holiday caravans in Wales, despite the fact that holiday caravans should only be used for recreational purposes. Evidence suggests that they are sometimes occupied as a person's only or main residence. This type of use will usually be in breach of site licence conditions, planning permission and individual licence agreements between caravan owners and site owners. This Bill will seek to prevent holiday caravans being used as only or main residences by placing new duties on site owners and local authorities and by imposing appropriate sanctions on those who use holiday caravans as their main or permanent residence.
37. Permanent residential occupation of holiday caravans can present a range of problems for the individuals living in the caravan,

the caravan site, the site owner, the local community and the local authority. Issues raised through the initial consultation on this Bill include:

- the impact this “hidden” population has on public services;
- the suitability of holiday caravans for all-year occupation;
- the potential negative impacts on the tourism industry.

38. The main representative bodies of the holiday caravan industry, the National Caravan Council and the British Holiday and Home Park Association, have recognised the problems that this issue can cause and have taken steps to address it with their membership and the holiday caravan using public.

39. The NCC has issued specific guidance<sup>ix</sup> for members of the public highlighting what may constitute mis-use of holiday caravans. This guidance highlights:

- the caravan owner would be in breach of their agreement with the site owner which could have serious legal consequences;
- legislation to protect park home residents from eviction and harassment will not apply if a person is living in a holiday caravan;
- not all holiday caravans will have sufficient insulation to enable them to be occupied in the winter months; and
- insurance cover for holiday homes will not usually provide alternative accommodation in the event of a flood, fire or if the caravan becomes uninhabitable.

40. The industry standard licence agreement also addresses this issue and contains a statement outlining a prohibition on residential use. The agreement states:

This agreement does not permit you to use the caravan as a permanent residence. The address that you give must be the only or main residence of the Caravan Owner/s to which all correspondence relating to the caravan will be sent. You will be required to provide documentary evidence of residence at the address given.

41. Whilst the majority of site owners act responsibly and comply with their legal obligations, it appears that there are some who will not engage with voluntary attempts at self-regulation. It is also clear that local authorities do not have the resources or powers to address this issue.

42. Research undertaken to support the development of this Bill has highlighted some official data (Council Tax, Housing Benefit Claims, GP Registrations and crime data) that gives an indication of the scale of permanent residential occupation.

### *Council Tax*

43. Residents of holiday caravans would only be liable for Council Tax if the caravan is their only or main residence.<sup>x</sup> However, there appear to be variations in how this issue is addressed across Wales. All local authorities in Wales were contacted in the course of developing this Bill and asked how many holiday caravan residents were paying Council Tax. A number of local authorities were not able to provide this information because of the way the data was held; other authorities regarded holiday caravans as not liable for Council Tax. However, it was established that at least 400 residents in 6 local authorities were indeed paying Council Tax while living in caravans on holiday sites, although it is important to note that this figure could include some employees legitimately living in residential units on holiday sites.

### *Housing Benefit claims*

44. All local authorities in Wales were asked to confirm how many Housing Benefit claims had been made in respect of holiday caravans. Six local authorities provided this information, and revealed 62 claims were in payment during the period October to November 2013.

### *GP registrations*

45. In March 2013, Public Health Wales published *A Snapshot of Health in north Wales*.<sup>xi</sup> The report highlights the high concentration of caravan sites on the coastal strip of north Wales, predominantly around Kinmel Bay and Towyn and speculates that there are likely to be substantial numbers of long-term caravan residents in north Wales who access local health services. The report refers to the research carried out by Sheffield Hallam University and draws potential parallels with north Wales.
46. The 'Exeter' system is a database of all patients registered with an NHS general practitioner (GP) in England and Wales. Cross-checking postcodes of holiday caravan sites (only where a site had a unique postcode and no residential units) with the database revealed that 82

residents on a sample of 12 sites in Conwy were registered permanently with a GP at their holiday caravan address. This excludes temporary registrations.

### *Crime*

47. There are also problems with crime, including anti-social behaviour, associated with holiday caravan sites. North Wales Police have confirmed that in the last 12 months 83 people with an address on a caravan site have been arrested or named as suspects for an offence.

### *Other data*

48. Research undertaken by Conwy Council in 2007/08 identified that a number of council services were provided to caravan addresses. In particular, concessionary bus passes. The council found that 361 passes had been issued to individuals on holiday caravan sites.

## **Purpose of the legislation**

### ***Part 1 – Introduction***

49. Part 1 of the Bill provides an overview of the Bill and key definitions. The Bill does not apply to Gypsy or Traveller sites.

### ***Part 2 – licensing***

#### *Site licences*

50. Holiday caravan sites will require a licence under this Bill. A “holiday caravan site” is a site where one or more holiday caravans are stationed for the purposes of human habitation where the relevant planning permission is expressed to be granted for holiday use only or where the land is offered or designed to be offered for use as holiday accommodation. As under the 1960 Act, local authorities will be required to maintain a public register of licensed sites. However, some sites are not to be regarded as holiday caravan sites for the purposes of this Bill. These sites are detailed in Schedule 1 to the Bill. Certain organisations hold certificates of exemption under Schedule 1 to the 1960 Act, and are therefore not required to hold a licence. These exemptions will be maintained under the Bill, unless withdrawn by Welsh Ministers. Local authority owned holiday caravan sites will

not be subject to Part 2 of the Bill and will not therefore require a licence, but will be subject to the Bill's other provisions. Operating a site without a licence will be an offence subject to an unlimited fine. Currently, fines in the magistrates' court are capped at level 5 (£5,000). However, when section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force a level 5 fine will become an unlimited fine and this Bill therefore reflects that. Where the Bill or this Explanatory Memorandum refers to a "fine", it is to an unlimited fine.

51. Where a site is unlicensed (and not exempt from being licensed) the occupier of the holiday caravan may apply to the court for a repayment order where they have a holiday caravan agreement with the site owner. A repayment order can require the owner or manager to repay any sums received from the occupier in the 12 months prior to the application for an order. The exact amount to be repaid will be specified in the order but can include the purchase price of the caravan and other payments such as pitch fees. The owner must have been convicted of an offence under section 7 of the Bill before a repayment order can be made. It will be for the court to decide the exact amount to be repaid having regard to what is reasonable in the circumstances.
52. Sites already licensed under the 1960 Act will be treated as holding a licence under this Bill. This will reduce the administrative burden for both site owners and local authorities. However, within 12 months of the commencement of the legislation, the local authority must assess whether each person responsible for managing the site is a fit and proper person. "Manager", for the purposes of this Bill, includes any person who gives instructions about managing the site. Where a person is deemed to not be a fit and proper person, the licence under the 1960 Act will no longer apply.
53. Where the manager of the site is assessed as a fit and proper person, the local authority must modify the licence issued under the 1960 Act to meet the requirements of this Bill within a period of 12 months. In effect, this means adding a licence condition that requires the site owner to conduct a residence test on occupiers every 12 months.
54. Unlike the Mobile Homes (Wales) Act 2013, site licences issued under this Bill **will not expire**. This continues the current arrangements under the 1960 Act and reflects concerns from the



industry about the impact on their businesses of time-limited licences. However, site licences will be subject to “review” every five years. It is anticipated that the review will be straightforward for most sites and licence conditions would not be expected to change without justifiable reason. As local authorities already have powers to vary licence conditions or apply to the magistrates’ court to revoke licences under the 1960 Act, this new duty is merely intended to introduce consistency to the informal “review” arrangements that already happen on an ad-hoc basis.

55. Under the 1960 Act there is no duty on local authorities to inspect sites. Under the provisions of this Bill, local authorities **must** inspect sites at least once every three years to ensure that sites are complying with licence conditions. This approach will allow local authorities to take a risk-based approach to inspections and is intended to ensure compliance with licence conditions. Well run sites that are run professionally should not expect frequent inspections. This duty will not commence until Welsh Ministers have made regulations and consulted with the industry.
56. Site owners will be required, through a mandatory licence condition, to undertake an annual residence test on relevant occupiers, with a corresponding duty on the local authority to check the records retained by the site owner on an annual basis. There is no requirement that the local authority should visit the site to undertake this task.
57. The Bill also requires that a site licence must contain a condition that ensures copies of the site licence and certificate of public liability insurance are displayed on the site in a prominent place.
58. When attaching other conditions to a licence local authorities must have regard to any model standards that have been specified. The existing 1989 model standards will continue to apply until new ones are issued.
59. The Bill will place a new duty on local authorities to consult with any public authority that has a responsibility for flood risk management when considering what conditions should be attached to a site licence. Local authorities will have a power to vary licence conditions.

60. Appeals against licence conditions will continue to be heard by the magistrates' court.

61. The site licence can be transferred to a new owner of the land, but the persons managing the site (who may or may not be the owner) must always be fit and proper persons.

#### *Breaches of licence conditions*

62. The Bill provides for either a fixed penalty notice or a compliance notice to be given by the local authority where a site owner has failed to comply with a condition of the site licence. Fixed penalty notices cannot exceed level 2 on the standard scale (currently £500). Local authorities must have regard to any guidance issued by Welsh Ministers when determining how to address a breach of licence conditions.

63. Compliance notices will require the site owner to take steps to ensure the licence conditions are complied with. There will be a right of appeal to the magistrates' court. Failure to take the steps outlined in the compliance notice will be an offence and will be subject to a fine. As with other fines in this Bill, the court would have a duty to take into account the financial and individual circumstances of offenders before fixing the amount of the fine.

64. Where the site owner has two or more previous convictions for failing to comply with compliance notices, the local authority can apply to the court for the site owner's licence to be revoked.

65. The local authority will be able impose a charge on the owner as a means of recovering expenses incurred by the local authority in connection with preparing and serving the notice. Where the notice is not complied with, and the site owner is convicted, the local authority may take steps itself to ensure that the licence conditions are met. This will require the local authority to give the owner of the land a reasonable period of notice.

66. Section 26 allows the local authority to take emergency action where a site licence condition has not been complied with and there is an imminent risk of serious harm to the health and safety of any person who may be on the land.

#### *Fit and proper person test*

67. The test requires a local authority to consider all matters it considers appropriate. The test will be applied to those persons with the day-to-day responsibility for managing the site. The test will also apply to the most senior person with responsibility for the management of the site. Where the site owner is directly involved in the management of the site, for example by giving instructions to the manager, they will also be subject to the test. "Managing" includes giving instructions about the management of the site.
68. When considering whether the test conditions have been met, the local authority must in particular have regard to whether there is any evidence to show that the person has:
- Committed offences involving fraud, dishonesty, violence, firearms, drugs or sexual offences;
  - Practised discrimination in the course of their business;
  - Contravened housing law (including caravans) or landlord and tenant; or
  - Contravened any provision of the law relating to trading standards.
69. The fit and proper person test therefore applies in the same way as under the 2013 Act, except that the local authority must also have particular regard to evidence showing the manager has contravened trading standards law.
70. Local authorities may also wish to consider compliance with any existing industry codes of practice, such as that operated by the National Caravan Council, when determining whether the test has been passed.

### *Interim managers*

71. Local authorities will have the power to appoint an interim manager of a holiday caravan site in certain circumstances. This includes situations where licence conditions are not being adhered to; where the site manager is no longer considered to be a fit and proper person; or where the local authority considers that there is nobody managing the site. There will be a right of appeal against any decision to appoint an interim manager to the magistrates' court.

### *Fees*

72. There is no provision under the 1960 Act for local authorities to charge for site licences. This is an anomaly which is addressed by this Bill.
73. In order for local authorities to adequately monitor site licences, they must be adequately resourced. This Bill will allow local authorities to make an annual charge to site owners for their site licence. Before charging a fee, the local authority must prepare and publish a fees policy. There may be different fees for different types of site, for example, the fees may be based on the size of the site.
74. When setting fees, local authorities may not take into consideration costs it has incurred exercising any of its enforcement powers under this Bill. In effect, the local authority will not be permitted to pass the costs of taking enforcement action against the minority of non-compliant site owners on to the majority of site owners who run their businesses in a responsible and professional way.

### ***Part 3 - The residence test***

75. Part 3 of the Bill will introduce a residence test which will ensure no person occupies a holiday caravan as their permanent or main residence. There will be some exceptions to this requirement, but only for the site owner, site manager or a person employed to work on the site (but only where it is **necessary** for them to also live on the site). This could include, for example, staff with responsibility for security arrangements. "Occupier" for the purposes of the Bill only includes those who enter into a holiday caravan agreement (see Part 4) that entitles them to station the caravan on a site for more than six weeks, or other occupiers (such as those sub-letting) who have an agreement to occupy the caravan for more than six weeks. This means the test is unlikely to apply to most people who stay in holiday caravans which they do not own.
76. All site licences will include a condition requiring the owner of the site to conduct a residence test to establish that the holiday caravan is not that person's main residence. Many sites already take steps to ensure holiday caravans are not used as an only or main residence, but this legislation will ensure consistency across the sector. Occupiers of holiday caravans will be required to provide readily available documentation as proof of their main residential address. Acceptable forms of documentation are listed in Schedule 2

to the Bill and include evidence of council tax being paid, utility bills and proof of medical registration at their main residential address. The site owner will be required to retain evidence of the documentation which must be made available for inspection by the local authority at all reasonable times. The site owner must conduct the residence test at least every 12 months.

77. Where a person already owns or occupies a caravan when the legislation is commenced, the site owner must undertake a residence test within **three months**. In all other circumstances, the residence test must be carried out before the agreement is entered into. Subsequent residence tests must be undertaken at least every 12 months.
78. The Bill provides for additional residence tests to be undertaken where the site owner believes there has been a change to the occupier's circumstances.
79. Where an occupier fails the residence test, the site owner must notify the local authority as soon as possible. The local authority **must** then give a notice to the occupier of the holiday caravan, a "residence test failure notice". The local authority **may** also issue a fixed penalty notice to the occupier.
80. The residence test failure notice will set out the reasons why the local authority believes the residence test has been failed and requires them, within a specified period of time, to desist from occupying the holiday caravan as their main residence. The occupier will have a right of appeal where they are served with such a notice. The appeal will be heard by the magistrates' court. The local authority will also have powers to revoke or vary the notice.
81. Where an occupier of a holiday caravan remains in occupation in breach of a residence test failure notice they will commit an offence for which they will be liable, on summary conviction, to a fine.
82. The local authority may give the site owner instructions on how to deal with an occupier who has failed the residence test, and the owner will be required to follow those instructions. To enable the site owner to follow these instructions, they are relieved of their obligation to comply with the terms of a holiday caravan agreement.

83. Local authorities will be required to check the evidence held by the site owner that demonstrates the residence test has been carried out. This check must take place on an annual basis.

#### ***Part 4 - Holiday Caravan Agreements***

84. Part 4 of the Bill will provide additional protection to occupiers and owners of holiday caravans and site owners by setting out particulars and implied terms of agreements. There is currently no requirement for written agreements, although industry best practice does recommend agreements be in writing. These provisions will only apply to agreements that permit a holiday caravan to be stationed on a site for more than six consecutive weeks, or where an occupier will be entitled to occupy a caravan owned by the site owner for a period of more than six consecutive weeks.
85. Before making a holiday caravan agreement, the owner of the site must provide the proposed occupier with a written statement that provides basic information about the proposed agreement. This information will include, amongst other things, details of start and end dates of the agreement, periods during which the caravan may be occupied and details of any commission arrangements which may require a payment to the site owner on sale of the holiday caravan.
86. The written statement must be given no later than 28 days prior to when the agreement is to be made, unless a shorter period is agreed in writing. The period cannot be shortened where a holiday caravan is being sold by the site owner to the proposed occupier.
87. Where holiday caravan agreements have been made before the commencement of this Part, the written statement must be provided to the occupier within a period of three months after commencement.
88. A range of implied terms to holiday caravan agreements are set out in Section 56 of the Bill. These terms will apply to all agreements regardless of any express terms. The implied terms include a condition that Part 3 of this Bill, the residence test, is complied with.
89. It will be an implied term of a holiday caravan agreement that the owner of the holiday caravan site carries out an appropriate level of consultation with the owners of all holiday caravans on the site who have a holiday caravan agreement regarding certain matters. This includes matters which relate to the management or operation of the

site, or proposals to change or improve the site, where those changes or proposals are likely to affect occupiers significantly. This would not include discussions about the proposed sale of a site or a change in personnel responsible for the management of a site. The Bill will not require consultation in emergency situations where it is not practicable to consult, but the site owner would be expected to take reasonable steps in the circumstances to seek views of owners of holiday caravans on the site.

90. Holiday caravan agreements will be binding on any successor in title of the owner of a holiday caravan site. Any disputes relating to holiday caravan agreements will be heard by the county court, unless both parties have agreed to arbitration.

### ***Part 5 – Protection from Harassment***

91. Owners and occupiers of holiday caravans will not benefit from the Protection from Eviction Act 1977 in respect of a holiday caravan stationed on a holiday caravan site. However, protection from harassment is provided to holiday caravan owners and occupiers by Part 5 of the Bill. “Occupiers” in this Part includes short term (less than six weeks) occupiers.
92. A person guilty of an offence under this Part is liable on summary conviction to a fine and a prison sentence of up to 12 months. Where the case is dealt with in the crown court, the maximum sentence is a fine and imprisonment for up to two years.

### ***Unintended consequences***

93. There is no data on the demographics, ethnic origin or other protected characteristics of those who currently live permanently on holiday caravan sites in Wales. This is in contrast to the park home sector which is known to cater for an older and potentially more vulnerable demographic. It is therefore not possible to assess the impact on individual groups.
94. There are people occupying holiday caravans who have no other accommodation. They will need to find alternative accommodation as a result of this Bill. Many of these occupiers will have financial resources and are therefore likely to be able to make alternative housing arrangements without any assistance from the local authority.

95. Research undertaken as part of developing this Bill has indicated there are a number of people claiming Housing Benefit in respect of holiday caravans. It is possible that some of these occupiers may present as homeless to the local authority when required to leave their holiday caravan. The precise assistance they will be entitled to will depend on their individual circumstances, and will also depend on the proposals contained in the Housing (Wales) Bill.
96. There may be some cost to local authorities in dealing with this issue. However, this should not be an on-going cost as the Bill will act as a deterrent to future permanent residential occupation.

## **Consultation**

### *Introduction*

97. Two consultations were undertaken to inform the development of this Bill. An initial consultation was held on the policy objectives of the Bill. A brief second consultation was subsequently held on the draft Bill which resulted in a number of changes.

### *Initial consultation*

98. There were two parts to the initial consultation: a traditional written consultation and an online consultation through the SurveyMonkey website. In total there were 172 responses.
99. The largest number of responses to the initial written consultation were from site owners/operators. Only two local authorities and one National Park Authority responded. There were a variety of individual responses from people with experience of the sector and also representative organisations, including the two main trade associations – the National Caravan Council (NCC) and the British Holiday and Home Parks Association (BH&HPA). There were a total of 57 responses to the initial written consultation. Responses were received from the following sectors:
- Site owners: 26
  - Individuals: 14
  - Representative bodies: 7
  - Local authorities: 5 (includes 3 from Conwy and 1 from Snowdonia NPA)
  - Police: 2



- Other: 2

100. There were 115 responses to the online consultation. These responses were anonymous but many appeared to be from holiday caravan owners/occupiers. The online survey asked seven questions along the lines of those posed in the written consultation, although they were targeted at people that have direct experience of staying on holiday sites rather than owners or local authorities.
101. There were clear dividing lines in the evidence, with site owners generally favouring either better enforcement of current legislation or limited changes to make existing legislation more effective. Local authority responses were strongly in favour of modernising the legislation. Individuals had a range of concerns including restrictions on the sale/purchase of caravans and the general management of sites.
102. Each of the consultation questions is listed below together with an analysis of the responses.

*What are your views on the current licensing system for holiday caravan sites? How can the current law be modernised?*

103. Many site owners felt that the only problem with the current licensing regime was that it was not being enforced adequately by local authorities. One site owner commented that “site licences had not been enforced properly for 25 years”.<sup>1</sup> This view was echoed in many responses from site owners and industry bodies. A number of responses from the industry accepted that the current law could be made to work more effectively, but saw no need for wholesale reform. However, there was by no means universal opposition from site owners to reform, with one commenting that “the current system is cumbersome, slow, lacks transparency and is in need of reform.”<sup>2</sup> A number of responses emphasised the need for any reform to take place in consultation with the industry. There was also support for changes that would specifically target those “rogue” operators that breach licence conditions.
104. Local authorities responded that there was a need for modernisation of the current law which dates back to 1960 so they

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<sup>1</sup> Thornley Leisure Parks

<sup>2</sup> Normanhurst Enterprises Ltd

were provided with more powers and resources to enforce licence conditions. However, it was also noted that Model Standards applicable to holiday caravan sites were issued in 1989 so are significantly more modern. A local planning authority highlighted potential difficulties where problems with sites arise in national parks where the local authority retains the licensing role and the national park is responsible for planning issues.

105. A number of responses mentioned the current level of fines and there appeared to be agreement that these should be increased. Some, including the NCC, highlighted the lack of any duty (they currently only have powers) on local authorities to take enforcement action under current legislation and suggested this could be addressed in the Bill.

106. The BH&HPA highlighted what it saw as the role of current legislation in enabling the holiday caravan industry to become the “vital economic driver that we know today.”<sup>3</sup> It sees the licensing system as complementing planning restrictions and able, for example, to impose seasonal occupation restrictions where the planning permission makes no such restriction. They emphasise that:

Any modernisation of the system should preserve this dual control and the flexibility provided by today’s interaction between planning and site licensing.<sup>4</sup>

107. The NCC saw modernisation of the current licensing regime as an opportunity to simplify existing arrangements and encourage opportunities for growth within the sector.

108. The operator of a number of large sites in Wales emphasised the competitive nature of the holiday caravan park industry, more so than the park home industry in their opinion, and that this in itself drives up standards.

109. Local authorities highlighted the lack of enforcement powers currently at their disposal, with one noting that prosecution is the only option where there is a breach of licence conditions.<sup>5</sup>

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<sup>3</sup> BH&HPA

<sup>4</sup> BH&HPA

<sup>5</sup> Gwynedd CC

110. An organisation representing caravan owners saw revision of the site licensing system as “overdue”.<sup>6</sup>
111. The online survey asked a number of questions related to the management of sites. Almost 50 per cent of respondents who expressed a view did not think that standards on sites were currently high enough.

*Do local authorities have sufficient powers and resources to enforce site licence conditions? If not, what powers and resources do they need?*

112. Many site owners felt that local authorities already had sufficient powers but were not using them effectively. One response highlighted what they saw as a “lack of willingness” to use their powers.<sup>7</sup> Site owners highlighted what appeared to be differing practises across Wales with some local authorities, such as Powys, carrying out frequent visits despite their being no duty to do so. Another area was noted to have risk-based inspections by the local authority which targeted sites where issues had previously been identified. Some local authorities saw their powers as inadequate to inspect sites and enforce licence conditions. One local authority said it had directed more resources to inspections during the closed season because of its concerns about breaches of licence conditions – in particular concerns about people living permanently on site.<sup>8</sup>
113. Some respondents saw a lack of resources as the main problem rather than lack of enforcement powers. A number of responses suggested that having holiday sites that opened for 12 months of the year was creating a situation that was going to be very difficult to “police”.<sup>9</sup>
114. A local planning authority stated that it believed there were enough sites in its area to employ one full-time member of staff.<sup>10</sup> Gwynedd highlighted the task it faced where one officer is responsible for 380 sites.
115. Council tax was mentioned by a number of witnesses and it appeared that some permanent residents of holiday sites were paying

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<sup>6</sup> NACO

<sup>7</sup> Border Caravans

<sup>8</sup> Conwy CBC

<sup>9</sup> Individual response

<sup>10</sup> Snowdonia NPA

Council Tax, in addition to paying for business rates through their pitch fee. Concerns were raised in relation to what services that residents who did pay Council Tax actually receive.<sup>11</sup>

116. The BH&HPA felt that local authorities did have sufficient powers, but there were three issues that prevented effective monitoring and enforcement:
- Resources;
  - Competence [of local authority officers]; and
  - The will [of local authorities to take action].
117. The NCC saw a significant role for enforcement through the planning system as it saw breaches of licence conditions as ultimately breaches of planning permission.
118. Gwynedd Council highlighted some additional enforcement options that could assist local authorities:
- A process of reviewing the licences of sites/dwellings similar to that permitted under the Licensing Act 2003;
  - Enforcing a temporary exclusion on activities under the Site Licence as a tool to ensure that work is done to rectify serious breaches of conditions;
  - Improvement or exclusion warnings - regarding licensing conditions.

*Should local authorities be able to charge for site licences and should licences last for a fixed period of time?*

119. While some site owners accepted the need for local authorities to be able to charge a reasonable and proportionate fee for a licence the BH&HPA emphasised that the industry was divided on this issue. However, there appeared to be clear opposition from within the industry to any moves towards requiring time limited licences.
120. An issue repeatedly raised by the industry was the effect of introducing time limited licences on the business plans of site owners. Many highlighted that holiday caravan businesses are often small family run firms and therefore more susceptible to financial pressures than the larger firms. Some saw time limited licences as potentially unacceptable to lenders and there could therefore be a negative impact on site development. One site owner commented:

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<sup>11</sup> Individual response

If a local authority were able to stipulate how long a licence could last for, then how could a caravan park owner confidently invest millions of pounds in a business and improving that business, if there is the possibility that a local authority unjustly impact on that business at the time of the site licence renewal.<sup>12</sup>

121. Some site owners suggested a compromise where the site licence could run in perpetuity (as it does now) subject to regular review with a fee charged periodically.<sup>13</sup> There were also some concerns that a time limited licence could affect the value of caravans on those sites and that it could also affect security of tenure – for example where the agreement for a pitch lasts longer than the site licence.<sup>14</sup>
122. Many respondents questioned where any fees from licensing would go, and whether sites would actually benefit from this new charge. Others had concerns that licence fees should not be used as a way to make good site owners pay for dealing with “rogue” owners. The BH&HPA saw a “polluter pays” principle as the way forward if a fee was to be introduced so that good owners would not be paying for enforcement on poorly run sites. The Federation of Small Businesses was concerned that the introduction of fees should not simply be a revenue raising exercise.
123. The two local authorities that responded were firm in their belief that fees should be charged for licensing, as they are for other licensing functions, and that the licence should be time limited.
124. A number of site owners highlighted the substantial business rates paid by holiday caravan site owners, with one site in South Wales paying over £590,000 in 2013 and suggested that they already contribute enough in taxes.<sup>15</sup>

*How can the issue of people occupying holiday caravans on holiday parks as their sole or main residence best be dealt with? What is the scale of this problem and what impact will it have on the holiday caravan industry in the longer term?*

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<sup>12</sup> Site owner

<sup>13</sup> Gwynedd and Anglesey BH&HPA

<sup>14</sup> BH&HPA

<sup>15</sup> Parkdean

125. There was near universal agreement that the scale of any problem with residential use of holiday caravan sites is currently unknown. One site owner suggested that of 360 caravan pitches he lets, he suspects two are being used as main residences – but those occupiers still vacate in the closed season and provide a separate residential address.<sup>16</sup> The BH&HPA suggest that anecdotal evidence indicates the problem may be greatest away from tourism “honeypots” and focused in areas of multiple deprivation. A number of submissions suggested that the scale of the problem may not be as large as some fear.

126. Most site owners emphasised that they made it clear in their sales material, pitch agreements and site rules that residential use was prohibited and, unsurprisingly, none appeared to have experienced significant problems with this issue. Many site owners specifically outlined some of the steps that they took to ensure that residential use did not occur and this usually appeared to include requesting proof of address in the form of a utility bill or insurance document from their permanent residential address. In one example from a site owner, invoices for pitch fees were sent to the caravan owner’s permanent residential address rather than the caravan. Where there had been issues identified on sites they were often linked to relationship breakdown where one party had nowhere else to go.

127. Practical difficulties in identifying residential use were raised in some submissions. For example, what exactly constitutes holiday use and on large sites would it be reasonable for an owner to monitor the movements of several thousand occupiers?

128. A number of submissions questioned why people would be living on holiday caravan sites, and whether this would necessarily be through choice. One site owner, whilst recognising the risks associated with wider residential use of holiday caravans, commented:

Nobody chooses to live in a caravan, they are just not suitable and in my experience those that do have found themselves doing so by change of circumstance rather than a purposeful choice of accommodation. Therefore and in most cases, where these abuses do occur, they are temporary in nature and the occupants soon move back into conventional housing, freeing up the caravan and pitch back into tourism use.

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<sup>16</sup> Site Owner

129. One site owner saw the lack of affordable housing as the main reason why people live in holiday caravans.<sup>17</sup> A number of respondents suggested that the prime factor behind residential use of holiday caravans were longer opening periods, in some cases 52 weeks, and shorter or no closed seasons.

130. The BH&HPA saw industry self regulation as the best way to deal with this problem. They suggested a number of approaches to dealing with incidents of residential use:

- A requirement that following the end date of the Licence Agreement, any new agreement would be enforced so as to prevent residential use;
- A legal requirement to enforce all 'no residential' provisions in licence agreements would be a recipe for untold litigation and expense and should be avoided. Where residence can be shown to have endured for 10 or more years, consideration [should be] given to the issue of a Certificate of Lawful Use regularising the situation through residential consent for the pitch or park (and therefore application of the protections of the Mobile Homes Act 1983 (as amended) or its successor in Wales when Peter Black AM's Bill becomes law). This would introduce a moat of protection for the caravan owner
- Where a park has become a quasi-residential park, consideration given to a change of use planning application for the park or pitch(es) so as to afford the protections of the Mobile Homes Act 1983 (as amended)
- Where there is evidence of unfair trading, consideration of a prosecution by Trading Standards or action under the Consumer Protection from Unfair Trading Regulations 2008.

*What impact do people occupying holiday caravans as their sole or main residence have on holiday caravan sites and local communities?*

131. The consultation identified a number of potential impacts upon both holiday caravan sites as businesses and on the local community.

132. Site owners identified a number of concerns that could affect their businesses. Many focused on the visual impact on the site, such as having more external storage, sheds, decking, washing lines etc. It was noted that caravans used as residential units were generally being viewed as a cheap accommodation alternative so it would be unlikely that the unit would be upgraded regularly. This could also impact upon the visual amenity of the site. One site owner commented:

As a result, these caravans become old, tired and unsightly in line with the rest of the park. If the problem is spread out on the park, the parks takes on

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<sup>17</sup> Bourne Leisure Ltd.

a rundown and tatty feel, and this results in falling sales, as new customers are put off by the appearance of this element of the park.<sup>18</sup>

133. Not all evidence supported that view, and in some cases living on a caravan site can be a positive choice as suggested in the Sheffield Hallam research.
134. A number of owners commented that residential occupiers will generally not contribute as much to the local economy or indeed facilities like bars and restaurants on site. Two submissions suggested that residential use of holiday caravans could have a negative impact upon Welsh speaking communities.
135. In terms of the wider effect on the local community, many submissions focused on the drain that full time residents could have on local public services such as health services and schools although there was no direct evidence of this. One site owner took the opposing view and suggested that health services in areas with significant numbers of caravan sites should make provision based on the number of “tourism beds” as tourists are entitled to access local health services whilst on holiday.
136. It was suggested that in providing low cost accommodation pressure was actually being removed from local providers of social housing by utilising caravans as permanent residences.
137. North Wales Police highlighted the impact that not counting people who live on holiday caravan sites has on funding for public services, including the police.
138. In the online survey, over one third of respondents that expressed a view thought that people living permanently in holiday caravans were causing problems for the industry. Almost the same number of respondents said they would be less likely to take a caravan holiday as a result of people using holiday caravans as their main home. Around half of the 105 people who responded to the question said they had direct experience of people living permanently in holiday caravans.

*What risks are associated with people occupying holiday caravans as their sole or main residence?*

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<sup>18</sup> Thornely Leisure Park



139. There was contradictory evidence as to the suitability of holiday caravans for year round occupation. Border Caravans noted:

Contrary to popular belief modern caravans/Lodges/Leisure homes are insulated all round to a greater degree and with the emergence of BS3632 specification onto more and more units manufactured only increases that degree of comfort tremendously.<sup>19</sup>

140. Other evidence, including that from the main trade bodies, suggested that holiday caravans are insulated only enough to cope with “mild winters”.<sup>20</sup> The majority of evidence appeared to support the latter proposition. The age of the caravan is likely to be a factor with newer units being made to higher standards.

141. The Chartered Institute of Environmental Health, which represents environmental health professionals, including those in local government, highlighted that because holiday caravans fall outside the legal definition of housing they cannot be assessed for hazards to health or safety using the Housing Health and Safety Rating System (HHSRS). However, Conwy Council suggested that if most holiday caravans were to undergo a HHSRS assessment most would fail. A number of submissions raised excess cold and damp as particular hazards, as well as the potential risks from carbon monoxide where residents block ventilation to try and address those two issues.

142. A number of other risks were identified. Environmental risks, primarily associated with flooding, were highlighted – many holiday sites have been established in low lying coastal areas. Permanent residents would be faced with homelessness should their home be flooded. Occupiers would not have insurance that would provide temporary accommodation as the caravan would not be their legitimate home for insurance purposes. Another issue highlighted by a number of submissions was the economic impact, and the potential lost income should tourists not visit holiday caravan sites in sufficient numbers. The National Association of Caravan Owners also highlighted risks to the caravan occupier who would not have the legal protection afforded to residents of park homes.

*What unintended consequences could arise as a result of this legislation?  
What steps could be taken to deal with these consequences?*

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<sup>19</sup> Border Caravans

<sup>20</sup> Site Owner

143. Many site owners expressed their concerns that the majority of site owners who operate within the current legislative framework and adhere to licence and planning conditions should not be penalised for the actions of a few. They are concerned about increased bureaucracy and costs for all sites – particularly affecting small businesses and in light of the recent VAT issues affecting holiday caravans. Some evidence expressed concern that those businesses that already follow the rules will continue to follow any new legislation, whilst those who flout the current system will continue to do so.<sup>21</sup>

144. Homelessness was highlighted as another consequence of this legislation, although it was not possible to quantify levels in the absence of robust data. The BH&HPA highlighted the potential difficulties of caravan occupiers being faced with homelessness and suggested they would have to consider whether the caravan had been misrepresented to them, i.e. they had not been aware that the caravan was available for holiday purposes only.

145. Many submissions were reluctant to give much detail when responding to this question in the absence of draft legislation although there seemed to be some consensus that additional costs would be passed on to caravan owners through pitch fees. The NCC noted:

Any regulatory or legislative change brings with it additional costs. Whilst business should be able to pass on the costs of legislative change (such as the proposals to charge for site licensing) this will invariably increase the costs of caravan ownership which could act as a deterrent in the long term in a sensitive and highly competitive market.<sup>22</sup>

146. The NCC suggested that legislative changes could just be seen as penalising its members who have demonstrated that they operate to a level that exceeds current statutory requirements by adhering to the NCC's voluntary Approved Code Scheme.

*Should site owners or managers be subject to a fit and proper person test and, if so, what matters should this test take into account?*

147. There was some support for this proposal, though that support was often qualified. Of those who did support a test, there was little consensus on whether it should apply to the owner, manager or both.

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<sup>21</sup> Gwynedd and Anglesey BH&HPA

<sup>22</sup> NCC

Many site owners were concerned at who would administer the test, and what criteria they would use to make a judgement. Some site owners suggested an industry enforced scheme could be a compromise. However, local authorities were supportive of the test.

148. The evidence highlighted that many site owners are already subject to a Fit and Proper Person Test (FPPT) for other purposes such as for the provision of financial services and gambling.

149. The NCC drew a distinction between the reasons why park home site managers will be subject to FPPT and why it feels that this is not appropriate for holiday caravan parks:

The provision for residential park operators to be subject to a FPP in Wales is primarily to create greater control over the ownership and management, and future ownership and management of a residential park where the consumers, very often vulnerable and elderly, live on the park in homes that are licenced as their permanent, main, sole residences. If a similar FPP were deemed necessary for the holiday park sector, and it is not clear what its introduction would be seeking to achieve, the mechanics to secure an effective regime still present a challenge.

150. There was support from both North and South Wales Police for a FPPT.

*Do owners of holiday caravans have sufficient legal protection and are they able to exercise their existing legal rights? If not, what needs to be changed?*

151. The industry standard licence agreement was mentioned in many responses as the basis for the rights of caravan owners. Many responses also mentioned existing consumer protection legislation and the role that Trading Standards could play in resolving issues. The main legislation mentioned was the Sale of Goods Act 1979, Consumer Protection Act 1987 and the Unfair Terms in Consumer Contract Regulations 1999. However, a local authority stated that it felt written agreements were not always used.

*Should there be a legal requirement for site owners to provide caravan owners with a written licence agreement, and should this be in a standard format?*

152. The consensus appeared to be that a statutory requirement for a written agreement would be a positive step, but there should not be a standard agreement. Sites wanted flexibility to reflect local

conditions. A number of responses suggested that the legislation should require core terms along the lines of the equivalent legislation in Northern Ireland.

153. The BH&HPA reflected the general consensus:

A requirement that the agreement between park and caravan owner should be in writing would ensure transparency (as is required under the UTCCRs) and would protect both consumer and park business.

However, given the different business models employed across the industry and the need for flexibility to permit innovation, the requirement should not be for a written agreement in standard format, rather it might stipulate what the written agreement should achieve.

This might include (as with the Caravans (NI) Act 2011) written confirmation of:

- names and addresses of the parties
- particulars of the land on which the occupier is to station the caravan
- all express terms contained in the agreement, which will include for example the length of the licence period and all charges payable under the agreement.

*What would be the impact on the holiday caravan industry should there be any additional regulation or costs as a result of this legislation? How can any impact be mitigated and what other groups could incur costs?*

154. Many site owners see their industry as already highly regulated and therefore the main concerns centre around the impact that the Bill would have on their business and the industry in Wales.

155. The main concerns from site owners were:

- Additional regulation and bureaucracy;
- Additional costs;
- Ensuring that the “rogue” operators are targeted, not the good ones;
- Being able to pass on any new costs to the caravan owners;
- The impact on small businesses;
- The impact of costs in Wales being higher than in England;
- The need for more research to be carried out before making any legislative changes.

*Do you have any other comments you wish to make on my proposals?*

156. There were a range of general comments provided in response to this question. Many points re-iterated issues raised in earlier answers such as the need to focus on the bad sites, not impose more regulation on the good sites:
- CIEH suggested that caravan occupiers could be required to demonstrate they are living elsewhere;
  - The need to take the overall effect of this legislation on the tourism industry into account;
  - Dyfodol I'r Iaith are concerned that the hidden population are mainly non-Welsh speakers and this contributes to the decline of the language as a whole;
  - Many of these issues have arisen because of inadequate enforcement by local authorities;
  - The Bill should include measures to regulate the supply of LPG;
  - Some sites do not allow sub-letting so caravans are only occupied by owners;
  - The problems caused by unlicensed sites should also be addressed;
  - The Federation of Small Businesses suggested that the problem the Bill seeks to address is ill-defined;
  - The Federation of Small Businesses advocated risk based interventions, rather than more regulation;
  - The BH&HPA suggested the Bill's title should address "pitches" rather than "sites";
  - The NCC suggested that existing legislation only needs small amendments to make it more effective.

## **Second consultation**

157. A consultation on the draft Bill was held between 11 December 2013 and 17 January 2014. The consultation letter and draft Bill can be viewed on the National Assembly's website.<sup>xii</sup>
158. The consultation attracted over 50 responses from a range of interested parties. This included detailed responses from the main industry trade associations: the National Caravan Council and the British Holiday and Home Park Association (BH&HPA). A response was also received from the National Association of Caravan Owners, which represents owners of holiday caravans. Six responses were received from local authorities (which broadly welcomed the Bill), and 37 from holiday caravan site owners, some of whom only had sites in England. Many responses from site owners stated that they supported the views of their trade body, primarily the BH&HPA.

159. While many of the responses were supportive of the Bill's intention to address residential occupation of holiday caravans, a range of suggested changes relating to other parts of the Bill were also made by respondents. Some of the main issues raised were:

- the draft Bill was difficult to read as it had to be read in conjunction with the 2013 Act;
- the suitability of applying aspects of residential mobile home legislation to the holiday caravan sector;
- that the requirement for local authorities to inspect each site annually was unnecessary and burdensome;
- the residence test could be difficult to implement, and site owners could be penalised for bringing residential occupation of a holiday caravan to the local authority's attention;
- that protection from eviction provided under the 2013 Act could be extended to holiday sites by the proposals in the draft Bill;
- local authorities expressed some concerns about the potential impact on people who currently live in holiday caravans;
- there were concerns about who the Fit and Proper Person Test would apply to, and specific concerns about the intention to have regard to contraventions of the law relating to trading standards;
- there was some opposition to the requirement to consult with holiday caravan occupiers.

160. As a result of the second consultation, a significant number of changes have been made to the Bill, these include:

- The Bill is now "self-contained" and there is no need to read-across to the 2013 Act to understand its intentions;
- Local authorities will now only have to inspect a site at least once every three years;
- Those using holiday caravan sites for less than six consecutive weeks will not be subject to Part 3 (residence test) or Part 4 (holiday caravan agreements) of the Act;
- Where a residence test is failed, it is the occupier that will be subject to action by the local authority rather than the site owner; the local authority will be able to give instructions to the site owner as to how to deal with the situation; the local authority will also be able to issue the occupier with a fixed penalty notice;
- The Bill specifically dis-applies the Protection from Eviction Act 1977 to holiday caravan occupiers, but occupiers will still have protection against harassment;

- The Fit and Proper Person test will apply to the manager of a site. This will include the most senior person with responsibility for managing the site, and any person with responsibility for day-to-day management of the site;
- The requirement on site owners to consult will only apply to the owners of holiday caravans.

## Power to make subordinate legislation

161. 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 applicable procedure (affirmative, negative, no procedure) if any.

Section	Power conferred on	Form	Appropriateness	Procedure	Reason for procedure
Section 2(4)	Welsh Ministers	Order by statutory instrument	Suitable for order as it will enable Welsh Ministers to amend administrative details regarding the size of holiday caravans.	Negative	These orders will prescribe technical matters of detail which may change from time to time.
Section 16	Welsh Ministers	Regulations by Statutory instrument	Suitable for regulations as it will enable Welsh Ministers to appoint a date for the commencement of site inspections	Negative	These regulations are confined to commencement and are technical in nature. Negative procedure is appropriate for commencement of the duty to introduce site inspections.
Section 21(3)	Welsh Ministers	Regulations by statutory instrument	Suitable for regulations as it will enable the Welsh Ministers to restrict the circumstances in which fixed penalty notices may be issued in	Affirmative	Amends an Act of the Assembly and current state of the law.



			respect of holiday caravan sites		
Section 34(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 66	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 70(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	Welsh Ministers	Order by statutory	Suitable for order as it will enable	No procedure	These orders will prescribe

3(2)		instrument	the Welsh Ministers to amend administrative details regarding the size of certain sites which are not to be a holiday caravan site.		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 the 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.

### **Territorial application**

162. This Bill will apply only to holiday caravan sites in Wales.

### **Cross border issues**

163. As the Bill applies to holiday caravan sites in Wales, there are no direct cross-border issues.

## Summary of the main differences between the Mobile Homes (Wales) Act 2013 and the Holiday Caravan Sites (Wales) Act 2014.

164. While the Bill replicates many parts of the 2013 Act and applies them to holiday caravans, there are some important differences. The following table provides a summary of the main differences between the Bill and the 2013 Act.

Provisions of the 2013 Act	Provisions of the 2014 Act
<b>Licensing regime</b>	
The 2013 Act uses the term 'regulated site' for sites subject to a licensing regime.	The 2014 Act uses the term 'holiday caravan sites' for sites subject to a licensing regime.
Sites specified in Schedule 1 to the 2013 Act are not regulated sites and therefore do not require a licence.	<p>Sites specified in Schedule 1 to the 2014 Act are not holiday caravan sites and therefore do not require a licence.</p> <p>The effect of the exceptions in the 2014 Act are very similar to the exceptions in the 2013 Act.</p> <p>However, there are differences. In particular, if a certificate granted under Schedule 1 to the 1960 Act is valid at the time the 2014 Act comes into force, then the certificate will continue to apply (i.e. there will be no need to apply for a new certificate).</p> <p>The 2014 Act does not apply to gypsy and traveller sites.</p>
The 2013 Act requires the residential property tribunal to hear appeals relating to licence conditions.	The 2014 Act requires the magistrates' court to hear appeals relating to licence conditions.
Those who held a licence under the 1960 Act had to re-apply for a licence	Those who hold a current licence under the 1960 Act will not have to

<p>under the 2013 Act.</p>	<p>re-apply for a licence under the Act.</p> <p>However, before the 1960 Act licence can continue to apply, the local authority must satisfy itself that the manager of the site is a fit and proper person (within 12 months of when section 9 comes into force).</p> <p>Also, the local authority must modify the licence so that it satisfies the new requirements in the 2014 Act (within 12 months of when section 9 comes into force).</p>
<p>Site licences are issued for a maximum of 5 years.</p>	<p>Site licences continue indefinitely (unless terminated).</p>
<p>Not in the 2013 Act.</p>	<p>When deciding what conditions to include in a site licence, the local authority must consult in relation to flood risk management.</p>
<p>Not in the 2013 Act.</p>	<p>Local authorities must inspect sites at least once every three years to check that sites are complying with licence conditions.</p> <p>This duty will commence in accordance with regulations to be made by the Welsh Ministers, after consultation.</p> <p>Local authorities must also review site licence conditions at least every five years, so that licence conditions remain appropriate.</p>
<p>The maximum fixed penalty notice for breaching a licence condition is set at level 1 on the standard scale.</p>	<p>The maximum fixed penalty notice for breaching a licence conditions is set at level 2 on the standard scale.</p>

	<p>The Welsh Ministers must issue guidance to clarify when breaches are sufficiently serious to justify fixed penalty notices.</p> <p>The Welsh Ministers may make regulations to restrict the circumstances in which fixed penalty notices may be issued.</p>
<p>When the holder of a site licence dies or sells the land, the site licence is revoked automatically.</p>	<p>When the holder of a site licence sells the site, the licence may be transferred to the new owner, with the local authority's consent.</p> <p>When a site owner dies, the person who becomes entitled to the site becomes the licence holder.</p>
<p>The fit and proper person test applies to the manager of the site.</p> <p>Where the owner of the site is also the manager of the site, the owner/manager must be a fit and proper person.</p> <p>Where the owner is not the manager of the site, the person appointed by the owner to manager the site must be a fit and proper person.</p>	<p>The fit and proper person applies to the manager of the site.</p> <p>The manager of a site will include the most senior person with responsibility for managing the site, and any person with responsibility for day-to-day management of the site.</p> <p>Further, reference to persons managing a site includes a reference to persons giving instructions about the management of the site.</p>
<p>In deciding whether the manager of a site is fit and proper, the local authority must have regard to all appropriate matters.</p> <p>In particular, it must have regard to evidence showing that the manager has:</p>	<p>The 2014 Act applies in the same way, except that the local authority must also have particular regard to evidence showing the manager has contravened trading standards law.</p>

<ul style="list-style-type: none"> <li>• committed offences involving fraud, dishonesty, violence, firearms, drugs and sexual offences</li> <li>• discriminated against any person in the course of business</li> <li>• contravened housing law.</li> </ul>	
<p>Repayment orders can be relied upon by owners of mobile homes.</p>	<p>Repayment orders can be relied upon by owners of holiday caravans and those letting holiday caravans owned by the site owner.</p>
<b>Fees</b>	
<p>The 2013 Act allows local authorities to set fees for applications for licences and for varying licence conditions.</p> <p>Enforcement costs incurred as a result of breach of licence conditions can be recovered directly from the site owner who breached the licence conditions.</p>	<p>The 2014 Act applies in the same way, but there is an additional annual fee to cover local authority costs in relation to site inspections, licence reviews and the residence test.</p>
<b>Residence test</b>	
<p>Not in the 2013 Act.</p>	<p>No one (other than the site owner, site manager and certain site staff) may use a holiday caravan as an only or main residence.</p> <p>Site owners must conduct a residence test at least once a year to establish that no one is using a holiday caravan as an only or main residence.</p> <p>The residence test requires occupiers of holiday caravans to provide evidence that the holiday caravan is not their only or main residence.</p>

	<p>The evidence must include at least two of the documents listed in Schedule 2. These are documents which show:</p> <ul style="list-style-type: none"><li>• the occupier’s residence for council tax purposes</li><li>• the occupier’s entry in an electoral roll</li><li>• the occupier’s address for correspondence with banks, credit card companies, utility providers, and HMRC</li></ul> <p>If an occupier of a holiday caravan cannot provide the evidence required, the site owner must notify the local authority as soon as possible.</p> <p>The local authority must then give the occupier a notice (a residence failure notice) which requires the occupier to stop using the holiday caravan as an only or main residence.</p> <p>An occupier served with a residence test failure notice may appeal to a magistrates’ court.</p> <p>The local authority may also give the occupier a fixed penalty notice.</p> <p>An occupier who fails to comply with a residence test failure notice commits an offence and is liable to a fine.</p> <p>Site owners must keep evidence showing how occupiers have passed the residence test. The local authority</p>
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	must then inspect that evidence at least once a year.
<b>Agreements</b>	
<p>The 2013 Act specifies in detail the terms of mobile home agreements, see Part 4 of, and Schedule 2 to, the 2013 Act.</p>	<p>Under the 2014 Act, site owners must give a written statement to occupiers setting out the following matters before making a holiday caravan agreement (i.e. the contract between the site owner and caravan occupier):</p> <ul style="list-style-type: none"> <li>• details of the party names</li> <li>• sufficient details to identify the pitch area</li> <li>• the terms implied by section 56 (see below).</li> </ul> <p>The written statement must also include the following express terms:</p> <ul style="list-style-type: none"> <li>• duration of the agreement (including start and end dates)</li> <li>• details of all fees payable under the agreement</li> <li>• details of any commission payable on sale of the holiday caravan</li> <li>• the dates between which occupiers can stay on the site (i.e. when is the site open)</li> <li>• details of the terms relating to termination, assignment and succession</li> <li>• any site rules (as made by site owners)</li> </ul> <p>If the site owner fails to set out any of those express terms, then the term cannot be enforced by the site owner.</p>



	<p>Section 56 of the Act also specifies some terms that are implied into all holiday caravan agreements.</p> <p>Those terms are:</p> <ul style="list-style-type: none"> <li>• occupiers must not use the holiday caravan as an only or main residence</li> <li>• occupiers must notify the site owner if their circumstances change so that they begin to use a holiday caravan as an only or main residence</li> <li>• occupiers must notify the site owner if they allow any other person to occupy the holiday caravan for more than 6 consecutive weeks</li> <li>• site owners must provide copies of utility bills and a non-domestic rating bill when reasonably requested by occupiers</li> <li>• site owners must consult holiday caravan owners about site matters which are likely to affect occupiers significantly (except in an emergency, where the site owner must only take reasonable steps to seek the views of holiday caravan owners)</li> </ul>
<b>Protection from harassment</b>	
<p>Part 3 of the 2013 Act provides protection from eviction and harassment in the context of residential occupiers.</p>	<p>Part 5 of the 2014 Act retains protections required in the context of holiday caravans, namely protection for occupiers of holiday caravans from harassment by site owners and their agents.</p>

## Part 2: Regulatory Impact Assessment

165. Official data on the sector is scarce. Census data only provides limited scope for further analysis as holiday caravans are not identified as a distinct form of housing in the census questionnaire, they are instead included within a wider category that includes other temporary structures.
166. The holiday caravan industry in Wales is far larger than the park home industry. While there are around 3,400 park homes in Wales, there are estimated to be approximately 70,000 holiday units.<sup>23</sup> Holiday caravans are not intended, or in some cases designed, for permanent occupation. In some parts of Wales there is evidence of a growing use of holiday caravans as permanent residences, some in areas of flood risk. As well as often being in breach of planning conditions, site licence conditions and individual licence agreements for pitches this has a generally negative impact on the local community and can result in underfunding of public services as much of this population is “hidden” from official statistics. This Bill will ensure that holiday caravans are used for holiday purposes rather than as a source of permanent housing.
167. As part of research to inform the development of this Bill a detailed questionnaire was sent to all local authorities in Wales to collect information in relation to the number of holiday caravan sites and details around the number of caravans and pitches. Responses were received from 18 of the 22 local authorities in Wales, covering the majority of holiday sites. Responses were not received from Caerphilly, Cardiff, Monmouthshire and Newport. Although not all authorities were able to provide all of the information requested, which focused on static holiday sites.
168. From this research, it can be estimated that there are around 1,100 sites in Wales with static holiday pitches and approximately 400 touring sites. This suggests that there could be around 1,500 sites, which are licensed under the 1960 Act. Of the licensed sites containing static holiday pitches, a large proportion have a small number of static holiday pitches: 18% have only one pitch, over 30% have five or less pitches and over 40% have ten or less pitches. The

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<sup>23</sup> British Holiday and Home Park Association/Visit Wales, [Economic Impact Assessment of the Holiday Park Industry in Wales](#), September 2011 p2

survey although incomplete suggested that there may be in the region of 70,000 units or pitches.

169. The options considered are:
- Option 1: Do nothing
  - Option 2: Voluntary Scheme
  - Option 3: Introduce the proposed Bill

## **Estimate of Costs:**

### **Option 1 – do nothing – continue with existing arrangements.**

170. Consultation responses suggest that local authorities are not currently sufficiently resourced to inspect holiday caravan sites and that the system of enforcement is insufficient.
171. As part of research to inform the development of this Bill, local authorities were asked how often holiday caravan sites were inspected and also how much resource time this takes. From the responses received it is clear that different local authorities take different approaches to site inspection and that authorities generally take into account risk when deciding how often to inspect each individual site. Inspection frequency ranges from only carrying out inspections in response to complaints to annual or more frequent inspections:
- Two authorities stated that sites are mainly inspected reactively – in response to licence applications, amendments, transfers and planning consultations. Sites will also be inspected as a result of any complaints, and there will be follow up inspections to ensure that any matters requiring attention are dealt with.
  - One authority stated that inspection frequency depended on work commitments.
  - Two authorities stated that they routinely inspected sites between every 3 and 5 years.
  - Five authorities stated that the frequency in which sites were inspected was risk based, with some sites being inspected every six months, and others being inspected annually, or every two or three years. One of these authorities stated that the scale extended to inspections every 5 years and another that those sites with the lowest risk could return self-assessment questionnaires.
  - Four authorities stated that sites were inspected annually or more frequently.

172. In terms of resource that is currently directed towards inspection, it was difficult to get a consistent picture across Wales. This is because the time needed to perform inspections is relatively small and therefore not recorded by local authorities. From discussions with local authorities it appears that an average assessment, may take somewhere between one to four hours, plus officer travel time. Even the authorities with a large number of sites in their area stated that this would only be a fraction of one full-time equivalent post. Therefore it has not been possible to quantify the current resources invested by local authorities in inspecting holiday caravan sites.
173. As has been stated previously, local authorities are unable to charge for their holiday caravan site licensing functions under current legislation. They therefore receive no direct contribution from site operators towards the costs associated in dealing with duties under the 1960 Act. If this Bill does not become law, these costs will continue to fall upon council tax payers and the local authority's funding from the Welsh Government. The inability of local authorities to charge may deter some authorities from intervening where breaches of licences are identified, or indeed from undertaking regular monitoring.
174. Although some local authorities do already undertake regular inspections of sites within their areas, this does not happen in all areas. The new regime proposed by this Bill will ensure that regular inspections are carried out more consistently across Wales, and that licences are modernised following commencement of the Bill. In the absence of these provisions there is a risk that in some areas there will be few, if any, inspections to ensure that the trend for holiday sites being used for residential purposes will continue.
175. There is a risk of the trend of holiday units in a minority of sites being used as permanent residences having a wider impact on the reputation and future profitability of the industry and the tourism industry more generally.

## **Option 2 – Voluntary Scheme**

176. The option of achieving the policy aim through the codes of practice and approved schemes of industry bodies and self-regulation was considered.

177. Participation by site owners in existing industry codes of practice and approved schemes is not widespread and sites engage on a voluntary basis. In addition, not all sites are members of industry bodies and there could be an unintended consequence should this option be pursued whereby site owners fail to renew their membership with industry bodies in order to avoid changing their practices.

### **Option 3 – Introduce a Bill – Preferred Option**

178. Option 3 is the preferred option. The new proposals would result in some new costs for site owners, local authorities, and the Welsh Government.

179. The Bill stipulates one regulation making power, one commencement order and one set of guidance that **must** be made by the Welsh Government. The Bill also stipulates two sets of regulation making powers, four order making powers and one set of guidance that **may** be made by the Welsh Government. Therefore the financial costs associated with the Bill will be dependent on how and when these powers are implemented. The following sections set out indicative costings around the intention of the Bill. It is anticipated that more detailed estimates will be available when regulations are drafted and consulted upon.

### ***A new licensing regime***

180. Sites already licensed under the 1960 Act will be treated as holding a licence under this Bill. This will reduce the impact of the additional administrative burden for both site owners and local authorities. However, within 12 months of the commencement of the legislation, the local authority must assess whether each person responsible for managing the sites in their area is a fit and proper person. “Manager”, for the purposes of this Bill, includes any person who gives instructions regarding the day-to-day management of the site, including owners, or appropriate officers of a corporate body. Where a person is deemed to not be a fit and proper person, the licence under the 1960 Act will no longer apply.

181. Where the manager of the site is assessed as a fit and proper person, the local authority must modify the licence issued under the 1960 Act to meet the requirements of this Bill within a period of 12 months.

182. Unlike the 2013 Act, site licences issued under this Bill will not expire. This continues the current arrangements under the 1960 Act and reflects concerns from the industry about time-limited licences. However, site licences will be subject to review every five years. It is anticipated that the review will be straightforward for most sites and licence conditions would not be expected to change without justifiable reason. As local authorities already have powers to vary licence conditions and can apply to the magistrates' court to revoke licences under the 1960 Act, this power is merely intended to introduce consistency to the informal "review" arrangements that already happen on an ad hoc basis.
183. Under the 1960 Act there is no duty on local authorities to inspect sites. Under the provisions of this Bill, local authorities must inspect sites at least once every three years to ensure that sites are complying with licence conditions. This approach will allow local authorities to take a risk based approach to inspections. Those sites, which are operated professionally, should not expect routine inspections any more frequently than is necessary. Local authorities will also need to ensure that they review information with regards residence tests for caravan owners and people staying at sites for over six consecutive weeks on an annual basis. These duties will not commence until Welsh Ministers have made regulations and consulted with the industry.
184. When attaching conditions to a licence local authorities must have regard to any model standards that have been specified. The existing 1989 model standards will continue to apply until new ones have been issued. Welsh Ministers may specify new model standards for holiday caravan sites.
185. A new requirement in the Bill is that local authorities will in future have to consult with any public authority with responsibility for flood risk management when considering what conditions to impose in a site licence. Recent flooding in Wales has demonstrated the significant risks associated with flooding for some holiday caravan sites, particularly in coastal areas.
186. Appeals against licence conditions will be heard by the magistrates' courts.

187. The local authority will be required to maintain a register of site licences, which are currently in force. This must be available for public inspection.
188. The Welsh Ministers may issue general guidance to local authorities as to considerations they should take into account in deciding whether to deal with a failure to comply with a condition of a site licence by serving a fixed penalty notice. The Welsh Ministers must also issue guidance to local authorities on arrangements for the enforcement of licence conditions. Where necessary, and following failure to take steps outlined in a compliance notice, the authority will be able to impose a charge on the owner as a means of recovering expenses incurred by the authority connected with the notice. Where the notice is not complied with, and the site owner is convicted, the local authority may take steps itself to ensure the licence conditions are met. The licence holder will first be given reasonable time to carry out the actions themselves.

### *Costs of reviewing licenses*

189. In order for local authorities to adequately monitor site licences, they must be properly resourced. As stated in Option 1 local authorities with holiday caravan sites within their areas currently license and inspect, to varying degrees, these sites, with the majority of sites being inspected at least once every three years. The new system of licensing would not impose significant extra responsibilities. For authorities with a very small number of sites there is potential for collaborative service delivery and economies of scale.
190. Assumptions on the time required for inspections in relation to the reviewing of licences and on-going monitoring are based on discussions with two local authorities. Those authorities had the largest number of holiday sites with static caravans in their areas.
191. **How services are organised on a local, regional or national level will not be directed by this Bill, therefore estimates shown in this Impact Assessment are based on an all-Wales basis.** In the following cost estimates it is estimated that, in the first year, to process approximately 1,500 renewed site licenses in Wales would take a combined resource of around 20 (full time equivalent) environmental health officers (EHOs). It is assumed that one licence renewal application and associated work could be processed every 3 days, allowing time for interaction with site owners as part of the

application process, to minimise the number of potential appeals and consultation with any relevant public bodies, including those with flood risk management responsibilities. Interaction with site owners will include ensuring they have provided sufficient evidence to satisfy criteria relating to fit and proper persons managing the site.

192. If the cost of an EHO is taken to be £38,100 (based on a mid-range higher executive officer in the Welsh Government, and taking account of National Insurance and pension costs) this would be a combined cost of £762,000 in the first year. This would assume all licences would be processed within twelve months of policy implementation, if this was not the case these costs would be spread over a longer period. Included within this estimate is the role of setting up a register of licences.

### ***Costs of monitoring sites***

193. This Bill sets out a requirement for local authorities to inspect sites at least once every three years, this fits in with the existing policy of grading the frequency of site inspections by the relative risk. Consultation responses from local authorities suggest that this is the most efficient and effective way for ensuring that there are satisfactory management arrangements in place, and that those standards are maintained.

194. Local authorities currently monitor and inspect sites so the additional burden of this legislation is limited. The current regularity of inspections by local authorities is set out in option 1. Almost two-thirds of authorities responding to the survey indicated that they inspected holiday caravan sites with static caravans at least every three years.

195. It is estimated that any new monitoring and general administrative requirements would require around one person day input per site per inspection every two years, or three and one-third full-time equivalent technical officers for the whole of Wales. This is based on the assumed average frequency of inspection being every two years, an inspection taking one to four hours, plus ensuring that administrative evidence is held by the site owners and also to cover for any additional administrative requirements such as updating the register of site licences, if necessary.



196. In years when an inspection of an individual caravan site will not be taking place, there will be a requirement for the local authority to review information held by the site in terms of residents meeting the residence test, this requirement will not necessarily require a site visit. It is assumed to take on average an hour per site. This would amount to an extra two-thirds of a full-time equivalent technical officer. This is an average figure and the resource needed will be higher in the largest organisations, but for the 40% of static sites with 10 caravans or fewer, and touring sites these costs will be lower.
197. Assuming that the cost of a technical officer is approximately £27,100 per year, (based on a salary of around £22,100 plus on-costs) the annual cost of monitoring would be £110,000 per year from year 2 onwards.
198. Local authorities will be responsible for setting a level of fees with the intention that these fees will recover the costs of the licensing, monitoring and inspection of sites over a 5 year period. The intention is for licences to be reviewed every 5 years and for site inspections to take place on a risk basis at least every 3 years. The Bill does prescribe that local authorities can charge an annual fee to recover the costs of licensing and inspection. There would be a benefit for local authorities in having an annual income, but small additional administrative costs in doing so as is the case with business rates.
199. As there is a huge variability in terms of the size of holiday caravan sites, from 1 to well over 1,000 units, there will need to be some form of grading in terms of assigning a fee based on the size of each site. The detail of such schemes is best left to individual local authorities. For illustrative purposes an example is set out below, this example shows what sort of average fees would recoup local authority licensing and inspection costs, as estimated later in this document, both in terms of the average cost per site and the average cost per static unit.

**Table 1 Estimated costs of licensing and monitoring functions and associated fees**

	Example: average licence fee		5 year licence fee income from 1,500 sites
	Annual	Over 5 years	
Fee per site <sup>1</sup>	£160	£800	£1,200,000
Fee per unit <sup>2</sup>	£3.43	£17.14	£1,200,000

Figures are based on aim to recover local authority costs for issuing licensing and monitoring over the initial five year period, rounded down by £2,000.

1 This is simply the estimated costs to local authorities divided by the number of sites estimated, 1,500.

2 This is calculated by taking the cost per site and dividing it by 70,000, a very rough estimation of the number of pitches in Wales.

*Licence fees are a transfer from site owners to local authorities and so not a net economic cost.*

200. Unlike the 2013 Act, site licences issued under this Bill will not expire. This continues the current arrangements under the 1960 Act and reflects concerns from the industry regarding time-limited licences. However, site licences will be subject to review every five years. It is anticipated that the review will be straightforward for most sites and licence conditions would not be expected to change without justifiable reason. As local authorities already have powers to vary licence conditions or revoke licences under the 1960 Act, this power is merely intended to introduce consistency to the informal “review” arrangements that already happen on an ad hoc basis. Therefore, after the initial five year period set out above, costs and fees going forward should be lower, as the resource input in the first year following commencement of the Bill would not be repeated.

201. In order for licences to reflect the new requirements of the Bill, the day-to-day manager(s) (and the most senior person responsible for giving instructions about the management of the site) will need to pass a “fit and proper” person test. There will be a duty on local authorities to obtain sufficient information from applicants for a licence to determine whether the licence holder and any person involved in the management of the site are fit and proper persons. Local authorities must have regard to any relevant criminal offences, contraventions of any provision of the law relating to equality, housing, landlord and tenant, and trading standards.

202. The fit and proper person test therefore applies in much the same way as under the 2013 Act, except that the local authority must also have particular regard to evidence showing the person in question

has contravened trading standards law. Local authorities may also wish to consider compliance with any existing industry codes of practice, such as that operated by the National Caravan Council when considering whether the test has been passed. It will be open to local authorities to request evidence of a person's criminal convictions.

203. A Disclosure Scotland Criminal Conviction Certificate costs around £25, a standard Disclosure and Barring Service (DBS) check costs around £26 and an enhanced DBS check £44. Assuming that checks were to be carried out for two persons per site, the cost of carrying out criminal checks for the estimated 1,500 sites would be in the region of £75,000 and £132,000 depending on the check required to be carried out by the local authority. An average cost of £95,000 has been used in these estimates to reflect the total cost for the first year following commencement of the Bill, costs have been assumed to be met by the site owner. It has been assumed that there may be a requirement to provide fit and proper person tests in 10% of sites, as owners and managers change. Therefore, in years 2 to 5 there are costs of £9,500 per year in relation to this requirement.

204. There would be administrative costs to the site owner in relation to additional work needed for the licence application and we have included an estimation of £100 per site to cover this. The majority of this cost relates to the input of time and will be an opportunity cost in terms of owner, or manager, time. For example, a further condition of the licence will be that caravan owners, and those staying in holiday caravans for a period of more than six consecutive weeks, will need to fulfill a residence test, providing evidence of an alternative primary address. It will be the responsibility of the occupier to provide this information and for the site owner to hold this information for inspection by the local authority. This would lead to an overall estimated cost of £150,000 (£100 x 1,500) in the first year following commencement of the Bill.

205. Site owners will need to update evidence that caravan owners and those staying on the site for over 6 weeks or more have passed a residence test to be available for on-going monitoring / inspections. It has been assumed that this will involve a cost of £75 a year per site from year 2 onwards, totaling £112,500 per year for the whole of Wales. Based on administrative time of around a day every two years in relation to inspections, plus the annual updating and providing to local authorities information in terms of caravan owners primary addresses and any visitors staying over 6 weeks. In a year where no

inspection is due to take place the site owner will need to provide evidence to the local authority that the residence test has been applied and met. This is an average figure and will be higher in large organisations, but for the 40% of sites of 10 or fewer static holiday caravans, and in touring sites these costs will be lower.

206. The cost to individual caravan owners of providing information to satisfy a residence test has not been calculated as this simply entails providing proof of residence once a year.

### ***Fines and Penalties***

207. When setting fees, a local authority may not take into consideration costs it has incurred exercising any of its enforcement powers under this Bill. In effect, the local authority will not be permitted to pass the costs of taking enforcement action against the minority of non-compliant site owners on to the majority of site owners who are responsible.

208. Where an occupier fails the residence test, the site owner must notify the local authority as soon as possible. The local authority must then give a notice to the occupier of the holiday caravan, a “residence test failure notice”. The local authority **may** also issue a fixed penalty notice to the occupier.

209. The residence test failure notice will set out the reasons why the local authority believes the residence test has been failed and requires the occupier, within a specified period of time, to desist from occupying the holiday caravan as their main residence. The occupier will have a right of appeal where they are served with such a notice. The appeal will be heard by the magistrates’ court. The local authority will also have powers to revoke or vary the notice.

210. Where an occupier of a holiday caravan remains in occupation in breach of a residence test failure notice they will commit an offence for which they will be liable, on summary conviction, to a fine determined by the court.

211. The Bill introduces a system of fixed penalty notices, for offences such as breaches of site licence conditions, these conditions will be determined by the Welsh Government and local authorities. The intention of the new regulatory framework is that these powers are only exercised as a last resort and will be a rare occurrence. Any

income in relation to fixed penalties would be retained by the local authority, whereas income from fines imposed by the courts would be passed on to HM Treasury – however, in cases of successful prosecution, local authorities can apply to the court for costs to be payable in relation to preparatory and court costs.

212. Costs falling on caravan owners or site owners in relation to fines or fixed penalty notices have not been included in these cost estimates, as these will only come into force as a reaction to activity in breach of the law by the occupier, or site owner / manager rather than due to the Bill itself.

213. The penalty structure is set out in Paragraph 50 of this Explanatory Memorandum.

214. This Bill will make any person who wilfully obstructs any authorised person entering a site, including where a warrant has been issued, liable for a fine of up to level 4 on the standard scale, which is currently £2,500 and in line with the Mobile Homes Act 2013 and Housing Act 2004.

215. If it is assumed that one case is heard on average in the first year following commencement per 10 sites with appeal costs estimated at £500 a case to the local authority in preparing for and attending the case, this would lead to a cost of £75,000 to the local authorities. In subsequent years there would be a far lower likelihood of cases being proceeded through the courts, hence the assumption of three per 100 sites in subsequent years, or £22,500 per year. Similar cost assumptions have been made for site owners.

216. Costs for Caravan Owners are not included as it is anticipated that the provisions within the Bill, such as holiday caravan agreements and protection from harassment, would make it less likely for occupier to need recourse to legal action than is currently the case.

### ***Other costs***

217. The proposed Bill also contains a power to appoint an interim manager of a site. It is estimated, based on appointing a manager at senior level that the potential cost to the local authority of securing a replacement could be approximately £10,000. The full cost of employing the interim manager would come from site revenue.

However it is hoped that such an intervention would only ever be considered as a last resort, and used very rarely.

218. Additional training would be needed for local authority staff in the first year along with publicity costs. These are generously estimated to be £40,000 for training and awareness raising. Training is only provided in the first year as subsequently this will be part of general inspection training. Existing staff will have received relevant training in relation to implementing the Mobile Homes (Wales) Act 2013. The allowance for training and publicity is to reflect the larger scale of the holiday caravan industry and the need for more staff resource to be involved. Comparisons were also made with the Food Hygiene Rating (Wales) Bill, where an estimate of £10,000 was included by the Welsh Government for training of local authority staff.

### ***Welsh Government***

219. There will also be costs for the Welsh Government due to the number of regulations and order making powers in the Bill. These will generally be transitional costs that could involve the setting of and consulting on legislation and publicising decisions. It is difficult to estimate the costs that will fall on the Welsh Government, as the timing and extent of resource input will be decided within the relevant department. Also, some of the powers are similar to those in existing housing legislation or current industry standards.

220. The Bill stipulates one regulation making power, one commencement order and one set of guidance that **must** be made by the Welsh Government. The Bill also stipulates two sets of regulation making powers, four order making powers and one set of guidance that **may** be made by the Welsh Government.

221. However, existing legislation, particularly in relation to Mobile Homes and also Houses in Multiple Occupation, may provide a basis for some of the new legislation.

222. Although costs will vary due to the complexity of regulations and guidance prescribed. The Welsh Government has been approached for more detailed estimates of what the implications of this Bill will be in terms of costs to produce regulations and guidance, it is expected that these will be provided during scrutiny of this Bill. In the interim, as an example, the School Organisation section of the Draft School Standard Bill Explanatory Memorandum estimated that

amending regulations and setting out new guidance would have the following costs.

223. One-off additional transitional costs, which would fall on the Welsh Government, for this option only, in the 2012/13 financial year, of producing and printing new guidance on best practice, issuing amended regulations and undertaking familiarisation training for local authority officers would be unlikely to exceed £8,500 (£6,500 for guidance and £2,000 for regulations).

224. In the absence of information from the Welsh Government, if it is assumed that the above costs were to hold for this Bill. For eight orders and regulations and two sets of guidance - producing and printing new guidance on best practice, issuing amended regulations and undertaking familiarisation training for local authority officers would be unlikely to exceed  $8 \times £2,000 + 2 \times £6,500$  or £29,000.

## **Summary of costs**

### ***Site owners***

225. There will be a number of costs which will fall on site owners these are summarised below:

- Site licence fees – illustrative figure £1,200,000. Transitional period, assumed to be the first year. The licence will last up to five years.
- Fit and proper person test, likely to be approximately £133,000 over five years. £95,000 in first year and £9,500 in subsequent years.
- Administrative costs for licence application, £150,000 in first year.
- Administrative support for maintenance of residence test information and local authority monitoring £112,500 from year 2.
- Estimated costs for appeals £75,000 in first year and then £22,500 per year subsequently.
- Over the first five years of the Bill this would equate to almost £2.1 million. Although £165,000 of these estimates are court costs which would hopefully be partially recoverable.

### ***Local authorities***

- Site fee income – illustrative figure £1,200,000.

- 20 EHO full time equivalent staff in first year to support implementation of licensing, £762,000.
- 4 technical officers to cover monitoring £110,000 a year from year 2 onwards.
- Estimated costs for appeals £75,000 in first year and then £22,500 per year subsequently.
- Training and publicity costs £40,000 in first year.
- Over the first five years of the Bill this would equate to just under £250,000 (net of £1,125,000 illustrative income). Although £165,000 of these estimates are court costs which would hopefully be partially recoverable.

### ***Welsh Government***

226. There will also be costs for the Welsh Government dependent on the level of regulations in the Bill and how much existing legislation needs to be amended or replaced. This will place a limited administrative burden on Welsh Government staff. Transitional costs will fall on the Welsh Government and these could involve the setting of, and consulting on, regulations and disseminating decisions.

227. It was not possible for the Welsh Government to provide an estimate of the administrative costs of this Option before introduction of the Draft Bill. Therefore in the absence of such a figure, as set out previously, an estimate of £29,000 is included to cover the administrative burdens on the Welsh Government with regard to this Option.



## **Estimated costs over the first five years following commencement**

	£				
	Yr1	Yr2	Yr3	Yr4	Yr5
<b>Site Owners</b>					
Admin license	150,000				
Checks	95,000	9,500	9,500	9,500	9,500
Monitoring		112,500	112,500	112,500	112,500
Appealing	75,000	22,500	22,500	22,500	22,500
<b>Total administrative costs</b>	<b>320,000</b>	<b>144,500</b>	<b>144,500</b>	<b>144,500</b>	<b>144,500</b>
<i>Licence fee<sup>1</sup></i>	<i>760,000</i>	<i>110,000</i>	<i>110,000</i>	<i>110,000</i>	<i>110,000</i>
<b>Total</b>	<b>1,080,000</b>	<b>254,500</b>	<b>254,500</b>	<b>254,500</b>	<b>254,500</b>
<b>Licensing authorities</b>					
Cost of licensing monitoring	762,000	110,000	110,000	110,000	110,000
Court costs	75,000	22,500	22,500	22,500	22,500
Training / publicity	40,000				
<b>Total administrative costs</b>	<b>877,000</b>	<b>132,500</b>	<b>132,500</b>	<b>132,500</b>	<b>132,500</b>
<i>License income<sup>1</sup></i>	<i>-760,000</i>	<i>-110,000</i>	<i>-110,000</i>	<i>-110,000</i>	<i>-110,000</i>
<b>Total</b>	<b>157,000</b>	<b>22,500</b>	<b>22,500</b>	<b>22,500</b>	<b>22,500</b>
<b>Welsh Government<sup>2</sup></b>	<b>29,000</b>				
<b>Total</b>	<b>1,266,000</b>	<b>277,000</b>	<b>277,000</b>	<b>277,000</b>	<b>277,000</b>

1 Licence is illustrative estimate based on estimates set out in earlier section relating to 'Costing and Monitoring of Sites'.

2 These figures will be replaced by more accurate figures from the Welsh Government. Timing of costs will be dependent on speed of implementation.

Note: It is anticipated that court costs could be claimed in successful cases, therefore actual court costs falling on local authorities and site owners will be lower.

Note: Local authorities are currently performing monitoring of holiday caravan sites, therefore some of these on-going costs will not be new costs.

Note: Wales Holiday Parks Economic Impact Assessment, 2011 estimated that total on site output / turnover was £328 million.

## **Benefits**

228. The benefits are difficult to put a financial value on:

- The current legal system is complex. Fines are currently at a low level, and there is no ability to charge fees for site licences which does not make it cost effective for local authorities to monitor and enforce legislation effectively.
- The current system of enforcement is cumbersome and the new system would therefore be likely to result in savings for local authorities in terms of current enforcement costs.
- The proposed system is intended to give local authorities the powers and funding to effectively oversee the industry, through

licence fees, fixed penalty income and any recovered enforcement costs. This will improve standards at sites which are poorly operated.

229. Where people are living on holiday caravans as their primary address they are likely to be using council and other public services. Cross-checking postcodes of holiday caravan sites (only where a site had a unique postcode and no residential units) with GP registration data revealed that 82 residents on a sample of 12 sites in Conwy were registered permanently with a GP at their holiday caravan address. This excludes temporary registrations. Although evidence from local authorities was patchy, it did appear that there may be at least 400 households paying council tax from holiday caravan sites and over 60 people claiming housing benefit. However, it is possible that further households could be living in holiday sites as their primary residence and not contributing council tax payments.
230. There are also problems with crime, including anti-social behaviour, associated with holiday caravan sites. North Wales Police have confirmed that in the last 12 months 83 people with an address on a caravan site have been arrested or named as suspects for an offence. The Police force considers that regulation of holiday sites will reduce this crime, although it is difficult to estimate the impact. We have not attempted to quantify the financial impact of this.
231. The Bill will bring benefits to the holiday caravan industry by ensuring future profitability is not impaired by reputational impact on the holiday caravan industry through falling standards on a minority of sites where residential use is a growing problem. Better regulation would also give greater confidence to lenders and those investing in the industry.

## **Unintended consequences**

232. There are people occupying holiday caravans who have no alternative accommodation. They will need to find alternative accommodation as a result of this Bill. Many of these occupiers will be able to make alternative housing arrangements without any assistance from the local authority.
233. It is very difficult to accurately identify the number of people that are currently living in holiday caravans and the length of time that

they do so. Research undertaken as part of developing this Bill has indicated there are over 60 people claiming Housing Benefit in respect of holiday caravans. Some of this group of occupiers could potentially present as homeless to the local authority when required to leave their holiday caravan. The proposals included in the Housing (Wales) Bill may, if implemented, entitle those occupiers to homelessness prevention assistance from the local authority, which will include help to secure alternative accommodation.

234. Under current legislation, Part 7 of the Housing Act 1996 would entitle the occupier (and their household) to advice and assistance, they may be entitled to additional assistance if they are within a priority need group. Where a person has knowingly moved into a holiday caravan on a permanent basis, they may be found to be intentionally homeless. There will be some cost to local authorities in dealing with this issue. However, this should not be an on-going cost as the Bill should act as a deterrent to future permanent residential occupation.

235. The Bill does allow for three months for the passing of the residence test from commencement, this should allow time for any people residing on caravan sites to find alternative accommodation, therefore it does seem that significant numbers of people should not become homeless purely as a result of this Bill.

236. The Housing Bill Explanatory Memorandum states that in relation to homelessness that on average the length of stay in temporary accommodation is six weeks, with an average cost per case of £1,082.

237. There will also be some overlap in terms of the licensing regulations and planning conditions which will require authorities to ensure that these functions are coordinated in terms of action taken.

238. In terms of the impact on the industry, the additional costs to site owners per pitch are small, so these should not have a significant effect on the profitability of sites or the charges to holiday caravan owners. Although, it is important that any fee charging system introduced by local authorities should be proportionate and take account of the fact that around a sixth of holiday caravan sites appear to only have one static caravan and 40% of sites have 10 or less. It is also important to balance costs against the benefits to the industry of improving the management of holiday caravan sites and addressing

the problems associated with people living in holiday caravans and the benefits to the wider tourism economy.

### **Equality considerations**

239. The Bill will ensure that as part of the licensing process, those responsible for the management of the site will be required to pass a fit and proper person test. One of the criteria that the local authority will be able to use to assess an applicant is whether they have discriminated on the basis of a protected characteristic under the Equality Act 2010.

## **Part 3: Explanatory Notes**

### **PART 1 - INTRODUCTION**

#### **Section 2 Meaning of “holiday caravan”**

240. This explains what is meant by a holiday caravan. The definition is the same as the definition of “caravan” and “mobile home” used in other UK legislation. Therefore, the use of the word “holiday” does not add anything new in this context.

#### **Section 3 Meaning of “holiday caravan site”**

241. The use of the word holiday does have significance here. The Act applies to land on which holiday caravans are stationed where: (a) planning permission has been granted for holiday use only, or (b) where the land is offered (or designed to be offered) for use as holiday accommodation.

242. Whether land is designed to be offered for use as holiday accommodation will depend on the layout and facilities of the land in each case.

243. Schedule 1 provides a list of sites that are not holiday caravan sites. This means that sites in Schedule 1 will not require a site licence under the Act.

#### **Section 4 Meaning of “local authority holiday caravan site”**

244. This introduces the variant of a holiday caravan site owned by a local authority. It is needed because section 7 states that such sites do not require a site licence under Part 2 of the Act.

245. However, while local authority holiday caravan sites are not subject to the licensing regime in Part 2, such sites are subject to the requirements in Part 3 (residence test), Part 4 (holiday caravan agreements) and Part 5 (protection from harassment).

#### **Section 5 Meaning of “owner” and “occupier”**

246. This sets out the important definitions of “owner” and “occupier”.

247. In this Act, “owner” means the owner of the holiday caravan site.

248. In this Act, “occupier” includes both (a) owners of holiday caravans who enter into a holiday caravan agreement with the site owner for more than six consecutive weeks, and (b) persons entitled to occupy a holiday caravan for more than six consecutive weeks.

249. The six week period is important. It means that those using holiday caravan sites for more than six consecutive weeks will be subject to a residence test (see Part 3). This means they will have to prove that they are not using a holiday caravan site as an only or main residence.

250. Section 44(2) provides that certain persons will not be occupiers for the purposes of Part 3. This means that the following persons will not be required to pass the residence test:

- the owner of the site
- the manager of the site
- persons employed to work on the site and whose work makes it necessary to live on the site.

251. Many occupiers will also be protected under Part 4 of the Act. This means they will have to enter into holiday caravan agreements with site owners. Part 4 clarifies to which occupiers such agreements apply.

252. Those using holiday caravan sites for less than six consecutive weeks will not be subject to Part 3 (residence test) or Part 4 (holiday caravan agreements) of the Act. However, they will be protected from harassment under Part 5 of the Act.

## **PART 2 – LICENSING**

### **Section 7 Prohibition on use of land as holiday caravan site without site licence**

253. This reflects section 5 of the 2013 Act.<sup>24</sup> It provides that using land as a holiday caravan site without a site licence is an offence, subject to a fine.

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<sup>24</sup> Section 5 of the 2013 Act is based on section 3 of the 1960 Act

254. This section also provides that holiday caravan sites owned by local authorities do not require a site licence.

## **Section 8 Applications for site licence**

255. This reflects section 6 of the 2013 Act.<sup>25</sup> It sets out requirements for site licence applications to local authorities. Subsection (2) provides details of what an application must contain and subsection (3) requires applicants to provide information requested by a local authority.

256. Under subsection (4), an application must include a declaration by the applicant that whoever is to be the manager of the site is a “fit and proper” person to do so.

257. Under subsection (5), the local authority may require payment of an application fee (see section 40).

## **Section 9 Continuation of 1960 Act licences**

258. This provides that licences granted under 1960 Act will continue to be valid for the purposes of this Act. This means that site owners with a 1960 Act licence will not have to re-apply for a licence under this Act.

259. However, 1960 Act licences will only remain valid if the local authority is satisfied that the site manager is a fit and proper person. The local authority must ascertain this within 12 months of when this section comes into force. Sections 33 and 34 set out more detail about the fit and proper person test.

260. Also, the local authority must modify 1960 Act licences so that the licences satisfy the new requirements of this Act. In particular, licences must contain a condition that site owners conduct a residence test at least once a year (Part 3 sets out more detail about the residence test). The local authority must make such modifications to 1960 Act licences within 12 months of when this section comes into force.

## **Section 10 Issue of site licence**

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<sup>25</sup> Section 6 of the 2013 Act is based on section 3 of the 1960 Act

261. This reflects section 7 of the 2013 Act.<sup>26</sup> It sets out the timescales for issuing a site licence. In subsection (4), if a local authority decides not to issue a licence, it must notify the applicant of the reasons for the decision and the applicant's right of appeal to a magistrates' court.
262. A local authority must not issue a licence to a person whose site licence has been revoked less than three years before the time a licence would be issued.

### **Section 11 Duration of site licence**

263. This provides that site licences continue indefinitely unless terminated.

### **Section 12 Power to attach conditions to site licence**

264. This reflects section 9 of the 2013 Act.<sup>27</sup> It allows a local authority to attach certain types of conditions when it issues a site licence. These include conditions relating to the number of holiday caravans that may be stationed on a holiday caravan site, regulating the positioning of holiday caravans, and securing that measures are in place to protect against fire, flood and coastal erosion.
265. Subsection (5) requires that a site licence must contain a condition that copies of the site licence and certificate of public liability insurance are displayed on the site in a prominent place.
266. Under this section, a local authority may require works to be completed on a holiday caravan site to the satisfaction of the local authority, and within a time limit. While such works are on-going, the local authority can prohibit or restrict the movement of holiday caravans on to the site.

### **Section 13 Model standards**

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<sup>26</sup> Section 7 of the 2013 Act is based on section 3 of the 1960 Act

<sup>27</sup> Section 9 of the 2013 Act is based on section 5 of the 1960 Act



267. This reflects section 10 of the 2013 Act.<sup>28</sup> It allows Welsh Ministers to specify, for the purposes of section 12, model standards with respect to certain aspects of holiday caravan sites.

268. A local authority must have regard to these model standards when they consider attaching conditions to a site licence under section 12.

### **Section 14 Fire precautions**

269. This reflects section 11 of the 2013 Act.<sup>29</sup> It ensures that local authorities must consult the fire and rescue authority when they are considering conditions to attach to a site licence.

### **Section 15 Flood risk management**

270. This requires local authorities to consult about the risk of flooding when considering attaching conditions to a site licence under section 12.

### **Section 16 Site inspection and licence reviews**

271. This requires local authorities to inspect holiday caravan sites at least once every three years. The purpose of such inspections is to check whether site owners are complying with site licence conditions.

272. The duty to carry out inspections will commence when the Welsh Ministers make regulations. The Welsh Ministers must consult before making such regulations.

273. Local authorities must also review site licence conditions at least every five years. This will ensure that licence conditions remain appropriate for each site.

### **Section 17 Appeal against licence conditions**

274. This reflects section 12 of the 2013 Act.<sup>30</sup> It sets out the applicant's right of appeal to a magistrates' court against site licence conditions (except a condition under section 10(5)). If the condition is

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<sup>28</sup> Section 10 of the 2013 Act is based on section 5 of the 1960 Act

<sup>29</sup> Section 11 of the 2013 Act is based on section 5 of the 1960 Act

<sup>30</sup> Section 12 of the 2013 Act is based on section 7 of the 1960 Act

deemed unduly burdensome, the magistrates' court may vary or cancel the condition and may attach a new condition to the site licence.

### **Section 18 Power of local authority to vary conditions of site licence**

275. This section provides that a local authority may vary the conditions attached to a site licence at any time, but before exercising this power a local authority must give the licence holder an opportunity to make representations.

276. Variation is also possible where the local authority discovers new information or considers there has been a change of circumstances.

277. Subsection (4) provides that, where a licence holder makes an application to vary the conditions attached to a site licence, a local authority may require the application to be accompanied by a fee, fixed by the local authority, provided it has published its fees policy (see section 40).

### **Section 19 Appeal against variation of conditions of site licence**

278. This reflects section 14 of the 2013 Act.<sup>31</sup> A licence holder may appeal to a magistrates' court, against any alteration of the conditions of the licence or any refusal to vary the conditions, within 28 days of receiving the notification of the decision. If the variation to the condition relates to carrying out of works to the site, the varied condition does not come into effect until the time for making an appeal has expired, or any appeal against it is disposed of or withdrawn.

279. In exercising its powers under subsection (1), a magistrates' court must have regard to any standards made by Welsh Ministers under section 13.

280. Subsection (5) clarifies that if section 18(1)(b) is used to modify a 1960 Act licence so that the licence satisfies the requirements of this Act, then the site owner can use section 19 to appeal against such modification.

### **Section 20 Breach of conditions**

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<sup>31</sup> Section 14 of the 2013 Act is based on section 8 of the 1960 Act

281. This provides that, where the owner of land is failing or has failed to comply with a site licence condition, a local authority may give the owner a fixed penalty notice or a compliance notice.
282. The Welsh Ministers may issue guidance to local authorities as to the considerations they should take into account when deciding whether to deal with a failure to comply with a condition of a site licence by issuing a fixed penalty notice or a compliance notice. The local authority must have regard to any guidance issued.
283. Where a fixed penalty notice has been issued, but not paid, a local authority may withdraw the fixed penalty notice and instead issue a compliance notice in respect of the same failure.

### **Section 21 Fixed penalty notice**

284. This section sets out the information to be included in a fixed penalty notice.
285. Subsection (2) provides that the amount specified in the fixed penalty notice must not exceed level 2 on the standard scale for summary offences (a maximum of £500 at February 2014).
286. Subsection (3) requires the Welsh Ministers to issue guidance to clarify when breaches are sufficiently serious to justify the issue of a fixed penalty notice. The Welsh Ministers may also make regulations to restrict when fixed penalty notices may be issued.

### **Section 22 Compliance notices**

287. This deals with the breach of a site licence condition. It provides that, where it appears to a local authority that an owner of land is failing to comply with a licence condition, the local authority may serve a compliance notice on that owner, which contains the information specified in subsection (1), including the steps that the owner must take to ensure that the licence condition is complied with.
288. The provisions provide the owner with a right of appeal against the compliance notice to a magistrates' court. They also provide the local authority with a power to revoke a compliance notice or to vary it by extending the time period specified for compliance with the notice. This extension can be given in response to an application made by the

owner of land on whom the notice was served, or on the local authority's own initiative.

### **Section 23 Compliance notice: offence and multiple convictions**

289. This provides that an owner of land who has been served with a compliance notice, which has become operative under section 29, commits an offence if they fail to take the steps set out in the notice within the specified time period.

290. Subsection (2) sets out that where a person is guilty of the offence the penalty is a fine. Subsection (3) allows a defence where the owner had a reasonable excuse for failing to take the steps set out in the notice within the time period specified.

291. Subsections (4) and (5) provide that, where an owner has two or more previous convictions for breach of a compliance notice, the local authority can make an application to the court (which convicted the owner) for the site licence to be revoked.

### **Section 24 Compliance notice: power to demand expenses**

292. This provides a power to demand expenses where a compliance notice has been served under section 22.

293. Where a local authority serves a compliance notice on an owner of land, the local authority may impose a charge on the owner as a means of recovering the expenses incurred in deciding whether to serve the notice and in preparing and serving the notice or a demand for expenses. The charges could relate, for example, to the costs of obtaining legal advice in deciding whether or not to serve a compliance notice. Subsection (2) clarifies that the expenses are not limited to expert advice. The charges may include interest (see section 30).

294. A local authority exercises its power to recover expenses by issuing a demand, setting out the information about the charges specified in section 24(3)(a) to (c) when serving the compliance notice.

295. Where the court allows an appeal against the underlying compliance notice (under section 22) it may also make an order about the expenses demand that accompanied the notice, for example to confirm or quash the charges.

## **Section 25 Power to take action following conviction of owner**

296. This provides that where a site owner is convicted of an offence of failing to comply with the steps specified in a compliance notice, the local authority who issued the notice may take steps required by the compliance notice, and further action it considers appropriate to ensure the relevant condition is complied with.
297. Where a local authority proposes to take action under this section, it must serve a notice on the owner of the land which contains the information set out in section 25(2)(a) to (e).
298. Subsection (3) provides that the notice must be served sufficiently in advance of the intended entry to the site as to give the owner reasonable notice. As Section 37(2) requires that 24 hours' notice of an intended entry must be given to the owner, this would be the minimum amount of notice that could be given.
299. Subsection (4) provides that where a local authority authorises a person other than an officer of the local authority to take action on its behalf, this person is treated as being an authorised officer under section 37(1). Such a person will be able to exercise a right of entry to the land.
300. The 24 hour notice requirement in section 37(2) only applies in relation to the day on which the local authority intends to start taking action on the land. This means that, if a local authority carries out works which take more than one day, it will not need to provide 24 hours' notice before each day it intends to enter the site.

## **Section 26 Power to take emergency action**

301. This provides a local authority with the power to take emergency action in certain situations.
302. Subsection (2) sets out that the local authority may take such action as is necessary to remove an imminent risk of serious harm to the health and safety of any person who is or may be on the land. Under subsections (3) to (5), where a local authority proposes to take emergency action under this section, the authority must serve a notice on the owner which contains certain specified information. This notice may also state that the local authority would apply for a warrant under

section 37(3) if entry onto the land is refused. The notice must be served sufficiently in advance of the intended entry to give reasonable notice to the owner of the land.

303. Subsection (6) provides that where a local authority authorises a person other than an officer of the local authority to take action on its behalf, this person is treated as being an authorised officer under section 37(1) of the Act.

304. Subsection (7) sets out that the requirement in section 32(1) for the right of entry to be exercised “at all reasonable hours” does not apply, as this may not be appropriate in an emergency situation. The requirement for 24 hours’ notice of the intended entry also does not apply here. Subsection (8) sets out that the local authority must serve a further notice on the owner, within 7 days of starting to take emergency action, which contains certain specified information, including the reasons for the action and an explanation of the right of appeal.

305. The owner is provided with a right of appeal to a magistrates’ court against the emergency action the grounds for which are that there was no risk of imminent serious harm to the health or safety of a person who is or may be on the land or that the action of the local authority was (or is) not necessary to remove such a risk.

### **Section 27 Action under section 25 or 25: power to demand expenses**

306. This provides a local authority with the power to demand expenses where action has been taken under section 25 or 26.

307. Subsection (1) provides that, where a local authority has taken action under section 25 or 26, it may impose a charge on the owner of the land as a means of recovering expenses incurred by them in taking the steps set out in paragraphs (a) to (c).

308. Subsections (4) and (5) set out the time when a charge may be imposed for the costs of emergency action, which is dependent upon whether an appeal is brought.

309. Subsection (6) sets out that the power to impose a charge is exercisable by serving on the owner a demand for the expenses that the local authority seeks to recover, in the time period specified in subsection (8).

310. Subsection (7) provides that an owner of land who is served with a demand under this section may appeal to a magistrates' court against this demand.

### **Section 28 Appeals under section 22, 26 or 27**

311. This deals with appeals brought under sections 22, 26 or 27.
312. Subsection (1) provides that an appeal brought under these sections must be made before the end of the period of 21 days, starting from the date the relevant document (see subsection (2)) was served.
313. Subsection (3) provides that a magistrates' court may allow an appeal to be made after the end of the appeal period, if satisfied that there is a good reason for the delay.
314. An appeal brought under these sections is to be by way of a rehearing of the magistrates' court. It may consider matters of which the local authority who made the decision were unaware. Subsection (5) sets out the order-making powers of the court to confirm, vary or quash the matter under consideration.

### **Section 29 When compliance notice or expenses demand becomes operative**

315. This sets out when a compliance notice or expenses demand becomes operative.
316. Under subsection (2) where no appeal against a compliance notice is brought within the appeal period specified in section 22, both the notice and any accompanying demand for expenses under section 24 becomes operative at the end of that period.
317. A demand for expenses under section 27 becomes operative at the end of the period allowed for an appeal, when no appeal is made against it (section 24(3)).
318. Subsections (4) to (6) deal with cases where an appeal is brought, and set out that a compliance notice (and any accompanying section 24 demand) or a demand under section 27 become operative when a decision on the appeal is given which confirms the notice or demand.

### **Section 30 Recovery of expenses demanded under section 24 or 27**

319. This deals with the recovery of expenses demanded under section 24 or 27.
320. Subsection (1) provides that, from the time when a demand under section 24 or 27 becomes operative, interest is charged on the expenses set out in the demand at a rate which is fixed by the local authority, until all sums due under the demand are recovered.
321. Subsection (2) provides that from the time the demand becomes operative, the expenses and interest are a charge on the land to which the compliance notice relates, until they are recovered.
322. Subsection (3) sets out that the charge takes effect as a legal charge which is a local land charge.
323. Subsection (4) sets out that the local authority can rely on certain powers and remedies set out in the Law of Property Act 1925 to enforce the charge, including the appointment of a receiver. Subsection (5) sets out when the power to appoint a receiver can be exercised.

### **Section 31 Transfer of site licences, and transmission on death**

324. This provides that the holder of a site licence who no longer owns the land may transfer the licence to the new owner, subject to the consent of the local authority. The licence must then be endorsed with the name of the new owner.
325. A person who inherits land which is a holiday caravan site becomes the holder of the site licence. The licence must then be endorsed with the name of the new licence holder.

### **Section 32 Duty of licence holder to allow site licences to be altered**

326. This reflects section 27 of the 2013 Act.<sup>32</sup> It contains a duty on the licence holder to surrender the licence for alteration when required to do so by the local authority who issued it. Failure without reasonable excuse to comply with a requirement under this section

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<sup>32</sup> Section 27 of the 2013 Act is based on section 11 of the 1960 Act



means the licence holder commits an offence which attracts a fine not exceeding level 1 on the standard scale (a maximum of £200 at February 2014).

### **Section 33 Requirement for manager of site to be a fit and proper person**

327. This introduces a new “fit and proper person” requirement that applies to a person who manages a holiday caravan site. Subsection (1) sets out that the owner of land may not allow any part of the land to be used as a holiday caravan site unless the local authority is satisfied that the owner (or a person appointed by the owner to manage the site), is a fit and proper person to manage the site.

328. Subsection (2) provides that, where the owner of land allows a site to be used, but a fit and proper person is not managing the site, in contravention of subsection (1), the local authority may apply to a magistrates’ court for an order revoking the site licence. Subsections (3) and (4) provide that such a contravention is an offence liable on summary conviction to a fine.

329. Under subsection (5), where an owner has been convicted of an offence under subsection (3) by a magistrates’ court on two or more previous occasions in relation to the land, the local authority may apply to the magistrates’ court to make an order revoking the site licence.

330. The question of who is a manager of a site is addressed in subsections (2) and (6). Under subsection (2), the manager of a site will include the most senior person with responsibility for managing the site, and any person with responsibility for day-to-day management of the site.

331. Subsection (6) provides that the reference in subsection (2) to persons managing a site includes a reference to persons giving instructions about the management of the site.

### **Section 34 Decision whether person is fit and proper**

332. Subsection (1) provides that, in deciding whether a person is a “fit and proper person” to manage a holiday caravan site, a local authority must have regard to all matters it considers appropriate, including any evidence of the kinds listed in subsection (3) or (4). For

example, under subsection (3), a local authority should consider if the person has contravened any provision of the law relating to trading standards.

333. Under subsection (4) a local authority must consider evidence that anyone associated or formerly associated with the person has done any of the things set out in subsection (3) and whether that evidence is relevant to the question whether the person is a fit and proper person to manage the holiday caravan site.

334. Subsection (5), allows the Welsh Ministers to make regulations which amend section 34 to vary the evidence that a local authority must have regard to when making a decision under this section.

335. Where a local authority decides that a person is not a fit and proper person, it must notify the person of the reasons for that decision and of the person's right of appeal to a magistrates' court within 28 days from the date of its decision.

### **Section 35 Appointment of interim manager**

336. This allows a local authority to appoint an interim manager of a holiday caravan site if the conditions specified in subsection (2) are met. These are that the local authority considers that the site licence holder is failing or has failed, either seriously or repeatedly, to comply with a condition of the site licence; that the site is not being managed by a fit and proper person; or there is no one managing the site.

337. Under subsection (3) if a person is aggrieved by a decision to appoint an interim manager there is a right of appeal against the decision to a magistrates' court within 28 days.

338. The appointment of the interim manager is not an indefinite appointment, and as set out in section 35(4) will end on a specified date or on its termination. Subsection (5) allows a new interim manager to be appointed should someone leave the post before the specified date.

### **Section 36 Terms of appointment and powers of interim manager**

339. This sets out the terms of appointment of an interim manager with the powers of the interim manager set out under subsection (2)(a) and (b). Under subsections (3) and (4) a local authority may give

general or specific directions to the interim manager and may withdraw or amend directions given. Under subsection (5), the remuneration and expenses of an interim manager may be deducted from any income the site licence holder is entitled to receive and if that income is insufficient any balance must be paid by the local authority. If the local authority pays any amount under subsection (5), it may recover them from the licence holder.

### **Section 37 Power of entry of officers of local authorities**

340. This reflects section 32 of the 2013 Act.<sup>33</sup> It provides any authorised officer or agent of the local authority with powers of entry to enter a holiday caravan site at all reasonable hours, if there are reasonable grounds for entry. They must produce an authenticated document of authority (if required) and require entry for the purposes outlined in subsection 1 (a) to (d).

341. Admission to the site is only permitted if 24 hours' notice has been given to the owner, except under section 26(7) in relation to emergency action.

342. A justice of the peace may issue a warrant to authorise the local authority's entry on to the land, if need be by force. This will happen if a magistrate concludes that, amongst other reasons, access to land has been refused, or the owner is temporarily absent and the case for entry is urgent. However, a justice of peace cannot issue a warrant to enter premises by force where the premises are used wholly as a private dwelling. Also, no warrant can be issued to enter a holiday caravan.

343. The penalty for a person wilfully obstructing any person exercising the power of entry or entering land by authorisation of a warrant is a fine not exceeding level 4 on the standard scale (£2,500 at February 2014).

### **Section 38 Repayment orders**

344. This provides that where, if a site is unlicensed, the occupier of the Holiday caravan may apply to a magistrates' court for a repayment order.

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<sup>33</sup> Section 32 of the 2013 Act is based on section 26 of the 1960 Act, with an increased penalty

345. A repayment order is defined in subsection (5) as an order requiring the owner or manager of the unlicensed site to pay the occupier of the holiday caravan site sums specified in the order in respect of those payments under paragraphs (a) to (d). The repayment order may include any payment made by the occupier to the owner or manager in respect of the purchase of the holiday caravan, any commission paid in respect of the sale of the holiday caravan, the pitch fee and any periodical payments paid in respect of the holiday caravan.
346. Under subsection (6)(a) to (c) a court must be satisfied that certain matters are satisfied, such as that the owner of the site has been convicted of an offence under section 7 in relation to the site, that an occupier made a payment to the owner during the time that the offence was committed and that the application has been made within 12 months of the date of the conviction.
347. Under subsection (7), the amount required to be paid under subsection (5) is such an amount as the court considers reasonable in the circumstances. Subsection (8) sets out the matters the court must take into account when determining the amount to be paid. Subsection (9) provides that a repayment order may not require the payment of any amount relating to a period outside the 12 months ending with the date of the occupier's application.
348. Under subsection (10), amounts payable to an occupier of a holiday caravan under a repayment order are recoverable as a debt due to the occupier from the owner or manager of the site.
349. Subsection (11) clarifies that this section applies to occupiers who enter into a holiday caravan agreement with the site owner under Part 4. Subsection (12) adds that the section does not apply to local authority holiday caravan sites.

### **Section 39 Annual fees**

350. This provides that local authorities may require licence holders to pay an annual fee. The annual fee will reflect the costs incurred by the local authority in complying with its obligations under this Act, such as carrying out site inspections, licence reviews and monitoring the residence test. The local authority must inform the licence holder of the matters that influence the fee amount.

351. Where the payment of the annual fee is overdue, the local authority may apply to a magistrates' court for an order for payment of the annual fee. If the licence holder does not pay within three months of the court order, then the local authority may apply to the court for an order revoking the site licence.

#### **Section 40 Power to charge fees: supplemental**

352. This allows local authorities to charge fees under section 8 (application for a site licence), section 18 (varying the conditions of a site licence) or section 39 (annual fees).

353. Subsection (2) requires a local authority to prepare and publish a fees policy before charging a fee. Subsections (3) and (4) set out what a local authority needs to do when fixing fees and which costs they may not take into account when fixing a fee. In particular, local authorities cannot take into account enforcement costs incurred under section 20 to 30. Those enforcement costs can be recovered separately and directly from the relevant site owner (see sections 24, 27 and 30).

#### **Section 41 Register of site licences**

354. This requires all local authorities to keep a register of site licences which is available for public inspection.

#### **Section 42 Crown land**

355. This provides that Part 2 of the Act does not apply to Crown Land.

### **PART 3 - RESIDENCE TEST**

#### **Section 44 No occupation as main residence**

356. This sets out a general prohibition on occupying a holiday caravan as an only or main residence. However, this does not apply to:

- the owner of the site
- the manager of the site

- persons employed to work on the site and whose work makes it necessary to live on the site.

### **Section 45 Residence test**

357. Local authorities must include a licence condition requiring the site owner to carry out a residence test. This is a test that will establish whether occupiers are using holiday caravans as an only or main residence.
358. Under subsection (2), occupiers of holiday caravans will be required to provide evidence that they have an only or main residence elsewhere. The evidence must include at least two of the documents listed in Schedule 2.
359. If an occupier fails the residence test, the site owner must notify the local authority as soon as possible.
360. The site owner is required to keep the evidence provided under subsection (2) and to make it available to the local authority at all reasonable times. The local authority must then inspect that evidence at least once a year.

### **Section 46 Timing of the first residence test**

361. Where a site owner enters into an agreement with an occupier, the first residence test must be applied before the agreement is entered into.
362. However, where a person is occupying a holiday caravan site at the date when this Part comes into force, the site owner must carry out the residence test within three months of that date.

### **Section 47 Timing of subsequent residence test**

363. Future residence tests must be carried out in respect of each occupier at least once a year.

### **Section 48 Change of occupier's circumstances**

364. The circumstances of occupiers may change after they have passed their last residence test, so that they may be using holiday caravans as an only or main residence. This section allows occupiers a

period of up to six weeks before they have to pass the residence test again.

365. Section 56(3) also provides that the occupier of a holiday caravan must inform the site owner if there is such a change of circumstances. This is part of the holiday caravan agreement between the site owner and the occupier.

### **Section 49 Failure of residence test**

366. Subsection (1) requires a site owner to notify the local authority if the site owner believes that an occupier has failed the residence test.
367. Under subsection (2), if a local authority believes that an occupier has failed the residence test (whether by notice under subsection (1) or by its own initiative), then it must give the occupier a residence test failure notice. The local authority may also give the occupier a fixed penalty notice.

### **Section 50 Residence test failure notice**

368. A residence test failure notice will set out the information required in section 50(1)(a) to (c), including the requirement for the occupier to cease using the holiday caravan as an only or main residence within a specified period.
369. The provisions provide the owner with a right of appeal against the residence test failure notice to a magistrates' court. They also provide the local authority with a power to revoke a compliance notice or to vary it by extending the time period specified for compliance with the notice. This extension can be given in response to an application made by the owner of land on whom the notice was served, or on the local authority's own initiative.

### **Section 51 Fixed penalty notice**

370. The provisions of section 21(1), (2) and (3) apply in the same way to a fixed penalty notice given under section 49(2)(b). This means that the fixed penalty notice cannot exceed level 2 on the standard scale (£500 as at February 2014).

### **Section 52 Failure to comply with residence test failure notice**

371. It is an offence to fail to comply with the requirements of a residence test failure notice, and occupier will be liable to a fine.

### **Section 53 Duty of owner of site in relation to residence test failure notice**

372. When a local authority gives a residence test failure notice, it must also notify the owner of the holiday caravan site.

373. Local authorities may also give instructions to site owners to take action in respect of the occupier who has failed the residence test. It is a condition of the site licence that the site owner complies with those instructions.

## **PART 4 - HOLIDAY CARAVAN AGREEMENTS**

### **Section 54 Agreements to which Part applies**

374. This Part will apply to any agreement where a person is (a) entitled to station their own caravan on a holiday caravan site for more than 6 consecutive weeks, or (b) occupy a holiday caravan owned by the site owner for more than 6 consecutive weeks.

375. In both cases, the occupier must be using the holiday caravan for holiday purposes. This means that persons employed to work on the site and whose work make it necessary for them to live on the site will not be protected by Part 4 because they are not stationing / occupying the holiday caravan for holiday purposes.

376. Part 4 applies whether the agreement was made before or after this Part of the Act comes into force.

### **Section 55 Particulars of agreements**

377. Subsection (1) provides that before making a new holiday caravan agreement, the site owner must give the proposed occupier a written statement which set out the following:

- names and addresses of the parties
- details of the pitch
- the express terms of the agreement (including the terms specified in section 55(1)(c))



- the terms implied by section 56

378. Under subsection (2), the written statement must be given 28 days before the date of the agreement. But subsection (3) allows that period to be shorter where the occupier consents (unless the owner is selling the holiday caravan, in which case the 28 day period applies).

379. Subsection (4) deals with holiday caravan agreements that are already in place before this Part comes into force. In these cases, the written statement must be given within three months of when this Part commences.

380. Subsection (5) provides that if an express term is not set out in a written statement, then the site owner cannot enforce that express term. This clarifies the importance of providing the written statement.

381. Written statements can be given personally, by post or by electronic mail. This provides flexibility, particularly where the site owner and the occupier agree to a shorter time period under section 55(3).

## **Section 56 Implied terms of agreements**

382. The following terms are implied into all holiday caravan agreements (and they have effect no matter what the express terms may say):

- occupiers must comply with Part 3 regarding the residence test (and if the occupier fails the residence test then the site owner does not have to comply with any obligation in the holiday caravan agreement to the extent that the site owner is instructed to take steps by the local authority under section 53(2))
- occupiers must inform site owners of change in circumstances that are relevant to the residence test
- occupiers must notify site owners in advance if they allow anyone to occupy the holiday caravan for a period of more than six consecutive weeks
- site owner must provide occupiers with copies of utility bills and the non-domestic rating bill, when reasonably requested by occupiers
- site owners must consult owners of holiday caravans about certain matters likely to affect occupiers significantly (save that in an

emergency the site owner must take reasonable steps to seek the view of owners of holiday caravans).

383. If the site owner fails to comply with these terms, then the occupier can apply to the county court requiring the owner to comply.

### **Section 57 Owners' successors in title**

384. This provides that holiday caravan agreements remain binding even when the successor in title of the site owner.

### **Section 58 Jurisdiction**

385. This provides that disputes relating to Part 4 and holiday caravan agreements are dealt with by the county court.

## **PART 5 - PROTECTION FROM HARASSMENT**

### **Section 59 Application of Part**

386. This clarifies that Part 5 applies to all occupiers, regardless of how long they station or occupy a holiday caravan on a site.

### **Section 60 Protection from harassment**

387. This provides that it is an offence to harass occupiers of holiday caravans. Harassment includes depriving occupiers of occupation of a holiday caravan, interfering with the peace and comfort of occupiers with the intention that they abandon occupation of the holiday caravan (or providing false or misleading information with the same intention).

### **Section 61 Offences under section 60: supplementary**

388. This provides that for the accused to have a reasonable defence in certain circumstances.

389. Any person who is found guilty of harassment under section 60 is liable to a fine and / or imprisonment.

## **PART 6 - SUPPLEMENTAL AND GENERAL**

### **Section 64 False or misleading information**

390. This provides that it is an offence to make false or misleading declarations and to provide false or misleading information. It is also an offence to fail to provide information or notifications required under the Act.

### **Section 65 Guidance by Welsh Ministers**

391. This gives the Welsh Ministers discretion to issue guidance to local authorities to guide them in the performance of their functions under the Act.

### **Section 66 Consequential amendments and transitionals etc.**

392. This deals with technical matters such as the power to make consequential, transitional, transitory and savings provisions.

### **Section 67 Liability of officers of bodies corporate**

393. This provides that where a body corporate commits an offence and it is proved that the offence was committed with the consent or connivance of an officer of the body corporate, or the offence was attributable to neglect on the part of this person, then this person is guilty of the offence as well as the body corporate. Proceedings can be brought against this person as well as the body corporate and both may be punished accordingly. Subsection (2) defines what is meant by an officer of a body corporate.

### **Section 69 Orders, regulations and guidance**

394. This makes general provision for orders and regulations under the Act. In particular, it provides for orders and regulations to be made by statutory instrument except where specified otherwise.

395. Subsection (3) requires the Welsh Ministers to consult before exercising their power under section 2(4) (an order amending the figures relating to the dimensions of a holiday caravan mentioned in section 2(3))

396. The remainder of the section sets out the Assembly procedure to be applied in respect of various statutory instruments made under the Act, and subsection (8) clarifies that the Welsh Ministers may vary or withdraw any guidance issued by them under the Act.

## **SCHEDULE 1 - SITES WHICH ARE NOT HOLIDAY CARAVAN SITES**

397. Schedule 1 restates Schedule 1 of the 2013 Act.<sup>34</sup> It sets out those sites that are exempt from a site licence, for example, sites approved by exempted organisations and sites used for agricultural workers.

398. Paragraph 11 provides for a temporary exemption after the death of the owner or change of ownership. In such cases, there is a 3 month “initial exempt period” from the requirement to have a site licence which the local authority may extend on application.

399. Paragraph 13 provides that certificates granted under Schedule 1 to the 1960 Act continue to apply when this Act comes into force.

## **SCHEDULE 2 - EVIDENCE FOR THE PURPOSES OF THE RESIDENCE TEST**

400. The documents referred to in section 45(3) for the purpose of the residence test are:

- the occupier’s sole or main residence for council tax purposes;
- the address of a school attended by children of the occupier who live with the occupier;
- the occupier’s entry in an electoral role;
- the occupier’s address for correspondence with a financial institution;
- the occupier’s address for correspondence with a utility provider;
- the occupier’s address for correspondence with HMRC;
- the occupier’s registration with a general practitioner.

## **SCHEDULE 3 - TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS**

401. Schedule 3 contains transitional, transitory provisions and savings. For example, an application for a site licence under the 1960 Act which has yet to be determined at the date that Part 2 of this Act comes into force, is treated as an application for a site licence under Part 2 of this Act.

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<sup>34</sup> Schedule 1 to the 2013 Act is based on Schedule 1 to the 1960 Act.

## Annex A - References

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- <sup>i</sup> British Holiday and Home Park Association/Visit Wales, [Economic Impact Assessment of the Holiday Park Industry in Wales](#), September 2011, p2 [accessed 14 February 2014]
- <sup>ii</sup> *Caravan Sites and Control of Development Act 1960*, s3(6)
- <sup>iii</sup> *Caravan Sites and Control of Development Act 1960*, s9(2)
- <sup>iv</sup> Denbighshire County Council, Environment & Regeneration Scrutiny Committee, [Report on the control of caravan sites](#), 24 June 2010, para 5.31 [accessed 11 February 2013]
- <sup>v</sup> Environment & Regeneration Scrutiny Committee, [Report on the control of caravan sites](#), 24 June 2010, para 5.31 [accessed 31 May 2013]
- <sup>vi</sup> Welsh Office, [Technical Advice Note \(Wales\) 13: Tourism](#), October 1997 [accessed 3 May 2013]
- <sup>vii</sup> Office of Fair Trading, [Guidance on unfair Terms in Holiday Caravan Site Agreements](#), September 2005 [accessed 14 February 2014]
- <sup>viii</sup> C Beatty, S Fothergill, R Powell and S Scott (2011) [The Caravan Communities of the Lincolnshire Coast](#), CRESR, Sheffield Hallam University. [accessed 9 February 2014]
- <sup>ix</sup> National Caravan Council, [Understanding how to make the best use of your holiday caravan home](#), June 2013 [accessed 18 December 2013]
- <sup>x</sup> Valuation Office Agency, [Practice Note 7: Application of Council Tax to caravan pitches and moorings](#) [accessed 12 February 2014]
- <sup>xi</sup> Public Health Wales, [North Wales Health Profile: Age, sex and biological factors](#), March 2013 [accessed 13 February 2014]
- <sup>xii</sup> [http://assemblywales.org/caravan\\_sites\\_wales\\_bill\\_-\\_consultation\\_letter\\_and\\_draft\\_bill.pdf](http://assemblywales.org/caravan_sites_wales_bill_-_consultation_letter_and_draft_bill.pdf) [accessed 6 March 2014]