

National Assembly for Wales
Constitutional and Legislative
Affairs Committee

Report on the Regulated Mobile Homes Sites (Wales) Bill

February 2013



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

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Remit and Powers

The Constitutional and Legislative Affairs Committee was established on 15 June 2011 with a remit to carry out the functions and exercise the powers of the responsible committee set out in Standing Orders 21. This includes being able to consider and report on any legislative matter of a general nature within or relating to the competence of the Assembly or the Welsh Ministers.

Current Committee membership



David Melding (Chair)
Deputy Presiding Officer
Welsh Conservatives
South Wales Central



Suzy Davies
Welsh Conservatives
South Wales West



Julie James
Welsh Labour
Swansea West



Eluned Parrott
Welsh Liberal Democrats
South Wales Central



Simon Thomas
Plaid Cymru
Mid and West Wales

In accordance with Standing Order 17.48, Vaughan Gething AM substituted for Julie James AM.



Vaughan Gething
Welsh Labour
Cardiff South and Penarth

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The Committee's conclusions and recommendations

Conclusion 1: We have noted that both the Member in Charge and the Minister are content in principle with adding more detail to the face of the Bill. We welcome this approach; in our view it would strengthen the Bill considerably and provide a clearer foundation for the policy that it seeks to deliver. (Page 14)

Conclusion 2: We consider that it is good practice for regulation making powers to have clear principles attached to them. There are a number of instances where we believe such a change should be made to the Bill and we identify these separately below. (Page 14)

Conclusion 3: While we agree in principle that technical and administrative changes should be subject to the negative procedure, as a general rule we would prefer to see more significant issues subject to the greater level of scrutiny that is provided for by the affirmative procedure. There are a number of instances where we believe such a change should be made to the Bill and we identify these separately below. (Page 14)

Recommendation 1: If the Minister decides to table amendments to deliver his alternative approach we recommend that he drafts them in accordance with Conclusions 1 to 3 above. (Page 14)

Conclusion 4: If the Bill is changed significantly following Stage 2 proceedings, we may consider scrutinising the Bill further with a view to providing a supplementary report prior to the start of Stage 3 proceedings. (Page 15)

Recommendation 2: We recommend that the Member in charge considers tabling amendments to section 8 of the Bill to set out more detail about the standards for the stationing of mobile homes and to attach some clear principles to the regulation making powers. (Page 18)

Recommendation 3: We recommend that the Member in charge considers tabling amendments to section 15 to set out more detail on how the licensing system will function and to attach some clear principles to the regulation making powers. (Page 19)

Recommendation 4: We recommend that the Member in charge considers tabling an amendment to allow Welsh Ministers to amend section 16(1) by Order. (Page 21)

Recommendation 5: We recommend that the Member in charge considers tabling amendments to add more detail to the appeals procedure set out in section 16 of the Bill and to attach some clear principles to the regulation making powers. (Page 21)

Recommendation 6: we recommend that the Member in charge considers tabling an amendment to increase the level of the penalty set out in section 24(1), such that amending Regulations will not be required soon after the commencement of section 24. (Page 23)

Recommendation 7: We recommend that the Member in charge considers tabling an amendment to ensure that the Regulations made under section 29 of the Bill are subject to the affirmative procedure. (Page 24)

Recommendation 8: We recommend that an amendment is tabled to the Bill to place transitional provisions on the face of the Bill. (Page 25)

Recommendation 9: We recommend that the Member in charge considers tabling an amendment to ensure that an Order made under paragraph 8A of Part 1, Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 is subject to the affirmative procedure. (Page 27)

1. Introduction

1. On 24 October 2012, Peter Black AM introduced the Regulated Mobile Home Sites (Wales) Bill ('the Bill') and accompanying Explanatory Memorandum.¹
2. The National Assembly's Business Committee referred the Bill to the Communities, Equality and Local Government Committee for consideration on 23 October 2012, setting the deadline of 22 February 2013 for reporting on its general principles.
3. The Constitutional and Legislative Affairs Committee considered the Bill at its meeting on 14 January 2013, taking evidence from the Member in charge, Peter Black AM and Huw Lewis AM, the Minister for Housing, Regeneration and Heritage.

The Committee's remit

4. The Constitutional and Legislative Affairs Committee's ("the Committee") remit is to carry out the functions of the responsible committee set out in Standing Order 21² and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or Welsh Ministers.
5. Within this, the Committee considers the political and legal importance and technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and reports on whether the Assembly should pay special attention to the instruments on a range of grounds set out in Standing Order 21.
6. The Committee also considers and reports on the appropriateness of provisions in Assembly Bills and UK Parliament Bills that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General.

¹ Peter Black AM, *Regulated Mobile Home Sites (Wales) Bill, Explanatory Memorandum*, October 2012

² National Assembly for Wales, *Standing Orders of the National Assembly for Wales*, December 2012

2. Background

Purpose of the Bill

7. The Explanatory Memorandum accompanying the Bill explains that the Bill:

“... has a number of objectives. Firstly, to introduce a new licensing regime for mobile home sites and to give local authorities sufficient powers to enforce that regime. This will include ensuring that site owners and managers pass a fit and proper person test, modelled on the test that already applies to Houses in Multiple Occupation (HMOs). The Bill will also give the Welsh Ministers powers to approve a code of practice with regard to the management of sites as well as powers to make management regulations. Additionally, the Bill seeks to modernise a number of aspects of the contractual relationship between mobile home owners and site operators, including changes to the process by which homes are bought and sold.”³

8. The Explanatory Memorandum adds that:

“This Bill does not affect the law relating to holiday or touring caravan sites, although it will affect mixed use sites, i.e. sites used for a combination of residential and holiday purposes as far as the residential parts are concerned. The Bill will not affect local authority Gypsy Traveller sites.”⁴

Legislative Competence

9. In terms of the National Assembly’s legislative competence to make the Bill, the Explanatory Memorandum states that:

“The legislative competence enabling the National Assembly for Wales to make an Act in relation to mobile homes is contained in Part 1 of Schedule 7 to the *Government of Wales Act 2006* (“the 2006 Act”). In particular, heading 11 (Housing) of that Part specifically includes residential caravans and mobile homes; heading 12 (Local Government) specifically includes the powers and duties of local authorities and their members and

³ Explanatory Memorandum, paragraph 5

⁴ Explanatory Memorandum, paragraph 6

officers; and heading 18 (Town and Country Planning) specifically includes caravan sites.”⁵

Summary of provisions in the Bill

10. The Bill contains 33 Sections, split into five Parts, and one Schedule.

11. Part 1 of the Bill provides an overview of the Bill’s structure, interpretation and application.

12. Part 2 (Licensing of regulated sites) lays down details of a new licensing regime for mobile home occupation. The main provisions included in this part are:

- the introduction of a new licensing regime for mobile home occupation (Sections 3 to 16):

These provisions legally define local authorities as ‘Site Licensing Authorities’, and require them to consider working collaboratively to discharge their functions under the Bill. In particular, the Bill sets out the specific requirements for applications; establishes tests for suitability and fitness of applicants (a ‘fit and proper person’ test; imposes specific licence conditions (including setting a maximum licence duration of five years); requires licensing authorities to keep a register of licences; and gives applicants the right to appeal to the Residential Property Tribunal.

- the empowerment of licensing authorities to enforce licences (Sections 17 to 26):

This includes giving Site Licensing Authorities the power to execute works and appoint interim managers where necessary; giving authorities the power of entry; enabling authorities to issue fixed penalty notices for failing to comply with licence conditions; and allows the Residential Property Tribunal to make ‘repayment orders’ requiring site operators to repay home owners certain costs if a site is required to be licensed but is not.

⁵ Explanatory Memorandum, paragraph 8

13. Part 3 (Amendments to the 1983 Act) gives effect to the Schedule and makes amendments to the *Mobile Homes Act 1983* in relation to the contractual relationship between home owners and site operators and particularly the way in which mobile homes are bought and sold. These provisions aim to strengthen the succession rights of co-owners, couples, partners, family members and friends and establish new provisions which allow owners to sell and assign mobile homes, including removing the requirement for site operators to approve the sale of a home.

14. Part 4 (Management of regulated sites) empowers Welsh Ministers to issue codes of practice regarding the management of sites and imposes a duty on Welsh Ministers to make regulations to ensure that there are satisfactory management arrangements for sites.

15. Part 5 includes miscellaneous provisions relating to commencement, details of orders and regulations made under the Bill and the interpretation of certain terms.

3. Legislative Competence

Evidence on legislative competence

16. We asked the Member in charge, Peter Black AM and the Minister whether they were aware of any concerns regarding the legislative competence of the National Assembly to make the Bill.

17. Peter Black AM told us:

“Welsh Government officials have raised no concerns regarding competence. A copy of the Bill was sent to the Wales Office, as a matter of courtesy, but we have not had a response to that letter. Therefore, at this stage, we have had no indication from the UK Government that it has an issue around the competence for this Bill.”⁶

18. The Minister indicated that he could not see anything in the Bill that is beyond the competence of the National Assembly⁷ and said that “no outside body has raised any qualms regarding competence”.⁸

Our view

19. We note that no issues have been raised with the Member in charge or the Minister regarding the ability of the National Assembly to make this legislation under Schedule 7 of the Government of Wales Act 2006.

⁶ Constitutional and Legislative Affairs (“CLA”) Committee, *RoP [paragraph 16]*, 14 January 2013

⁷ CLA Committee, *RoP, [paragraph 155]*, 14 January 2013

⁸ CLA Committee, *RoP, [paragraph 149]*, 14 January 2013

4. Powers to make subordinate legislation – general observations

Evidence from Peter Black AM

20. When questioned about the balance between what information is contained on the face of the Bill and what is left for subordinate legislation to be made by Welsh Ministers, Peter Black told us that it is always difficult to strike the correct balance because this is a Member-proposed Bill and “often ... it is helpful not to seek to advance the objectives in ways that the Government might consider impractical”.⁹

21. He added that:

“A lot of the secondary legislation that is associated with the Bill deals with administrative matters that I would normally expect the Minister and his officials to have a view on. I do not think that it is my job to pre-empt that. However, we have had detailed discussions with the Government and we are likely to bring forward amendments at Stage 2 that we hope will reflect my view, and the Government’s view, that there should be less secondary legislation and more on the face of the Bill. That work is ongoing, and I cannot give you any detailed undertakings at this stage on that.”¹⁰

22. When questioned further about the Minister’s views that there should be more on the face of the Bill and the discussions he had had on this issue, Peter Black AM said:

“All I can say is that I anticipate that Government officials will come back at the next meeting with some concrete amendments for Stage 2 that will take forward and put into effect the Minister’s desire to have more on the face of the Bill. Until I see those amendments, I cannot comment on what they contain.”¹¹

23. The Bill contains a total of 16 delegated powers enabling Welsh Ministers to make subordinate legislation; only one power (in section 24) is subject to the affirmative procedure, with the remaining powers

⁹ CLA Committee, *RoP* [paragraph 12], 14 January 2013.

¹⁰ *Ibid*

¹¹ CLA Committee, *RoP*, [paragraph 128], 14 January 2013

subject to either the negative procedure or no procedure. When asked why there were so few delegated powers subject to the affirmative procedure, Peter Black AM explained the approach that had been followed in drafting the provisions relating to subordinate legislation:

“In general terms, we have gone through each of the relevant powers in the Bill in some detail, and we have effectively applied what we consider to be the appropriate procedure to each one. There are obviously individual reasons for each regulation, Order or guidance in terms of how they are dealt with.”¹²

24. He added that:

“The normal procedure with Bills, as I understood it, is that when you have administrative arrangements dealing with the implementation of a part of a Bill, the negative procedure would apply.”¹³

25. He indicated that this approach reflected government guidance on how you apply the negative or affirmative procedure in each instance.¹⁴ He also noted that some of the procedures adopted had been based on current housing legislation:

“Given that this Bill is very much based on the licensing procedure for houses in multiple occupation, a lot of it has been brought forward from the Housing Act 2004. It is in similar terms to those set out in that Act and a lot of regulations arose from that Act as well. So, that is another reason why some things have been set out in this way.”¹⁵

26. A lawyer accompanying Peter Black AM added that in the case of this Bill:

“... unless there was a good reason for doing something differently, the precedent used for the HMO [Housing of Multiple Occupation] legislation was followed in relation to these administrative matters.”¹⁶

¹² CLA Committee, *RoP [paragraph 19]*, 14 January 2013

¹³ CLA Committee, *RoP [paragraph 28]*, 14 January 2013

¹⁴ CLA Committee, *RoP [paragraph 31]*, 14 January 2013

¹⁵ *Ibid*

¹⁶ CLA Committee, *RoP, [paragraph 33]*, 14 January 2013

27. In terms of how and when the Bill would be commenced, Peter Black AM said that:

“Given that the Bill creates a single licensing regime, I expect that it would have to be commenced as a whole. That is how I would envisage it being done. Any necessary regulations or Orders would have to be in place before you could do that. That is how I understand that it would operate. The need for transitional arrangements is another reason why we do not have a commencement date on the face of the Bill. The Ministers will determine how the transitional arrangements have to be put in place.”¹⁷

Evidence from the Minister

28. During questioning on the powers provided to Welsh Ministers Bill, the Minister suggested an alternative approach for the Bill:

“The Bill as originally drafted talked about two licensing regimes existing simultaneously. Our proposal to Peter Black is that we would like to get hold of and preserve the Caravan Sites and Control of Development Act 1960, but create new provisions within it around the fit-and-proper-person test that would sit alongside the current site licensing legislation. In other words, we would continue with the current site licensing regime instead of setting up a wholly new one, and we would amend existing legislation to implement the new fit-and-proper-person test so that we would have a Welsh fit-and-proper-person test running alongside an England-and-Wales licensing regime for sites. So, we would avoid a lot of the legislative burden, if you like, of having a wholly separate Welsh site licensing regime alongside the original Act.”¹⁸

29. In that explaining this alternative approach he added:

“This is a matter of practicality, in that it should be simpler and it should give us less of an issue around the burden of supplementary legislation, Orders and so on. We would see the thrust of the Bill on the face of the Bill to a much greater extent and it would also institute a fit-and-proper-person test for

¹⁷ CLA Committee, *RoP*, [paragraph 124], 14 January 2013

¹⁸ CLA Committee, *RoP*, [paragraph 160], 14 January 2013

Wales that can fit snugly and run in parallel with the England-and-Wales licensing regime for the sites.”¹⁹

30. As a consequence, he said that:

“... we will not be relying on, statutory instruments and regulations as much as we would have done under the original set of proposals. Therefore, that swathe of making powers under negative procedures should fall by the wayside.”²⁰

31. He also felt that his approach would speed up the timetable for commencing the Bill considerably.²¹

32. When questioned on the Bill as currently drafted, the Minister indicated he was open to changing the emphasis from negative to affirmative in respect of the procedure for making subordinate legislation.²² In so doing, however he emphasised that it was Peter Black’s Bill.²³

33. Nevertheless, when questioned in relation to his proposals based around the 1960 Act, he had no objection in principle to strengthening the way that delegated powers are scrutinised by changing some existing negative instruments in the 1960 Act to the affirmative.²⁴

Our view

34. We have noted that the Bill contains a significant number of provisions providing Welsh Ministers with powers to make subordinate legislation.

35. In our view the balance between what has been included in the face of the Bill and what is to be provided for by subordinate legislation is not as we would expect given the policy which this legislation is intended to deliver.

36. We also have some concerns about the consistency of approach adopted in framing the regulation making powers: some regulation

¹⁹ CLA Committee, *RoP*, [paragraph 164], 14 January 2013

²⁰ CLA Committee, *RoP*, [paragraph 187], 14 January 2013

²¹ CLA Committee, *RoP*, [paragraph 200], 14 January 2013

²² CLA Committee, *RoP*, paragraphs 182 -183], 14 January 2013

²³ CLA Committee, *RoP*, paragraph 183], 14 January 2013

²⁴ CLA Committee, *RoP*, paragraph 196], 14 January 2013

making powers have clear principles attached to them and others do not. As such, in some places there is not much on the face of the Bill to restrict or guide Ministers in the way that they make regulations.

Conclusion 1: We have noted that both the Member in Charge and the Minister are content in principle with adding more detail to the face of the Bill. We welcome this approach; in our view it would strengthen the Bill considerably and provide a clearer foundation for the policy that it seeks to deliver.

Conclusion 2: We consider that it is good practice for regulation making powers to have clear principles attached to them. There are a number of instances where we believe such a change should be made to the Bill and we identify these separately below.

Conclusion 3: While we agree in principle that technical and administrative changes should be subject to the negative procedure, as a general rule we would prefer to see more significant issues subject to the greater level of scrutiny that is provided for by the affirmative procedure. There are a number of instances where we believe such a change should be made to the Bill and we identify these separately below.

37. We note that the Minister has suggested in his evidence an alternative approach which could potentially result in significant amendments to the Bill and which would reduce the number of delegated powers provided to Welsh Ministers. We do not consider it appropriate to comment at this stage on the merits of this alternative approach.

38. However, we note that no reference was made to this alternative approach during the evidence of the Member in charge. We would find it surprising if the alternative approach had not been discussed between the Member in charge and the Minister in advance of the meeting.

Recommendation 1: If the Minister decides to table amendments to deliver his alternative approach we recommend that he drafts them in accordance with Conclusions 1 to 3 above.

39. Section 5 of the report sets out our views on the specific provisions in the Bill that provide powers for Welsh Ministers to make subordinate legislation. While we acknowledge that the Bill may

change significantly if agreement is reached on the Minister's proposals, it remains our role to comment on the Bill as introduced.

Conclusion 4: If the Bill is changed significantly following Stage 2 proceedings, we may consider scrutinising the Bill further with a view to providing a supplementary report prior to the start of Stage 3 proceedings.

5. Powers to make subordinate legislation – observations on specific powers

40. Section 5 of the Explanatory Memorandum describes the provisions of the Bill that provide powers to make subordinate legislation. A table is included that summarises the powers and for each provision, states the appropriateness of the delegated power and the reasons for the chosen procedure.

41. The Bill contains 16 delegated powers and these are considered below.

Section 5(1)(c) - Requirement for regulated sites to be licensed

42. Section 5(1)(c) empowers Welsh Ministers to exempt a regulated site from being required to hold a licence by Order (subject to the **negative procedure**).

43. Peter Black AM felt that the power could be used to exclude sites with fewer than a certain number of pitches to facilitate a gradual implementation or for temporary sites while the licensed site is being refurbished in some way. As a consequence:

“... we felt that that was the sort of detail that it was best for Ministers to determine, because it is basically an administrative issue that you would bring into play as you learn from the enactment of the Bill and how it is being applied across Wales.”²⁵

44. He did not have “any huge concerns” that Welsh Ministers might use the powers to extend the class of reasons for exemption beyond what he initially anticipated, adding:

“I cannot really see any circumstances in which he would abuse that position, simply because the sites that should be licensed, and why, are set out on the face of the Bill. I would envisage that the exemptions would be administrative in nature, based on lessons learnt from having a temporary licence while a site is being refurbished, for example.”²⁶

²⁵ RoP, Paragraph 19, 14 January 2013

²⁶ CLA Committee, *RoP [paragraph 21]*, 14 January 2013

Our view

45. We note the comments of the Member in charge and consider the negative procedure, in accordance with section 31(5), to be appropriate.

Section 6(8) - Application for licences

46. Section 6(8) empowers Welsh Ministers to make regulations (subject to the **negative procedure**) about matters relating to licence applications, while section 6(9) lists matters that must be included in those Regulations, including:

- the manner and form of applications;
- the provision of copies of, or information about, applications;
- the information to be submitted with applications;
- the maximum licence fees chargeable; and
- any exemptions or refunds of fees chargeable.

47. Peter Black AM explained that section 6(9) sets out on the face of the Bill what the regulations should address. In his view, these are administrative arrangements, for which the negative procedure would apply.²⁷

Our view

48. We note the comments of the Member in charge and consider the negative procedure, in accordance with section 31(5), to be appropriate.

Section 8(3) - Tests as to suitability for the stationing of mobile homes

49. Section 8(3) empowers Welsh Ministers to make Regulations prescribing standards for the stationing of mobile homes on regulated sites (subject to the **negative procedure**).

²⁷ CLA Committee, RoP, [paragraphs 27 and 28], 14 January 2013

Our view

50. We consider that section 8 of the Bill would benefit from more detail about the standards for the stationing of mobile homes, in accordance with conclusions 1 and 2 of this report.

Recommendation 2: We recommend that the Member in charge considers tabling amendments to section 8 of the Bill to set out more detail about the standards for the stationing of mobile homes and to attach some clear principles to the regulation making powers.

51. In light of recommendation 2, we consider the negative procedure, in accordance with section 31(5), to be appropriate for the power to make Regulations under this section.

Section 10(5) - Licence conditions

52. Section 10(5) enables Welsh Ministers to issue guidance on the form and content of licence conditions, which Site Licensing Authorities (i.e. a county or a county borough council) must have regard to (subject to **no procedure**).

Our view

53. We consider it appropriate for Welsh Ministers to issue guidance on licence conditions and for no procedure to be attached to this process.

Section 13(1)(d) - Revocation of licences

54. Section 13(1)(d) empowers Welsh Ministers to prescribe circumstances, other than those included on the face of the Bill, outlining when a site licensing authority can revoke a licence (subject to the **negative procedure**).

55. When asked why it was appropriate to include this Regulation making power in addition to those matters set out on the face of the Bill, Peter Black AM indicated that it is to deal with unintended consequences, adding:

“If we found that a minority of site owners found a way around the safeguards introduced by the Bill, the Minister would have the power to intervene quickly to close that loophole. That was

the intention of that particular provision, and the reason why we went for the negative procedure rather than the affirmative procedure was because the Minister might need to act quickly.”²⁸

Our view

56. We note the comments of the Member in charge and consider the negative procedure, in accordance with section 31(5), to be appropriate.

Section 15 - Procedures relating to licences

57. Section 15 empowers Welsh Ministers to make regulations about licence procedures that site licensing authorities must follow in dealing with the granting, refusing, varying and revoking of licences (subject to the **negative procedure**).

58. When asked if section 15 was under further consideration given that everything on procedures relating to licences was being left to Regulations, Peter Black AM responded by confirming that it was still under consideration, but noted that:

“... the sort of thing required on the face of the Bill would be quite detailed, administrative matters, and I cannot second-guess the Minister in how he would envisage that being rolled out, and I have not tried to do so. If the Government is happy to put forward amendments that do that, then we will certainly work with it to try to do away with sections such as that, if that is possible.”²⁹

Our view

59. We note the Member in charge’s comments. We consider that section 15 of the Bill would benefit from more detail setting out how the licensing system will function, in accordance with conclusions 1 and 2 of this report.

Recommendation 3: We recommend that the Member in charge considers tabling amendments to section 15 to set out more detail

²⁸ CLA Committee, *RoP [paragraph 35]*, 14 January 2013

²⁹ CLA Committee *RoP, [paragraph 40]*, 14 January 2013

on how the licensing system will function and to attach some clear principles to the regulation making powers.

60. In light of recommendation 3, we consider the negative procedure, in accordance with section 31(5), to be appropriate for the power to make regulations under this section.

Section 16(4) - Appeals and other determinations

61. Section 16(4) empowers Welsh Ministers to make regulations (subject to the **negative procedure**) setting out the appeals procedure to be followed in cases where owners appeal to the Residential Property Tribunal against decisions made by site licensing authorities in relation to certain specified areas. The specified areas are listed in section 16(1).

62. In explaining section 16(1), Peter Black AM told us:

“... we have set out in some detail the various scenarios in which we feel an appeal could be taken to the Residential Property Tribunal. We think that it is a fairly full list. If you think that there are other situations, we would have no objection to including a power for Welsh Ministers to add to the list by Order.”³⁰

63. Peter Black AM felt that if such an Order making power was to be included, it should be subject to the affirmative procedure “because it would be a substantial change to the Bill.”³¹

64. He added that the Regulation making powers in section 16(4) “are purely about the process by which appeals are made, and are again administrative”,³² noting that the appeals process is not set out on the face of the Bill because it is quite detailed and “he did not want to second-guess the Minister”.³³ He acknowledged however that the Bill was still being discussed³⁴ and subsequently suggested in terms of the

³⁰ CLA Committee, *RoP [paragraph 43]*, 14 January 2013

³¹ CLA Committee, *RoP [paragraph 45]*, 14 January 2013

³² CLA Committee, *RoP [paragraph 46]*, 14 January 2013

³³ CLA Committee, *RoP [paragraph 40]*, 14 January 2013

³⁴ CLA Committee, *RoP [paragraph 49]*, 14 January 2013

appeals process, that he would prefer it:

“... to be set out on the face of the Bill. If we are able to put together amendments to that effect, we will do so. I am reliant on the Welsh Government to do that.”³⁵

Our view

65. We note the areas in which it may be possible to bring an appeal in relation to the decisions of licensing authorities. We consider that this list may need to be changed over time in light of operational experience. We note the Member in charge’s view that such an order making power should be subject to the affirmative procedure.

Recommendation 4: We recommend that the Member in charge considers tabling an amendment to allow Welsh Ministers to amend section 16(1) by Order.

66. We consider that there is scope for some detail regarding the appeals procedure to be added to the face of the Bill, for example in a similar way to the provisions in section 5 of the *Food Hygiene Rating (Wales) Bill*³⁶ and in accordance with conclusions 1 and 2 of this report

Recommendation 5: We recommend that the Member in charge considers tabling amendments to add more detail to the appeals procedure set out in section 16 of the Bill and to attach some clear principles to the regulation making powers.

67. In light of recommendation 5, we consider the negative procedure, in accordance with section 31(5), to be appropriate for the power to make regulations under section 16(4).

Section 17 - Enforcement

68. Section 17(2) enables Welsh Ministers to issue guidance to a site licensing authority in relation to its general duty to enforce licence conditions under Section 3 (site licensing authorities) of the Bill (subject to **no procedure**).

69. Peter Black AM explained that the power to issue guidance in section 17(2) is discretionary but would enable the Welsh Government

³⁵ CLA Committee, *RoP [paragraph 61]*, 14 January 2013

³⁶ As amended at Stage 2.

to:

“... take account of what is being done elsewhere in Wales and issue guidance that shares best practice, which would then complement the provision in terms of collaboration.”³⁷

70. He added that he would be reluctant to restrict the Bill to a requirement that the guidance should focus on best practice.³⁸

Our view

71. We consider it appropriate for Welsh Ministers to issue guidance on enforcement and for no procedure to be attached to this process.

Sections 23(8) and 24(2) - Fixed penalties and amount of fixed penalty

72. Section 23(8) empowers Welsh Ministers to make regulations specifying the form a fixed penalty notice must take (subject to the **negative procedure**). Section 24(2) empowers Welsh Ministers to make an order changing the fixed penalty fee from £100 as necessary, and to substitute different amounts in future years (subject to the affirmative procedure).

73. Peter Black AM said that the £100 fixed penalty fee figure was based on the fixed penalty of £80 included in the *Local Government Byelaws (Wales) Act 2012* and that the figure may need to be amended in light of experience or inflation.³⁹

74. He also explained that the affirmative procedure was chosen for the Order making power because we “felt that the Assembly should be able to express a view on the appropriateness of the level of the penalty, simply because the alternative is prosecution”.⁴⁰

³⁷ CLA Committee, *RoP[paragraph 63]*, 14 January 2013

³⁸ CLA Committee, *RoP[paragraphs 64-65]*, 14 January 2013

³⁹ CLA Committee, *RoP[paragraph 73]*, 14 January 2013

⁴⁰ CLA Committee, *Ro[paragraph 70]*, 14 January 2013

Our view

75. As regards section 23(8), we consider the negative procedure, in accordance with section 31(5), to be appropriate.

76. Given the nature of the power, the affirmative procedure as provided for in section 31(6) of the Bill is considered appropriate for section 24(2).

77. However, as regards the fixed penalty of £100 set out in section 24, we consider there is a danger that a penalty set at such a low level is likely to be subject to amending regulations soon after the provision has been commenced. In our view, such an eventuality would be poor practice.

Recommendation 6: we recommend that the Member in charge considers tabling an amendment to increase the level of the penalty set out in section 24(1), such that amending Regulations will not be required soon after the commencement of section 24.

Section 28(1) - Approval of codes of practice with regard to the management of regulated sites

78. Section 28(1) empowers Welsh Ministers by order to approve a code of conduct and practice for the management of regulated sites; to approve modifications to such codes; or to withdraw approval of codes or modifications (subject to the negative procedure).

79. Peter Black AM explained that he now intended to remove section 28 from the Bill because it had been carried forward from the Housing Act 2004 (along with section 29) and was no longer considered appropriate for the Bill⁴¹, indicating that the Bill would rely on the regulations provided for by section 29 in dealing with management arrangements for sites. The Minister indicated that he held a similar view.⁴²

Our view

80. We note the intention of the Member in charge to bring forward an amendment to remove section 28 of the Bill.

⁴¹ CLA Committee, *RoP*[paragraph 89], 14 January 2013

⁴² CLA Committee, *RoP* [paragraph 144], 14 January 2013

Section 29(1) - Management regulations in respect of regulated sites)

81. Section 29(1) empowers Welsh Ministers to make regulations to ensure that there are satisfactory management arrangements for sites and that satisfactory management standards are observed (subject to the **negative procedure**).

82. Peter Black AM said that Regulations were appropriate for management standards (rather than guidance) because “any breach of those standards would be an offence under section 29(3)”.⁴³

Our view

83. It is our view that in circumstances where a Bill provides that a person commits an offence if that person fails to comply with a regulation, then the affirmative procedure should apply to the making of the relevant Regulations.

Recommendation 7: We recommend that the Member in charge considers tabling an amendment to ensure that the Regulations made under section 29 of the Bill are subject to the affirmative procedure.

Section 31 - Orders and regulations

84. Section 31(2)(c) provides that powers exercised by Welsh Ministers to make Orders and Regulations under the Bill are subject to the negative procedure, apart from Orders varying the fixed penalty (section 24) and Commencement Orders (section 33).

85. Section 31(3) empowers Welsh Ministers to make orders or regulations under the Bill to include powers to make incidental, supplementary, transitory, transitional, or saving provisions as Welsh Ministers think fit (subject to the **negative procedure**).

86. The Explanatory Memorandum states that transitional provisions will be required to explain how holders of licences under the current arrangements are to transfer to the new regime.⁴⁴

⁴³ CLA Committee, *RoP [paragraph 90]*, 14 January 2013

⁴⁴ Explanatory Memorandum, paragraph 207

87. Peter Black AM explained that Welsh Ministers will determine how the transitional arrangements have to be put in place and that he was in discussion with the Minister on this particular issue.

88. When questioned around the Minister's view that there should be more on the face of the Bill including transitional arrangements, Peter Black AM said:

"All I can say is that I anticipate that Government officials will come back at the next meeting with some concrete amendments for Stage 2 that will take forward and put into effect the Minister's desire to have more on the face of the Bill. Until I see those amendments, I cannot comment on what they contain."⁴⁵

89. A lawyer accompanying the Minister said that if the Welsh Government's proposal was adopted:

"... there may be fewer transitional provisions than if we move from one system to another system where you would have detailed transitional provisions, which have not been worked up yet. We would be looking at that during the formation of the Government amendments."⁴⁶

90. In relation to this new proposal, a government official accompanying the Minister indicated that any transitional arrangements would be on the face of the Bill.⁴⁷

Our view

91. We note that the Minister would like to see transitional provisions placed on the face of the Bill. We share this view. We also note that the Member in charge is in discussions with the Minister on this issue.

Recommendation 8: We recommend that an amendment is tabled to the Bill to place transitional provisions on the face of the Bill.

92. We consider the negative procedure, in accordance with section 31(5), to be appropriate for Regulations made under this section.

⁴⁵ CLA Committee, *RoP* [paragraph 128], 14 January 2013

⁴⁶ CLA Committee, *RoP*, [paragraph 237], 14 January 2013

⁴⁷ CLA Committee, *RoP*, [paragraph 253], 14 January 2013

Section 33 – Short title, repeals and commencement

93. Section 33 provides that the Act will come into force in accordance with commencement orders made by Welsh Ministers. Such orders will be subject to no procedure in accordance with normal legislative practice.

Our view

94. It is standard practice that no procedure is prescribed for commencement orders and we are therefore content with this approach.

Paragraph 4(2) of Schedule 1- Rate of commission

95. Paragraph 4(2) of the Schedule (introduced by section 27) empowers Welsh Ministers by Order (subject to the **negative procedure**) to set a rate of commission which the site owner would be entitled to if the occupier chose to sell the mobile home. The provision also allows Welsh Ministers to make different provision for different areas or for sales at different places.

96. Peter Black AM explained that this provision was carried forward from an existing Act (the Mobile Homes Act 1983) that “already provides for the commission to be changed by negative procedure”.⁴⁸ He noted that the issue of commission “is a long-standing matter of controversy” and he “did not want to tamper too much with the previous Act and how it set out the way to change the commission”.⁴⁹ He added that he didn’t want to address this issue in the Bill and so the provision was carried “forward as it was set out in the previous Act purely for tidiness and neatness”.⁵⁰

97. Peter Black did not have any concerns about the policy intentions of the Bill being undermined by the provision that allows Welsh Ministers by Order to make different provision for different areas or for sales at different places.⁵¹ In making this point, he reiterated that he was seeking to avoid addressing the Commission

⁴⁸ CLA Committee, *RoP [paragraph 75]*, 14 January 2013

⁴⁹ CLA Committee, *RoP [paragraph 77]*, 14 January 2013

⁵⁰ CLA Committee, *RoP, [paragraph 79]*, 14 January 2013

⁵¹ CLA Committee, *RoP [paragraphs 86 - 87]*, 14 January 2013

issue and that the provisions had been carried forward from the previous 1983 Act.⁵²

Our view

98. We note the comments of the Member in charge and in particular that he has simply carried through the relevant provision from the *Mobile Homes Act 1983* and that he did not wish to address the Commission issue in the Bill.

99. In our view, the potential for Welsh Ministers to effectively set varying levels of commission by making different provision for different areas or for sales at different places, is a matter that should be subject to approval by the National Assembly and therefore the affirmative procedure. While we note that this would represent a change from the procedure used under the 1983 Act, we do not believe that suggesting this change alters the nature of the policy itself.

Recommendation 9: We recommend that the Member in charge considers tabling an amendment to ensure that an Order made under paragraph 8A of Part 1, Chapter 2 of Schedule 1 to the Mobile Homes Act 1983 is subject to the affirmative procedure.

Cross-border issues

100. The Explanatory Memorandum accompanying the Bill explained that:

“As the Bill applies to regulated home sites in Wales, there are no direct cross-border issues in the Bill. Nevertheless, there may be a need for regulations and guidance to address matters such as the exchange of information with local authorities outside Wales regarding site owners and managers who operate sites in Wales and beyond.”⁵³

101. Peter Black AM said he would envisage most cross-border issues to:

“... be ones of sharing information, simply because we have situations whereby site owners operate mobile home sites in England and Wales. So, we would envisage that the Minister

⁵² CLA Committee, *RoP [paragraph 87]*, 14 January 2013

⁵³ Explanatory Memorandum, paragraph 211

would be advising local authorities to co-operate on an England and Wales basis to share information, particularly about site owners and the fit-and-proper-person test.”⁵⁴

102. He added that:

“There is a duty to collaborate in the Bill, so it is right that we take account of those cross-border issues as a part of that. It is reasonable that we ask the Minister to provide guidance or regulations to local authorities on sharing information across the border as well as between them ... whether the Minister wishes to take it up is a matter for him or her.”⁵⁵

Our view

103. We note the comments of the Member in charge on cross-border issues and consider the approach he has outlined to be a sensible one.

⁵⁴ CLA Committee, *RoP [paragraph 112]*, 14 January 2013

⁵⁵ CLA Committee, *RoP [paragraph 115]*, 14 January 2013