POLICY NOTE

THE MOBILE HOMES ACT 1983 (AMENDMENT OF SCHEDULE 1) (SCOTLAND) ORDER 2013

SSI 2013/DRAFT

1. The above instrument will be made in exercise of the powers conferred by section 2B of the Mobile Homes Act 1983 ("the 1983 Act"). The instrument is subject to the affirmative procedure.

Purpose of the Instrument

2. The purpose of this instrument is to amend Parts 1 and 2 of Schedule 1 to the 1983 Act. In terms of section 2B(4) the first Order made under section 2B may provide for all or any of its provisions to apply to existing agreements. Subsequent orders can only affect agreements made on or after the date of coming into force of the order. The above instrument will, when made, be the first use of the section 2B power and by virtue of article 1(3) of this instrument the amendments made to Schedule 1 of the 1983 Act by this instrument will apply to all existing agreements as well as to agreements made on or after this instrument comes into force.

Policy Objectives

3. Part 1 of Schedule 1 to the 1983 Act sets out terms which are implied into any agreement (in essence statutory contractual obligations) between the resident of a mobile home (the occupier) and the owner of the site the home is situated on (the site owner). The 1983 Act applies to agreements relating to protected sites, which term in relation to Scotland has the same meaning as in Part 1 of the Caravan Sites Act 1968. In addition to conferring security of tenure, there are a number of terms which govern the resident's right to station their home on that land.

4. Recent research undertaken on behalf of Consumer Focus verified 91 sites with residential mobile homes and an estimated population of around 5,400 residents in Scotland.

5. There is increasing evidence that there are very real issues faced by residents living permanently on some residential mobile home sites in Scotland, many of which are generated by unscrupulous site owners utilising weaknesses in the current legislation. The amendments to Schedule 1 of the 1983 Act made by this instrument, which include the introduction of additional terms, will significantly enhance the protection of residents who choose this form of living.

6. A significant and serious complaint is that site owners use the existing legislation to prevent owners of residential mobile homes from selling their homes on the open market. This is a practice known as sale blocking and can be profitable for the site owner. By preventing a sale in the open market the site owner can effectively force the resident to sell to him, at a much reduced price. The site owner may then remove the old property from the site and position a more lucrative home on the pitch, or, simply sell the existing home at its full

market value. This also allows the site owner to issue a new agreement to the incoming residents on terms more favourable to the site owner.

7. There is anecdotal evidence to suggest that this activity actually goes further, in that some site owners looking to expand their sites or remove older properties actively pursue a policy of trying to remove residents living in the homes they want to replace. The update to implied term 8 at point 14 below seeks to address this matter.

8. The key objective of the reforms to the implied terms, as outlined below, are to prevent residents being exploited by unscrupulous site owners while ensuring business viability of privately owned sites is maintained, against the backdrop of the growing need for good quality, desirable, affordable housing.

9. The Order will apply in relation to agreements for the stationing of mobile homes in Scotland and amends Schedule 1 to the Mobile Homes Act 1983 which amendments also introduce new terms. The Order will provide protections under the headings of:

- Termination by owner
- Repayment of sums paid by occupier on termination of agreement
- Sale of mobile home
- Gift of mobile home
- Re-siting of a mobile home
- Undisturbed possession of the mobile home
- Owner's right of entry to the pitch
- The Pitch fee
- Occupier's obligations
- Owner's obligations
- Owner's name and address
- Qualifying residents' association

10. All the implied terms will apply to agreements relating to pitches on all protected sites with the exception of the terms 8 and 9 which do not apply to agreements relating to pitches on local authority Gypsy/Traveler sites or registered social landlord Gypsy/Traveller sites, as these homes are either rented accommodation or the properties are mobile and as such not sold on site. The Order amends as follows;

Termination by owner

11. A site owner will no longer be able to terminate an agreement *forthwith*, following application to the court for occupier breach of agreement. The amendments ensure that on all occasions the *court is to determine* the date at which the agreement may be terminated.

12. However, before the court makes an order to terminate an agreement, on the basis that the home is not being occupied as the only or main residence or, if the mobile home is having a detrimental effect on the amenity of the site, the court must also now be *satisfied that it is reasonable* for the agreement to be terminated.

Repayment of sums paid by occupier on termination of agreement

13. Currently if an agreement is terminated, the resident is entitled to recover from the site owner, pitch fees/charges which have been paid in advance. This will be amended to provide that the owner *must repay the occupier within 2 months.* This introduces a duty on behalf of the site owner to repay but will still require court action to enforce if the site owner does not do so.

Sale of mobile home

14. The order completely removes the requirement for the occupier to seek approval of the site owner to sell their mobile home and assign the agreement. The amendment not only removes the present implied term requiring consent, but also provides that no payment, other than the commission mentioned below, may be required from the occupier in connection with the sale and assignation.

15. Commission of up to 10% will continue to be payable to the site owner on the resale of a mobile home. This recognises that the quality and location of the site is an influential factor in the value of the home and goes some way to ensuring that the balance between the occupier and site owner is properly addressed and makes no interference in business viability of privately owned sites. In order to safeguard the owner, neither the sale nor assignation will have effect until the commission is paid.

16. The order introduces a provision that entitles the occupier to market their mobile home for sale, using the services of an agent, and that they are entitled to display related marketing signs either on or in the mobile home for this purpose.

17. It is also sets out that the site owner must allow any agent appointed by the occupier reasonable access to the pitch on which the home for sale is stationed, for valuation and preparing or displaying marketing particulars.

18. The order introduces a requirement that the resident seller must give the prospective assignee a copy of the written statement and the site rules 28 days in advance of the sale. This will ensure prospective assignees/purchasers are clear on the implied terms and their obligations at the point of sale, including payment of commission to the site owner on resale.

Gift of a mobile home

19. The order provides that a site owner cannot claim commission on the gift of a mobile home. The occupier is entitled to gift the mobile home and assign the agreement to a family member, without the approval of the owner. However the occupier must provide the owner with such evidence as the owner reasonably requires in order to confirm that the person to whom the mobile home is being gifted is a member of the occupier's family. In addition, the new occupier must notify the owner that he or she has accepted the gift and the assignation. The gift and the assignation will not have any effect until these things are done.

Re-siting of a mobile home

20. The order improves the protections of the occupier to ensure that the site owner cannot move the mobile home, except for essential repair or emergency works (which have been set out in the order) without application to the court. The court must be satisfied that the other pitch is broadly comparable to the occupier's original pitch and it is reasonable for the mobile home to be stationed there.

21. The occupier can require the site owner to return the mobile home to the original pitch on completion of the works or at the end of the period to which the court order relates. This requirement does not apply where the original pitch can no longer be used as a pitch. The site owner will be required to pay all the costs and expenses incurred by the owner in connection with their mobile home being moved to and from the other pitch.

Undisturbed possession of the mobile home

22. A resident is entitled to the undisturbed possession of their home and the pitch, the only exceptions being the owner's implied rights to enter the pitch and the provision for re-siting the home. The provision extends the undisturbed possession to the pitch as well as the mobile home.

Owner's right of entry to the pitch

23. In relation to the owner's implied rights to enter the pitch, the order sets out the following;

- The site owner may enter the pitch without prior notice between 9 a.m. and 6 p.m. for the delivery of mail and meter readings for services supplied by the owner.

- The site owner may enter the pitch for essential repair or emergency works giving as much notice as is reasonably practicable in the circumstances.

- Other than the above, unless the occupier has agreed otherwise, the site owner may only enter the pitch after giving 14 clear days' written notice of the date, time and reason for the visit.

- The order specifies that these rights do not extend to the mobile home.

The pitch fee

24. The order sets out the procedures that relate to the review, and payment of, the pitch fee payable by the occupier to the site owner. It sets out that the pitch fee can only be changed at dates specified or calculated in accordance with the Order , with the agreement of the occupier, or with a court order, which can be as a result of an application by either the site owner or occupier, where the court considers it reasonable for the change to be made. The main provisions contained in the Order are that:

- The pitch fee may be reviewed at the review date (which is annual) if the owner has given the occupier 28 days written notice setting out the proposals in respect of the pitch fee. The notice must set out the services which are included in the pitch fee and this will include water and sewerage services unless they are specifically excluded

from forming part of the pitch fee, by agreement with the occupier. If the occupier agrees to the proposed pitch fee it shall be paid from the review date.

- If the occupier does not agree to the proposed pitch fee the site owner may apply to court for a court order. The occupier will continue to pay their pitch fee until a new pitch fee is agreed or an order is made by the court determining the new fee. The pitch fee will be due from the review date but the occupier will not be classed as being in arrears until 28 days after either the pitch fee is agreed or 28 days after the date of the court order.

- If the owner does not serve a notice 28 clear days before the review date then the occupier has the ability to serve a review request on the owner asking him to serve a notice mentioned below. Should the owner fail to do so within 28 days of that request then the occupier may apply to the court for an order determining the pitch fee.

- The pitch fee may be reviewed at a date later than the review date providing that the owner gives a written notice setting out the owner's proposals in respect of the pitch fee. Where the occupier agrees to pay the new pitch fee, it shall be due from the 28th day after the date the site owner served the notice. The site owner may still apply for a court order when in dispute, the pitch fee on this occasion being due from 28 days after the date of the court order. The same arrears provisions apply.

- In determining the revised pitch fee consideration will be given to the cost of improvements to the site which are for the benefit of residents where the majority of occupiers have not disagreed in writing. However, costs incurred by the owner in relation to any expansion of the site cannot be taken into account. In calculating what constitutes a majority of occupiers, each mobile home will be taken to have one occupier. If there is more than one occupier then the occupier will be taken to be that person whose name first appears on the agreement.

- Regard should also be given to any decrease in the amenity or facilities and services provided on the site when revising the pitch fee.

- Regard can also be given to the effect of legislative change that has occurred since the last review date when calculating the revised pitch fee.

- There is a presumption that the pitch fee will increase or decrease by a percentage no more than the percentage increase or decrease in the RPI since the last review date.

Occupier's obligations

25. The occupier of the mobile home will have the following obligations to the owner;

- pay the pitch fee to the site owner

- pay to the site owner all sums due under the agreement in respect of utilities supplied by the owner

- keep the mobile home in a good state of repair, maintaining the outside and the pitch including fences and outbuildings belonging to it and the outside of the mobile home, in a clean and tidy condition; and if requested by the owner, provide documentary evidence of any costs or expenses in respect of which the occupier seeks reimbursement.

Owner's obligations

26. The site owner will have the following obligations to the occupier of the mobile home;

- if requested by the occupier, the site owner will provide (free of charge) a copy of the current public liability insurance certificate and documentary evidence in support and explanation of, any new pitch fee, utilities charges payable under the agreement, and any other charges, costs or expenses payable to the site owner by the occupier under the terms of the agreement.

- be responsible for repairing and where necessary replacing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other services supplied by the site owner to the pitch or to the mobile home.

- maintain in a clean and tidy condition all parts of the site, which are not the responsibility of any of the occupiers.

- to consult, by giving 28 days notice in writing, the occupier about improvements to the protected site in general, and in particular about those improvements which the owner wishes to be taken into account when determining the amount of any new pitch fee.

- to consult, by giving 28 days notice in writing, a qualifying residents' association, if there is one, about all matters which relate to the operation, management and improvements to the site which may affect the occupiers.

Owner's name and address

27. The site owner will be required to inform the occupier and any qualifying residents' association, in writing, of the name and address of the site owner and if that address is not in Scotland then notification of an address in Scotland at which notices (including notices of proceedings) may be served. If the site owner fails to comply, pitch fees for that site will not be due until the site owner provides the information.

28. Site owner correspondence requesting payment, by the occupier, of pitch fees or other services must contain the detail as above, otherwise the payment shall not be due until the information had been received.

Qualifying residents' association

29. A residents' association is a qualifying residents' association in relation to a protected site if the criteria below are met:

- it is an association representing the occupiers of mobile homes on that site;
- at least 50 per cent. of the occupiers of the mobile homes on that site are members of the association;
- it is independent from the owner, who together with any agent or employee of the owner is excluded from membership;
- aside from the owner and employees, membership is open to all occupiers who own a mobile home on that site;
- it maintains a list of members which is open to public inspection together with the rules and constitution of the residents' association;
- it has a chairman, secretary and treasurer who are elected by and from among the members;
- with the exception of administrative decisions taken by the chairman, secretary and treasurer acting in their official capacities, decisions are taken by voting and in calculating what constitutes a majority of occupiers, each mobile home will be taken to have one occupier. If there is more than one occupier then the occupier will be taken to be the person whose name first appears on the agreement.

30. The new implied terms will apply to all current written agreements, from the commencement date of 1 September 2013, in addition to new agreements made after this date. The site owner will be required to provide the occupier with a written copy of the new agreement on the first review date after the commencement date of 1 September 2013 unless this has already been done.

Consultation

31. To fulfill the requirements of section 2B(5) of the 1983 Act, the Scottish Government has been consulting with a stakeholder group since March 2010. Focussing on residential mobile home sites the group examined the issues and options in detail and helped develop the provisions that were included in the public consultation. The group, which consists of the following members, continued to help progress and determine the policy direction following the public consultation.

- Association of Chief Police Officers in Scotland
- British Holiday and Home Parks Association
- Convention of Scottish Local Authorities
- Fife Council
- Independent Park Homes Advisory Service
- Midlothian Council
- Moray Council
- National Association of Park Home Residents
- National Caravan Council
- Park Home Legislation Action Group Scotland
- Park Home Residents Action Alliance
- West Lothian Council
- Willow Wood Community Company

32. The public consultation on a draft order took place between 24 January and 18 March 2011. The report on the findings of the consultation was published on 28 June 2011 and also

contains a list of the consultation respondents. The report is available at the following address: http://www.scotland.gov.uk/Publications/2011/06/15104220/0.

33. In order to engage directly with the Gypsy/Traveller community, the Scottish Government also carried out a separate consultation in summer 2011. 42 responses were received from individual members of the public, local authorities, registered social landlords and owners/residents of private sites. A copy of the report is available at the following address:
http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privateowners/Residentialmobilehomes/analysis.

Impact Assessments

34. An equality impact assessment has been completed on the Mobile Homes Act 1983 (Amendment of Schedule 1) (Scotland) Order 2013 and a summary is attached.

Financial Effects

35. A Business and Regulatory Impact Assessment (BRIA) has been completed. By retaining the provision which enables the site owner to be paid commission on the re-sale of the property, the Scottish Government has ensured that there is no risk of any detrimental financial impact to businesses. The maximum commission rate that is currently set at 10% of the sale price by virtue of the Mobile Homes (Commissions) Order 1983 (SI 1983/748) has been retained.

36. The order has no financial effects on the Scottish Government, local government or residents.

37. A full BRIA has been prepared and placed in the Scottish Parliament Information Centre. A copy of the BRIA is attached.

Scottish Government
Directorate for Housing Regeneration and Welfare
8 May 2013

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	Changes to Schedule 1 to the Mobile Homes Act 1983, introduced by the Mobile Homes Act 1983 (Amendment of Schedule 1) (Scotland) Order 2013
Summary of aims and desired outcomes of Policy	The aim of the legislative change is to improve statutory protections for residents who choose to live permanently in mobile homes, the outcome of which will be to improve quality of life, to free those residents from harassment, and to improve the clarity of the responsibilities of both the residents and the site owners.
Directorate: Division: team	Directorate for Housing, Regeneration and Welfare; Housing Services and Regeneration Division; Housing Options and Services Unit.

Executive summary

1. The aim of the legislative change is to improve statutory protections for residents who choose this form of living, the outcome of which will be to improve quality of life, to free those residents from harassment, and to improve the clarity of the responsibilities of both the residents and the site owners.

2. The analysis of the evidence gathered to inform the policy change has highlighted that in relation to residential mobile home living the two key (overlapping) groups with protected characteristics that will be impacted on are the elderly, and ill or disabled, who have chosen this form of lifestyle.

3. The Scottish Government has given due regard to section 149(1) of the Equality Act 2010 in the development of this legislative change. The positive impact on introduction of the Order will be to improve the life of

all residents living permanently on residential mobile homes sites, many of whom are elderly and as such may be considered to be vulnerable.

4. The Scottish Government has ensured that the protections provided by this Order will (as far as they are relevant) apply to Gypsies/Travellers. Members of those communities will, in the main, be in the same legal position as those living on permanent mobile or park home sites.

Background

5. The implied terms, set out in Part 1 of Schedule 1 to the Mobile Homes Act 1983, are contractual terms implied by that Act into the pitch agreement between a resident of a mobile home and the owner of the site where the home is stationed, which permits the resident to station his or her mobile home on the site and occupy it as a residence. Part 2 of Schedule 1 has a list of matters concerning which additional terms can be implied by the courts. Changes to Part 2 remove particular matters from the list of those the court can imply terms about, as the Order will mean those matters will now be covered in the implied terms in Part 1. The aim of the legislative change is to improve statutory protections for residents who choose this form of living, the outcome of which will be to improve quality of life, to free those residents from harassment, and to improve the clarity of the responsibilities of both the residents and the site owners.

6. The implied terms were developed to protect residents living in permanent residential mobile homes, renting the pitch on a licensed site from a private site owner. However the sector has developed significantly with the emergence of luxury park home retirement style villages. This niche section of the housing sector now accommodates approximately 5,400 residents in Scotland, many of whom can be considered vulnerable due to their age or ill health.

7. Since the Local Government etc (Scotland) Act 1994 local authority sites providing accommodation for Gypsies / Travellers have fallen within the definition of protected site, and as such the implied terms have applied in relation to agreements for pitches on those sites.

The Scope of the EQIA

8. This EQIA is focussed on the changes introduced by the Order, which will improve statutory protections for residents who choose this form of living.

9. We ran two consultation exercises, the first one on our proposals in general from January to March 2011. A total of 67 consultation responses were received, and no equalities issues were raised through this consultation process. We then held a public consultation from August to September 2011 specifically on our proposals as they would apply to Gypsies/Travellers. We received 42 responses, and again no specific equalities issues were raised. A consultation workshop was also held with a range of local authorities and local authority Gypsy/Traveller Site Managers. In addition to this we engaged a representative of the Gypsy/Traveller community who undertook direct communication with members of the Gypsy/Traveller communities. This involved workshop discussion and support to complete response forms.

10. The outcome and messages received through this consultation have been published on the Scottish Government website, and are reflected in the terms of the Order as it applies to the Gypsy/Traveller Community.

11. The Scottish Government has previously undertaken a twice yearly count of Gypsies/Travellers. However the latest data relates to 2009 as the Gypsy/Traveller count is currently under review. The 2009 count found that;

- There were 31 Council/Registered Social Landlord (RSL) sites across Scotland. 28 of these operated all year round and 3 were only open in the summer.

- These sites provide a total of 478 pitches (of which 345 (72%) were currently tenanted, 61(13%) were available for let but untenanted and 72 (15%) were unavailable for letting. There were 294 (43%) households living on Council/RSL sites, 161 (24%) on private sites and 229 (33%) on unauthorised encampments.

- Of the 31 Council/RSL sites, 8 were operating at full capacity. All 3 seasonal sites were in use at the time of the Count while the site in Glasgow remained unused.

- Around 225 (64%) of households based on Council/RSL sites had been tenants for over a year. 31% of all households had held their tenancies for 5 years or more.

- There were 22 private sites at the time of the Count, 17 of which operated all year round and 5 of which were only open in the summer. 161 households were living on private sites, with the great majority 148 (92%) having been there for 4 weeks or longer.

Key Findings

12. The analysis of the evidence gathered to inform the policy change has highlighted that in relation to residential mobile home living the two key (overlapping) groups with protected characteristics that will be impacted on are the elderly, and ill or disabled, who have chosen this form of lifestyle.

13. The Scottish Government does not consider that there is any provision within the Order which will have a negative impact on any of the protected characteristics. By the very nature of the introduction of the Order, to improve protections for all residents, the revised legislation will have positive implications for all those living in residential mobile homes irrespective of their personal characteristics.

14. It could be argued that removing the site owner's ability to approve the sale of a property and assignation of agreement interferes with their right to say who has a right to stay on their land. However, after giving full consideration to European Convention on Human rights, specifically Article 1 Protocol 1 which relates to protection of property, it was concluded that interference can be justified in the public interest and can be shown to be proportionate and justified.

15. In the interests of equality and in giving full consideration to the rights of Gypsies/Travellers as a particular ethnic group, it is right that the Scottish Government legislates appropriately to meet the requirements of this way of life, while ensuring that Gypsies/Travellers who choose to live more permanently on local authority, Registered Social Landlord or private sites are afforded almost all the same statutory rights and legal protections as the residents of permanent mobile or park home sites.

16. In giving consideration to the outcome of the consultation and in support of existing contractual relationships, the Scottish Government is ensuring that the new implied terms will apply to Gypsies/Travellers, so that they will have the same statutory protections as the residents of permanent mobile homes, with only two exceptions. These exceptions are to the provisions in the Order relating to the sale and assignation of the

agreement, and gifting of a mobile home and assignation of the agreement to a family member. These will not apply to the Gypsy/Traveller community, to reflect what happens in practice. Due to the lifestyle and mobile nature of a Gypsy/Traveller owned caravan, these provisions are not relevant to that community.

17. However, on local authority sites in particular where the site occupancy agreements are based on the Scottish Secure Tenancy, Gypsies/Travellers already have the benefit of improved protections and as such the introduction of this Order will have neither a positive or negative impact, but will ensure that the terms implied into Gypsy/Traveller agreements are relevant in relation to the mobile nature of their privately owned homes or their rented accommodation agreements.

Recommendations and Conclusion

18. The evidence has highlighted the importance of giving full consideration to the protected characteristics of age and illness/disability in development of the policy, and the needs of the Gypsy/Traveller community.

19. Care has been taken not to impact on the contractual arrangements already established on local authority Gypsy/Traveller sites, in relation to the mobile nature of home owning Gypsies/Travellers, or the tenancy agreements of those renting properties from local authorities. However the overarching principle of ensuring that Gypsies/Travellers are afforded the same statutory conditions and legal protections as those living in permanent mobile home sites has been maintained.

20. Provisions in the Order relating to the sale and assignation of the agreement, and gifting of a mobile home and assignation of the agreement to a family member, will not apply to the Gypsy/Traveller community. This reflects what happens in practice. Due to the lifestyle and mobile nature of a Gypsy/Traveller owned caravan the terms are not relevant to that community. The Scottish Government has ensured that the protections provided by this Order will insofar as they are relevant apply to Gypsies/Travellers. Members of those communities will, with the two exceptions mentioned, be in the same legal position as those living on permanent mobile or park home sites.

21. Other changes made to the policy to ensure equalities issues are addressed include removing the site owner's right to approve the sale of a

property and assignation of agreement. This will remove the main opportunity an unscrupulous site has to bully, harass and victimise a resident. The Scottish Government has also enhanced the security of tenure protection of residents where there may be occasions that they are unable to live in their home as their only or main residence, and introduced provision which means that the site owner must recognise a qualifying resident's association.

22. The Scottish Government has given due regard to section 149(1) of the Equality Act 2010 in the development of this legislative change. The positive impact on introduction of the Order will be to improve the life of all residents living permanently on residential mobile homes sites, many of whom are elderly and as such may be considered to be vulnerable.

23. The effect of the policy will be monitored by on-going engagement with the Residential Mobile Homes Stakeholder Group, including residents, industry and local authorities. The volume of related Ministerial and direct correspondence will also be monitored.

Scottish Government
8 May 2013

Business and Regulatory Impact Assessment

Mobile Homes Act 1983 – Amending Implied Terms in Written Agreements

Purpose and intended effect

1. This Business and Regulatory Impact Assessment (BRIA) provides an assessment of the impact of amending the implied terms in written agreements between residential mobile home site owners and residents of mobile homes. Scottish Ministers have the power to amend by order the implied terms of Parts 1 and 2 of Schedule 1 to the Mobile Homes Act 1983 ("the 1983 Act").

2. When introduced in 1983, the Act specifically excluded local authority sites providing accommodation for persons to whom section 24(8A) of the Caravan Sites and Control of Development Act 1960. In 1994 the Local Government etc. (Scotland) Act 1994, included a repeal of that section. As a result the implied terms became applicable, to and provided enhanced protection for, Gypsy/Traveller residents of those sites. The legislative amendments proposed will offer Gypsies/Travellers the same statutory protections as those living in permanent mobile homes.

3. The Equal Opportunities Committee recently undertook an inquiry into "where Gypsies/Travellers live". Following the outcome of the Inquiry and its recommendations, further consideration is being given to the Gypsy/Traveller communities living on private, local authority and registered social landlord Sites. This BRIA includes an assessment of the impact of amending the implied terms for both mobile home sites, including those commonly referred to as park home sites and also Gypsy/Traveller sites.

4. The Scottish Government wants to ensure every park home resident, including Gypsies/Travellers, can enjoy living in their property and in so doing ensure that the terms implied into agreements are relevant to the respective communities and lifestyle.

5. It is a key strategic objective, contributing towards the Scottish Government national outcomes, that we live in well designed, sustainable places where we are able to access the amenities and services we need and; we have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others.

6. The legislative amendments are presented as an affirmative procedure SSI to amend Parts 1 and 2 of Schedule 1 to the Mobile Homes Act 1983, and the Mobile Homes Written Statement (Scotland) Regulations which are subject to negative procedure. This BRIA is structured to clearly consider the impact on each of the respective groups.

Background

Residential Park Homes

7. Research published by the Scottish Government in December 2007 recorded that mobile homes provide permanent accommodation for a relatively small number of households in Scotland (circa 4,500). More recently Consumer Focus Investigations commissioned research into Park Homes across the UK. The outcomes of the Scottish findings were presented to the Scottish Government in April 2012. Local authorities verified 91 sites in Scotland with an estimated population of around 5,400 residents. One of the objectives of the early research was to consider the adequacy of current legislation. Further to this publication, the Scottish Government engaged directly with stakeholders representing a range of interests in the mobile homes sector, including site owners and residents.

8. It is currently accepted by stakeholders that legislation and guidance governing mobile homes is out of date and changes to the implied terms in particular, are desirable. It is clear that the majority of residents living in privately owned residential park homes are retired and often sell their permanent 'bricks and mortar' homes to move to licensed park home sites, attracted by the sense of community and perceived quality of life.

9. In October 2009, the Minister for Housing and Communities announced consultation on review of:

- Minimum standards for mobile home sites.
- Powers for Councils to allow them to enforce minimum standards.
- Improved protection for home owners through strengthened agreements with site owners.

10. In order to progress the issues arising, a stakeholder working group was established. The group includes representation from Shelter, COSLA, Fife, West Lothian, Midlothian and Moray Councils, site owner and site resident interests. In recognition of the criminal nature of some reported behaviour on behalf of site owners a representative from the Association of Chief Police Officers in Scotland (ACPOS) has also joined the group.

11. The stakeholder group identified the importance of updating written agreements between site owner and residents as set out in the 1983 Act, as a key priority. Work in relation to the site licensing regime is progressing separately.

Gypsy/Traveller Population

12. The Scottish Government has previously undertaken a twice yearly count of Gypsies/Travellers. First established in 1998, the count returned data on the Gypsy/Traveller population living on official Council and Registered Social Landlord (RSL) sites, private sites and caravans found on unauthorised encampments. However the latest data relates to 2009 as the G/T count is currently under review as the Scottish Government are looking to maximise the impact of statistical spend, and

in its current format the count offers a very limited range of data. From the 2009 count;

- There are currently 31 Council/ RSL sites across Scotland. 28 of these operate all year round and 3 are only open in the summer.
- These sites provide a total of 478 pitches (of which 345 (72%) are currently tenanted, 61(13%) are available for let but untenanted and 72 (15%) are unavailable for letting there are 294 (43%) households living on Council/ RSL sites, 161 (24%) on private sites and 229 (33%) on unauthorised encampments..
- Of the 31 Council/ RSL sites, 8 were operating at full capacity. All 3 seasonal sites were in use at the time of the Count while the site in Glasgow remains unused.
- Around 225 (64%) of households based on Council/ RSL sites had been tenants for over a year. 31% of all households had held their tenancies for 5 years or more.
- There were 22 private sites at the time of the Count, 17 of which operate all year round and 5 of which are seasonal open only in the summer months. 161 households were living on private sites, with the great majority 148 (92%) having been there for 4 weeks or longer.

13. Local authority Gypsy/Traveller site managers, representatives of the Gypsy/Traveller population and related interest groups have been engaged in the proposals to update the legislation. Although not members of the Mobile Homes Stakeholder Working Group that has overseen the main legislative changes proposed, separate stakeholder engagement at meetings and through formal consultation has taken place over the course of the last 18 months.

Current Legislative Position

<u>The Mobile Homes Act 1983</u>

14. Schedule 1 to the Mobile Homes Act 1983 sets out the rights of mobile home residents (including Gypsy/Travellers) by way of a set of contractual terms that it implies into agreements (Part 1 of the Schedule) and a list of contractual terms that a court may order to be implied into agreements (Part 2 of the Schedule). These are the terms and conditions which currently allow mobile home occupiers in Scotland to place a mobile home on a site and occupy it as their only or main residence. These implied terms are the rights and obligations residents have irrespective of whether they actually appear in their written statement.

15. The Housing (Scotland) Act 2006 amended a number of provisions of the Mobile Homes Act 1983 extending protections. In addition it inserted a new section 2B into the 1983 Act which gives the Scottish Ministers the power to amend by order the implied terms of Parts 1 and 2 of Schedule 1 to the 1983 Act. However, Section 2B(4) of the 1983 Act places a limitation on this power to amend the terms by stating that only at its first use can the amendments be used to vary existing agreements. The implication of this is that for current residents there is only one chance for them to benefit from any changes.

Legislative Change in England and Wales

16. The Department for Communities and Local Government (DCLG) and the Welsh Assembly Government have already implemented some changes to the implied terms. These came in to force in 2006 in England and 2007 in Wales. Stakeholders in Scotland are keen that similar provisions are progressed for Scotland. Additionally resident's representatives have expressed a desire that more radical change is made in relation to the criteria supporting the sale of a mobile home.

17. However changes introduced in England and Wales have been criticised for not going far enough. As a result the Mobile Homes Act was recently passed, which updates the site licensing regime by enhancing local authority powers to enforce site licence conditions, so that home owners are properly protected.

18. The changes proposed in Scotland through this SSI in relation to the amendments to Schedule 1 of the 1983 Act are similar to those that have been introduced in England.

Financial Impacts

19. The main changes proposed through the secondary legislation range from security of tenure, to the re-siting of a home and the recognition of qualifying residents associations. Implementing the majority changes proposed will not have a financial impact. This paper focuses on the provisions where there is a potential financial impact.

20. In considering the impact of these changes for private site owners of mobile park homes sites, the two areas where the proposed amendments could have greatest financial impact are:

- Assignation of Sale: As the legislation stands, approval is required from the site owner before a prospective buyer can purchase the home. This includes provision that this agreement can be given conditionally. The Order removes this power from site owners to approve sales, and;

- Payment of Commission on Sale: There exists a requirement that the site owner is entitled to receive a commission of up to a set rate (currently set at 10% by the Mobile Homes (Commissions) Order 1983) on the re-sale of each mobile home. The Order has not introduced any amendment to this provision.

21. For Gypsy/Traveller sites the provisions in relation to the sale of a mobile home, as outlined above, do not apply in practice due to the mobile nature of either the Gypsy/Traveller owned caravan or the fact the Gypsy/Traveller (family) is living in chalet style accommodation rented from the local authority. Consultation undertaken has identified that where the accommodation is a more permanent structure owned by the local authority, tenancy agreements are usually based on the Scottish Secure Tenancy agreement model. In amending the legislation there are no implications that could result in additional costs to local authorities as the site tenancy agreements and procedures in place generally go beyond the minimum protections

of the Act. The amendments however ensure that all Gypsies/Travellers living on private, local authority and RSL sites will continue to be protected by the other provisions in the legislation.

22. It should be borne in mind that currently the only recourse for residents in Scotland is through the courts. This can be an expensive process and one which many residents are not in a position to pursue. A recent case in England where the seller did take the site owner to court because of "unreasonable refusal of purchaser", cost the seller £4,000.

Objective

23. Introducing this change is a key objective, contributing towards the Scottish Government national outcomes. In particular it contributes to the objectives that "we live in well designed, sustainable places where we are able to access the amenities and services we need" and; "we have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others".

24. The Scottish Government wants to ensure every park home resident can enjoy living in their property. Additionally the Scottish Government recognises the importance of ensuring that the Gypsy/Traveller community are assured of equivalent statutory protections.

25. In relation to the residential mobile home sector we aim to;

- Improve protection for residents through strengthening written agreements with site owners.
- Ensure that the changes reflect considerable improvement in relation to the key issue that enables the sale of a mobile home to be blocked by the site owner..

26. In relation to the Gypsy/Traveller population we intend to:

- Frame the amendments to the legislation to better reflect the difference between the nature of caravan ownership and rented accommodation on Gypsy/Traveller sites and the more permanent structures on a residential mobile park home sites which are sold in situ on the site.

- Increase the clarity in statutory protections to support the Gypsy/Traveller community. This will help address observations made by the Equalities and Human Rights Commission and local authorities who have not immediately recognised the applicability of the Act.

- Ensure that the written agreements best meet the requirements of the residents.

Rationale for Government intervention

<u>Residential Mobile Homes</u>

27. Many residents of mobile homes living on sites licensed by the local authority, particularly those who own their homes, have proactively chosen to live in this type of accommodation. A significant proportion of those residents are older people

seeking a change of lifestyle on retirement. Residential Mobile Homes often provide the opportunity to release equity from the sale of a traditional house and to live in a pleasant location which could otherwise be unaffordable. This type of occupation is often referred to as park home living. Park homes have developed to such an extent that on many sites the homes are more akin to bungalows than caravans and can often be sold for prices in excess of £100,000.

28. While the park home sector only forms a small part of the wider housing market, it can play an important role in local housing markets in particular areas. Equally current demographics suggest that this is becoming a more popular way of living in retirement. Although this is more prevalent in England and Wales, (where changes to the implied terms have already been implemented), the Scottish Government recognises that there are issues, as a result of the changes to the sector, which require to be addressed to meet the needs of Scottish residents.

29. The central feature of the 1983 Act is the requirement of the site owner to serve a written statement to the resident outlining the implied terms of the agreement relating to the site and rights to occupy the pitch. Key issues which have been highlighted by stakeholders include the requirement for the site owner to approve any prospective park home buyers, and the payment of commission to the site owner on the sale of a residential mobile home.

30. While the Scottish Government recognises that most site owners operate responsibly and adhere to the implied terms as they are intended, evidence is increasingly indicating that a minority of site owners are abusing current loopholes in the legislation for their own financial gain. This is often to the financial detriment and wellbeing of residents.

31. Park home sites are run as profit making businesses and while the importance of ensuring that businesses remain viable and any changes progressed do not have a significant adverse impact on well run parks, park home malpractice ranges from unacceptable behaviour to, in its most serious form, criminal activity.

32. This said, it has been necessary to draw on a range of data sources and evidence to form a picture of what the true position is (covered further in this paper) however, it is worth noting at this stage, that DCLG commissioned an independent study into the economics of the park home industry in 2002, and although it was recognised that park home transactions may not always operate fairly in a transparent market, there was no evidence to support the fact that excessive profits were being made by site owners, across the sector as a whole.

33. Any amendments to the implied terms will not in isolation resolve the pockets of malpractice. This is only a limited legislative tool which will hopefully support wider improvement activity across the sector which also needs to include increased reporting by residents and liaison with local police.

Consultation

- **Within Government**

34. Housing Services and Regeneration Division within the Scottish Government has consulted with Local Authorities and the Convention of Scottish Local Authorities (COSLA). In addition, officials liaised with the Department for Communities and Local Government in England to learn about the changes being introduced in England. This significantly helped the development of the draft Scottish Statutory Instrument (SSI) which formed part of the public consultation.

- **Public Consultation**

35. The Scottish Government has been consulting through a Residential Mobile Homes Working Group since March 2010. The working group was established to progress the work arising from the Minister's 2009 announcement and assist the Scottish Government in examining the issues relevant to the range of legislation in more detail. The group highlighted the issue of updating written agreements between site owner and residents as a key priority. Input from the stakeholder working group was very helpful in preparing the public consultation document. Minutes of the meetings held to date are published on the Scottish Government website at:
http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privateowners/Residentialmobilehomes/mobilehomes.

36. Membership of the Stakeholder group include representatives from; CoSLA: Midlothian Council: Moray Council: West Lothian Council: Fife Council: Park Home Legislation Action Group Scotland, (PHLAGS): Willow Wood Community Company: British Holiday & Home Parks Association, (BH&HPA): National Caravan Council, (NCC): National Association of Park Home Residents, (NAPHR): Park Home Residents Action Alliance, (PHRAA): Independent Park Homes Advisory Service, (IPHAS): Association of Chief Police Officers in Scotland (ACPOS).

37. A public consultation, Mobile Homes Act 1983 - Amending Implied Terms, was carried out from 24 January to 18th March 2011. The consultation was circulated to a number of stakeholders who have previously expressed an interest in all housing matters and have registered with the Scottish Government to that effect. Additionally it was cascaded to all local authorities and the stakeholder working group with a view to onward cascade out to their members and local residents.

38. A total of 67 consultation responses were received, with 11 of these submitted by groups or organisations and the remaining 56 by individual members of the public. Of the 56 individual responses, 52 were submitted by residents from one residential park and were identical to the response submitted by their residents group. Of the 11 group responses received, 6 were submitted by residents groups from specific park homes or by campaign groups run by and on behalf of park home residents. A further five responses were received from those involved in the park home industry.

39. The main findings as outlined in the report of the consultation were that;

- responses were received from three types of respondent: individual members of the public, mobile home residents associations or campaign groups, and mobile home site owners or their industry bodies. The views expressed by individual

respondents very largely reflected that of resident group respondents;

- there were many areas in which there was very considerable or complete agreement. However, where respondents did not agree, they invariably divided according to whether they were industry respondents or resident group respondents;
- those proposals which received considerable or unanimous support included preventing any conditions being attached to the granting of the park owner's consent to a sale of a mobile home and clarification that the park owner cannot claim commission on the gift of a home;
- there were also a number of areas where opinion was divided. For example, resident group respondents supported changes to the provisions requiring a mobile home to be the only or main residence. Industry respondents largely disagreed;
- opinion was also divided about the provisions under which the occupier must request approval of a prospective purchaser from the site owner and the period of time a park home owner should have to respond to a request for approval;
- all Industry respondents supported the retention of the commission on the sale of a mobile home. In contrast, most resident group respondents were opposed to the commission system and questioned the industry's claims that any increase in the value of the home is down to the desirability of the park and investment by the site owner;
- respondents generally agreed that provision should be inserted to clarify which services are included in the pitch fee, but were divided about changes which would ensure that any costs incurred by the site owner in connection with developing the site are excluded from the calculation of the pitch fee.

40. The polarised views largely relate to the provisions around the sale of a mobile home and the possible related impact on pitch fees. This is the key area of financial impact risk. In order to further develop options and progress firm proposals this formed the main discussion at a further stakeholder meeting on 27 September 2011. The minutes of that meeting are available on the Scottish Government website at: http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privateowners/Residentialmobilehomes/mobilehomes/0911

41. The Scottish Government consulted directly with the Gypsy/Traveller community in Summer 2011 and responses made clear that there was both little awareness of the legislation and that the provisions within it were below the level of standards that are already in place. In particular, the Scottish Housing Regulator and the Scottish Social Housing Charter have introduced good practice in tenancy agreements that have been adopted, in varying degrees by all local authorities. In total, 42 responses were received from four types of respondent: individual members of the public, local authorities, registered social landlords and owners/residents of private sites. A copy of the report was published on the Scottish Government website, at http://www.scotland.gov.uk/Topics/Built-Environment/Housing/privateowners/Residentialmobilehomes/analysis.

42. In support of the consultation a meeting was held with Local Authority site

managers in September 2011; interviews were undertaken with Gypsy/Traveller communities and assistance and support provided by representatives of the Gypsy/Traveller community, Grampian Race Equality Council and Article 15. A meeting was also convened with the Showmen's Guild to consider any impact. The main findings were:

- There were many areas, in which there was complete agreement between all parties that the implied terms were not applicable to Council owned Gypsy/Traveller sites.

- There was confusion at times, particularly by individuals, regarding whether a specific implied term and its proposed change would impact on them. This can be seen as a demonstration of the lack of awareness of the existing legislation and the protections that it provides.

- Similarly where there are proposed changes to the implied terms that are likely to impact on Gypsy/Traveller sites the majority of respondents agreed that the current tenancy/site occupancy agreements between both parties, based on the Scottish Secure tenancy, often go beyond the amendments proposed. As such, respondents indicated that these proposals should not undermine, conflict or overrule existing tenancy/site occupier arrangements.

- **Business**

43. In addition to the various organisations represented on the stakeholder working group, a number of individual business and two organisations were consulted directly. 12 individual residents were also met with directly.

Organisations;
- Independent Park Home Advisory Service
- British Holiday and Home Parks Association

Businesses;
- One business near Edinburgh consisting of 115 privately owned homes
- One family run business consisting of 50 privately owned homes and 315 holiday homes.
- One family run business consisting of 80 privately owned homes and a large number of holiday homes.

Options

44. Given the overarching consensus that the implied terms require to be updated, the options for consideration focus on issues relating to the sale of a mobile home. This is where there is the greatest division in opinion, both between residents and industry. This was reflected through views expressed at the residential mobile homes stakeholder working group and polarised opinions presented through the consultation. The options considered in relation to the sale of a mobile home are therefore the focus of this paper and the options considered relate to the two issues identified in paragraph 20 - the Assignation of the Agreement on Sale: and the Payment of Commission on Sale

45. It was clear from the consultation and engagement that in amending the legislation in relation to Local Authority and Gypsy/Traveller sites, there was no financial impact. The purpose of the amendments is to ensure that Gypsy/Travellers receive, in the main, the same statutory protections as those living on permanent mobile home sites and in relation to the sale of a mobile home they are fit for purpose.

46. As regards amending the provisions relating to the assignation of the agreement on sale and the payment of commission the options available were to:

Option 1: Do nothing

Option 2: Remove or reduce the 10% commission on re-sale of a home, taking into consideration that this could result in, or be linked with, a compensating increase to the pitch fees.

Option 3: Remove the right of the site owner to approve the sale of a mobile home and the assignation of the agreement.

Option 4: Introduce deemed approval of the sale requiring the site owner to raise a court action to stop the sale and assignation if he or she objects.

Option 5: Require or give the option for residents to progress an independent valuation and/or completion of a "property questionnaire".

- **Sectors and groups affected**

47. There are two groups of people that would be affected;

- *Private residents of park homes;* changes proposed would potentially enable residents to market and sell their own property without fear of intimidation and malpractice from unscrupulous site owners.

- *Industry/site owners;* would have to adapt their business processes in relation to any revised legislative requirements. Site owners would need to ensure compliance with any new regulations and any potential financial implications of loss of income or control over the sale of property on their land.

- **Benefits**

Option 1: Do nothing

48. The Scottish Government is committed to ensuring that park home residents are able to live in successful, sustainable communities and also that these communities thrive and residents feel happy and safe living in that environment.

49. This is an expanding form of living, particularly attractive to those seeking to retire and live in a community with like-minded people. The current legislation is outdated and does not meet the needs of this form of living, particularly on sites

being mismanaged by less scrupulous owners. Doing nothing would not address these issues and would risk increasing problems as the sector expands.

Option 2: Remove or reduce the 10% commission on re-sale of a home taking into consideration that this could result in, or be linked with, a compensating increase to the pitch fees.

50. The intention would be to consider a various range of options to amend the amount of commission paid by the resident seller to the site owner on the re-sale of a mobile home. Currently this is set at *up to* 10% although evidence suggests that the large majority of site owners take the full rate of 10% commission on all sales.

51. Numerous alternatives have been considered during the policy development stage including eliminating the commission completely, reducing the percentage, a sliding scale of reduction depending on the duration of the agreement, a staggered reduction introduced over a period of time with a specified compensatory rise in pitch fees or no compensatory rise in pitch fees allowed. All options are contentious in that park owners and residents maintain opposing arguments. i.e. site owners argue strongly that the retention of commission payable at the current level of 10% is essential for the continued viability of businesses, whereas residents have an opposing argument that the commission payment is often "unearned" especially if the park is not adequately maintained and that the sale of park homes should be brought in line with the sale of most more traditional bricks and mortar housing.

52. An independent survey in to the economics of the park home industry was carried out by the DCLG in 2001 and the subsequent document "Economics of the Park Home Industry" published in 2002. Although there was no evidence of excessive profits across the sector as a whole it was recognised that in general park home transactions did not necessarily operate in a fair or transparent manner. Following further consultation in England no changes were made in relation to commission on re-sale of a property. Although this issue does remain an area of significant contention south of the border, with on-going pressure to revisit the legislation and remove the commission element, the Mobile Homes Act 2013 in England and the Regulated Mobile Homes Sites (Wales) Bill, have both retained the commission element.

53. Benefits of progressing a direct change to the commission payable include;

- Significant resident satisfaction in addressing a key area in relation to the sale of a park home which is seen as "*unfair and undeserved".*
- Introducing consistency and transparency in relation to this element of the sales process.
- Potentially partly closing a loophole which currently enables unscrupulous site owners to harass and pressure residents into selling up and moving off the park.
- Removing the issue for buyers, where the obligation to pay commission may not have been made clear at the time of purchase and therefore results in a shock at the point of re-sale.
- In recognising the importance of the role of park home living in relation to providing good quality affordable housing which supports retirement communities in particular, future residents will be encouraged to buy in to this form of living.

54. The compromise position whereby the maximum rate of commission could be reduced from 10% would not satisfy the above criteria or meet residents' preferred option. Equally industry would not be content with any reduction and as such to progress this route would not satisfy either of the stakeholder groups or be seen as of any significant benefit or value to either party.

55. The data gathered directly from a number of businesses provided evidence to support the fact that the majority of sites in Scotland are small businesses and commission is an integral part of their business model. To remove the commission could put the viability of some businesses at risk. Also, as the quality and location of the site, on land which is owned by the site owner, is an influential factor in the value of the home on re-sale. The value of the home is linked to the value of land where the site is, so commission gives the owner an incentive to maintain that land to a high standard. The decision was therefore made for the site owner to retain the ability to claim up to 10% commission on the re-sale of a property. It is worth noting that there is nothing to prevent residents negotiating the rate of commission down from 10% with the site owner.

Option 3: Remove the right of the site owner to approve the sale of a mobile home and assignation of the agreement.

56. With this option, removing the right of the site owner to approve the sale of the mobile home itself could be progressed without difficulty. However progressing the option of removing the site owner's right to consent to the assignation of the site agreement required significantly more research, as it is the assignation that confers the right of the mobile home purchaser to station the mobile home on the site owner's land. Any removal of this consent has to be considered taking into account Article 1 of Protocol 1 (A1P1) of the European Convention on Human Rights, to ensure that there is no unwarranted interference with the site owner's peaceful enjoyment of his or her property/land.

57. Therefore, although there could potentially be some risk associated with this option there would be clear and important benefits for residents in that;

- It would allow the resident home owner to market and sell their own property without interference from the site owner.

- As this option completely removes the "approval process" there is no necessity to share details of any prospective buyer with the site owner. As such, this removes the possibility of "sale blocking" for the financial gain of the site owner (a major concern of residents).

58. In order to progress this matter full consideration was given to a number of areas in relation to A1P1, including related case law, covering:

- what property rights exist;
- whether there would be an 'interference' with such a right;
- assessing whether interference is justified

59. As a result of this research, the Scottish Government has concluded that the

removal of the ability for any input of the site owner on the assignation of sale is compliant with the European Convention on Human Rights. The Scottish Government is satisfied that doing so, while retaining the commission, strikes an appropriate balance between landowner and occupier and is justified in terms of the Convention. Provision is included in the draft Order for it to remove the requirement for the resident to seek the approval of the site owner to sell their home and assign the agreement. The new implied term will allow an occupier to sell the mobile home and assign the agreement providing the commission is paid. The Order also ensures that any express term agreed which is inconsistent with the new implied term is of no effect.

Option 4: Introduce deemed approval of the sale requiring the site owner to raise a court action to stop the sale and assignation if he or she objects.

60. There are risks with this option and also the evidence suggests that automatic approval, unless the site owner had a reason to take court action to stop the sale, would not close the main loophole of unscrupulous site owners inventing faults with the home to discourage prospective buyers.

61. In progressing with this option there would still have to be a requirement for the site owner to be notified of the sale and the seller's identity, in order for the owner to consider whether or not to object. This would need to happen in advance of the sale to give the owner time to take an appeal to court. The issue therefore remains at the point at which a site owner communicates with a prospective buyer to consider the approval of the buyer prior to the point of sale, leaving the opportunity for abuse to continue.

62. The benefits associated with this option are minimal but weighted towards residents.

- Residents living on well managed sites may benefit from this option as a site owner is unlikely to take an appeal to court unless there is a serious and valid reason for objecting to the incoming resident.

Option 5: Require or give the option for residents to progress an independent valuation and/or completion of a "property questionnaire".

63. Within this option there are alternatives. Progressing either the questionnaire or the valuation or both. The main issue the Scottish Government is trying to address remains the unscrupulous blocking of sales. The property questionnaire in itself is unlikely to bring significant advantages as in essence this is only a declaration by the seller that the information about the property is accurate and factual. Equally some early engagement with estate agents reflected limited knowledge with regard to the sale of mobile homes, therefore requiring residents to arrange valuations when not always necessary is disproportionate to the scale of the industry and related problems in Scotland.

64. An independent valuation, should the resident so choose, would assist in tackling the main issue identified, which is prospective buyers being dissuaded away from the sale by site owners claiming there are defects with the home. One of the

main challenges to be overcome could be legislating for occasions where a site owner refuses to let estate agents or surveyors on the site. One option considered s to set out that a site owner has to provide particular information within a set period of time, to a home owner and potential valuer to support this. The benefits of this option would include:

- It would appear to present a way of tackling the main problem with the consent requirement.
- It could partly satisfy site owners in that the consent requirement is retained.
- It would satisfy residents in that they would be free to market and sell their own property through an estate agent of their choice.
- It would also satisfy residential mobile home purchasers as it would ensure that they are provided with accurate information in relation to the condition of the property.

65. The most significant benefit would be gained by providing that the site owner must allow any estate agent access to the site and the pitch where the home is for sale in addition to removing the consent requirement

- **Costs**

Option 1: Do nothing

66. This option presents no costs in relation to implementation. However there is evidence to suggest that a significant minority of residents would continue to lose out financially if no change was progressed. Sale blocking by some site owners results in residents being forced to sell their property at a price often well below the market value or face the cost of taking legal action to contest the reason for the site owner blocking the original sale.

Option 2: Remove or reduce the 10% commission on re-sale of a home considering corresponding increase to the pitch fees.

67. Although the exact cost implications in relation to this option would depend on the specific change made to the commission payable, the overarching principle remains that without a compensatory rise in pitch fees any reduction or elimination of commission payable to site owners on the re-sale of a property is potentially a reduction in business income. It is likely therefore that without increasing the pitch fees, the consequences for site owners would be a reduction to their profitable income irrespective of the specific option progressed. The impact of this could be a reduction in spending on maintaining the standards on site.

68. In giving consideration to provision allowing for compensatory pitch fee increases, the impact on costs for residents is of equal importance. Turnover on the sale of homes is actually very low. The average turnover ranges from 6% to 8.5% annually, although this will obviously vary from year to year and site to site. Many residents are happy on site and have chosen this form of retirement living with no intention of selling, having sold their bricks and mortar property to release equity and retire to the retirement communities many park home sites offer. Any scenario therefore which reduces or eliminates commission on the sale of a property while

enabling a compensatory pitch fee increase, whether immediate or staggered, potentially creates an imbalance with residents who have no intention of selling. The greater majority of residents (say 91.5%) who make the choice not to sell could potentially have an increase in pitch fees imposed to cover the losses of no commission payable for the small minority (say 8.5%) of residents who decide to sell their property.

69. The industry/site owners make reference to their tripartite income, each element considered a vital part of their business income. The three areas referred to are the finance generated from the sale of a brand new home (this income reduces as sites/parks become more established and no new homes are introduced), pitch fees and the commission on re-sale of a property. Concerns are consistently expressed by site owners that any change to the balance of this income would have detrimental effect on the viability of businesses.

70. For illustrative purposes, using a small established (no introduction of new homes) retirement park with 27 homes:

- Pitch fees would amount to an annual income of £27,000 (£1,000 per year per home);
- With 27 homes on the park, assuming an average sale turnover of 8.5%, just over two homes per year would be sold. Assuming an average price of £75,000 per home, commission on the re-sale of both these homes would generate income of £15,000 for the site owner.

In this scenario the commission is an important element as it equates to 35% of the total income of £42,000. In simple terms pitch fees would be required to increase to £1,555 per year per home, an increase of 55.5%, to maintain business income if commission were eliminated. If commission were abolished and pitch fees were potentially increased by such a large percentage this would reduce the attractiveness of this form of living.

Option 3: Remove the right of the site owner to approve the sale of a mobile home and assignation of the agreement.

71. The most obvious financial gain with this option will be for the resident seller who is trying to sell their property on a park being deliberately mismanaged by the site owner. It will not impact financially on a well run site where a resident is free to market and sell their property without interference from the site owner. However it could also be argued that if the resident was free to market and sell their own property in a competitive market, at full market value, and the commission on re-sale was retained, there is appropriate legal financial gain for site owners. With this option there would be a requirement on the resident seller to give the prospective purchaser a copy of the written statement to ensure they are clear on their obligations at the point of sale.

72. Currently, to allow for the process of approval on sale, any prospective buyer's details must be shared with the site owner. This enables rogue site owners to make contact with the prospective buyer and claim faults with the home or other issues to dissuade the buyer off from buying the property. In turn, it provides the opportunity for the site owner to profit by selling that buyer one of their own homes on the park.

As this approval procedure must be undertaken every time there is a prospective buyer, the resident seller can often be left with the property for years until they finally have to accept the site owner's offer to buy the mobile home at a greatly reduced price. Stakeholders claim that sometimes residents have to accept offers at only 25% of the market value of their property. These are homes the site owner then sells on for their full market value.

73. The value of a park home takes into consideration the value of the home and the quality, location and amenity of the land on which it is sited. The original price of the home depends on the make, model, size and furnishings requested by the original purchaser. This is the 'un-sited' price of the home. However, the final price of buying a new park home, takes into account the cost of siting the home and the value of the home once it is sited on the park. This depends on several factors, such as the location of the park, amenities and the location and size of the plot.

74. The sale price of a park home therefore varies enormously from around £40,000 to upwards of £100,000.

Option 4: Introduce deemed approval of the sale requiring the site owner to raise a court action to stop the sale and assignation if he or she objects.

75. Costs in relation to this option are difficult to ascertain. Although there are obvious implications for businesses in having to take an appeal to court in order to block a sale, in reality the cost of the challenge and the risk in losing is likely to deter site owners from exercising this right.

77. It is perhaps worth noting that this option would not prevent the site owner from contacting the prospective purchaser and attempting to dissuade them from buying the mobile home.

Option 5: Require or give the option for residents to progress an independent valuation and/or completion of a "property questionnaire".

78. The cost in relation to progressing a property questionnaire scenario would not be known until a scheme was worked up and the detail in place. However there would be costs borne by the mobile home owner if the model reflects a similar process to the property questionnaire which forms part of the home report.

79. An independent valuation would also introduce costs into the process. However this could potentially be offset by the seller being free to sell their property though an estate agent of their choice, to obtain the full market value of the property without the interference from the site owner where persistent blocking of sales invariably reduces the price the property is eventually sold for.

Scottish Firms Impact Test

80. In setting out fully to understand the impact that the proposed changes might have on Scottish Businesses the Scottish Government adopted various approaches:

- Ongoing engagement with industry bodies as part of the Residential Mobile

Homes Stakeholder Group.

- Direct interviews with site owners.
- Development of a questionnaire which was issued to a range of companies of varying scales which operate within the sector.

81. The face to face discussions and analysis of the questionnaire gave businesses the opportunity to input into shaping the proposals in addition to consideration of the public consultation. This information was instrumental in retaining the option to enable site owners to claim up to 10% commission on the resale of a property.

Percentage of new units, re-sale and ratio of re-sale and new units for residential parks

	New Units	Re-sale	Ratio Re-sale/New Units
Residential	30%	70%	2.3

82. Although the response rate to the questionnaire was relatively low, the 3 interviews conducted highlighted the strength of feeling in relation to the importance of retaining the option of commission for small businesses. The evidence gathered also supported the fact that the majority of sites in Scotland are small businesses and commission is an integral part of their business model. Also, in giving consideration to the range of stakeholder interest, removing the approval process and retaining commission, as the value of the home is partly attributable to the value of the home's location and the amenity etc on site, strikes a fair balance between the interests of residents and owners.

83. The results were then presented and discussed with the Residential Mobile Homes Stakeholder Working Group who agreed and signed off the proposals at their meeting on the 13 September 2012.

- **Competition Assessment**

84. The new and amended provisions will apply to all sites governed by the Mobile Homes Act 1983. However, the main market affected is the privately owned residential mobile homes side of the sector. It is not anticipated that the proposals will have any impact on competition or the range of park home businesses, as in retaining the option to enable site owners to claim commission on resale, the changes proposed will not have any direct financial impact on businesses being run legitimately.

85. The importance of the business impact to smaller businesses relative to large sites and companies with multiple sites was one of the key factors in retaining the commission provision.

86. The proposed provisions include a number of implied terms that will help to address the issue of poor or unscrupulous site owner practice. By closing some of the current legislative loopholes site owners will be under increased obligation to adhere to the implied terms in a more consistent, fair and transparent manner, which will help ensure that bad site owners do not gain a more competitive advantage in

the market place.

- **Test run of business forms**

87. There are no new business forms proposed.

Legal Aid Impact Test

88. We anticipate any rise in the demands placed on the legal system as a result of this proposal would be very slight. The sector concerned is a small one, and so any impact on legal aid expenditure will be minimal.

Enforcement, sanctions and monitoring

89. The implied terms represent a part of the contractual arrangement between the site owner and resident. It is for parties to the written statement to ensure that it complies with the requirements of the terms set out in parts 1 and 2 of schedule 1 to the Mobile Homes Act 1983.

90. The legal dispute resolution mechanism in Scotland is through the courts. However prior to either party progressing litigation it is often more appropriate to resolve disputes by adjudication, mediation, liaison and support from an Advisory Service for people in the residential mobile homes sector or Industry Body.

91. The court therefore acts as final decision maker in relation to dispute resolution for the implied terms and can make an order to terminate an agreement if it is satisfied that it is reasonable under certain criteria. The court can also order that the mobile home has to be moved for a period of time if it is reasonable to do so and the other pitch is comparable.

Implementation and delivery plan

92. It is anticipated that the Order and Regulations will come into force on 1 September 2013.

93. The Scottish Government will continue to work in partnership with the Residential Mobile Homes Stakeholder Working Group, to develop related guidance to support implementation of the policy.

94. The Scottish Government will, in liaison with industry stakeholders, develop a strategy for publicising the implications and responsibilities of the introduction of the new legislation as it will apply to site owners. Information on the changes will also be cascaded for other interested parties, particularly residents of permanent mobile homes sites. We will work with local authorities to co-ordinate dissemination of information to ensure maximum coverage and quality of information across local authority licensed protected sites.

Post-implementation review

95. There is no timescale for review specified in the Order or Regulations although the Scottish Government is committed to review within 10 years of the legislation coming into force. The Scottish Government will also continue to work with stakeholders to monitor the impact and benefits as a result of the introduction of the revised and new implied terms.

Summary and recommendation

96. The table at Annex A summarises the recommendations, costs and benefits.

Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed by the accountable Minister:

Margaret Burgess
Minister for Housing and Welfare

Date: 25 April 2013

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Annex A: Recommendations, Costs and Benefits

Implied Term	Current Issue and anticipated Benefits	Costs
Termination of an agreement to live on the site by the Site Owner	Currently the site owner is able to terminate the agreement for a resident to live on the site "forthwith" following the agreement of the Court. This has resulted in residents being forced to leave the site at short notice. The Order will introduce that the Court must be satisfied that it is reasonable for the agreement to be terminated and will determine the date of the termination.	None, the recommendation will not increase the number of court cases. There could actually be potential for reduced cases as the proposal could act as a deterrent for site owners to progress court action to force residents to leave unreasonably.
Recovery of any overpayments by the occupier (resident)	The site owner is currently not under a duty to repay any overpayments made within any set time period. This has resulted in instances where residents are unable to reclaim monies without taking court action. The Order will introduce that, if an agreement is terminated, the owner must within 2 months of the date of termination, repay to the occupier so much of any payment as is attributable to the period after the date of termination..	None, the recommendation has the potential to reduce court cases by acting as a deterrent for site owners not to repay monies owed.
Conditions relating to the sale of a mobile home	Approval of purchaser: Currently, in order for a resident to sell their home the site owner is required to approve the assignation of the agreement. In essence this is an approval of the incoming resident. Evidence has suggested that this can lead to the blocking of sales and other unscrupulous practice to the detriment of the resident. After detailed consideration of this issue, including business impact analysis, it is our intention to remove this provision. The effect of this is that a site owner will no longer have a	No cost to legitimate businesses.

	say over who a resident sells their caravan to. 10% Commission on re-sale**:** On sale of a residential park home the resident is required to pay up to 10% of the sale price to the site owner. It is argued by site owners that this money is reinvested in the facilities and amenity of the site. After detailed consideration of this issue, including business impact analysis, it is our intention not to remove this provision. Instead, issues relating to this are to be addressed through increased awareness raising to prospective purchasers through clearer presentation in the written statement of agreement between the site owner and resident.	None, now that a resident will be free to market and sell their own property in a competitive market, at full market value there is potential for appropriate legal financial gain for site owners. By providing that neither the sale nor assignation will have effect until the commission is paid will ensure that the payment of legitimate commission to the site owner is safeguarded.
The gifting of a mobile home	The law is currently unclear that commission cannot be claimed by the site owner when the mobile home is gifted to a family member. The Order will clarify that the site owner cannot claim commission on the gift of a mobile home. In line with the sale of a mobile home the approval of the owner is no longer required.	None for legitimate businesses
The resiting of a mobile home by the site owner	The site owner can currently require the home to be moved so long as it is to a broadly comparable pitch and there are no protections with regard to the specialist equipment and training required to move the home. This has resulted in some instances of homes being moved without residents' consent in order for the site owner to sell a new home on the more desirable pitch.	None

	The Order will improve the protections of the resident to ensure that the site owner cannot move the mobile home, except for essential repair or emergency works, without application to the court. The Order will also set out that the mobile home must be returned by the site owner at the end of the period set by the court or when the essential repair or emergency works have been completed, if the occupier so requires.	
The right to undisturbed possession of the mobile home	There is presently no legal protection The Order will confirm that a resident is entitled to the undisturbed possession of their home and the pitch.	None
Owner's right of entry to the pitch	There is presently no legal protection The Order sets out when the site owner has an implied right to enter the pitch.	None
The Pitch fee	There is presently no legal protection The Order sets out a number of provisions that relate to the payment and agreement on the level of pitch fee payable by the resident to the site owner.	None for legitimate businesses
Occupier's obligations	There is presently no legal protection. Lists the resident's obligations to the site and site owner.	None
Owner's obligations	There is presently no legal protection. Lists the site owner's obligations to the resident.	There may be minimal administrative cost to the site owner as at the annual pitch fee review date the site owner will be required to give written notice of the pitch fee proposals to the resident.
Owner's name and address	There is presently no legal protection. The Order will establish that the site owner will be required to	There may be minimal administrative cost to the site owner as the information has to be

	inform the resident and any qualifying residents' association, in writing, of the name and address of the site owner at which notices (including notices of proceedings) may be served.	given in writing.
Qualifying residents' association	There is presently no legal protection There are reported incidences of site owners failing to recognise the views of representative Residents Associations and pushing through unfavourable changes as a result. The Order will enables Resident's Associations to be constituted provided certain listed criteria are met.	May be minimal costs associated with the establishment of any new residents' association.