EXPLANATORY MEMORANDUM TO

THE MOBILE HOMES (PITCH FEES) (PRESCRIBED FORM) (ENGLAND) REGULATIONS 2013

2013 No. 1505

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations prescribe the form which must be used where a site owner proposes to review the pitch fee on a mobile home site, under the new procedures for conducting a pitch fee review, inserted into the Mobile Homes Act 1983 ("the 1983 Act") by the Mobile Homes Act 2013 ("the 2013 Act"). The form is designed to provide greater transparency in pitch fee reviews, to help mobile homes owners understand the amount that they are being charged and ensure that site owners are not able to add unfair charges onto the pitch fee.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 The 2013 Act amends the law in relation to mobile homes, by making amendments to the Caravan Sites and Control of Development Act 1960, the Caravan Sites Act 1968 and the 1983 Act. This instrument is the second of a number of implementing statutory instruments, and follows the Mobile Homes (Selling and Gifting) (England) Regulations 2013, which came into force on 26th May 2013. A further statutory instrument will follow to implement the new provisions in relation to site rules.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 There are around 85,000 mobile homes on about 2000 sites in England. These sites are often laid out as private estates and most services and facilities are provided by the owner. Residents own their homes, but have a licence to occupy particular plots (called pitches) on the sites in return for paying a licence fee. This is called a "pitch fee" and it is usually payable monthly in advance.

7.2 The 1983 Act governs the contractual arrangements between residents and site owners. It provides mobile home residents with security of tenure so the licence (pitch agreement) can only be terminated on the authority of a court and the court can only authorise termination on specific grounds. The Act also implies certain terms into the pitch agreement, which override any express terms to the contrary. The implied terms set out certain statutory obligations and rights of the parties, including a right for the resident to sell their home and a right of the site owner to receive 10% of the purchase price as a commission. It also sets out the parties' respective repairing liabilities. In particular the site owner is required to keep in repair the site, its facilities and services. It is also implied into the pitch agreement that the site owner must consult with residents and any qualifying residents' association about proposed improvements to the site.

7.3 A key implied term sets out how and when pitch fee reviews are conducted and what can be included in such a review. Reviews are annual and there is a presumption that the pitch fee will only be changed by the annual change in the Retail Price Index (RPI) since the last review, unless this would be unreasonable having regard to the matters set out in paragraph 18(1) of the implied terms[1], which are:

- The cost of improvements to the site which benefit the residents and which were consulted on and agreed to by the majority of residents;
- The cost of implementing any relevant change in the law affecting the management of the particular mobile home site (except such legislation which is specifically excluded).
- The effect of any decrease in the amenity of the site or in its condition (or that of adjoining land under the ownership of the site owner) or reduction in or deterioration of any services to the site which has occurred since 26 May 2013 (and continues to occur).

7.4 Certain other costs are specifically excluded from being included in a pitch fee review. For example, costs incurred as a result of enforcement action by the local authority (in relation to its licensing functions under the Caravan Site and Control of Development Act 1960) and those incurred in court or tribunal proceedings.

7.5 A pitch fee increase cannot be imposed. If the resident does not agree to the proposal and the site owner wishes to pursue it they would need to

[1] Paragraph 18(1) of Part 1 of Schedule 1 to the Mobile Homes Act 1983.

apply to a tribunal to seek its determination of the appropriate fee. In the meantime the existing pitch fee remains payable. A resident can similarly make an application to a tribunal, but this is more unusual. If no application to a tribunal is made the pitch fee review ends for the year, with no change implemented.

7.6 Pitch fee reviews are, therefore, regulated to ensure that site owners are sufficiently funded to meet their obligations to manage and maintain the sites, whilst residents are protected against unreasonable increases in pitch fees. (It should be noted that site owners have other income strands, including, as mentioned, commission on home sales and also the proceeds from homes they sell directly.)

7.7 Although reviews are restricted to cover the matters outlined in paragraph 7.4 and residents are not obliged to pay any increase, the position was, until the changes introduced by the 2013 Act, that there was no requirement in the notice of review to provide residents with any explanation about how the pitch fee has been worked out or what the effect of the notice was. This led, for example, to review notices being framed as demands; the wrong rate of RPI being used in the calculation of the pitch fees and charges being included for matters which are not permitted to be included, such as repairs to site infrastructure. Whilst a resident was (and continues to be) entitled to receive documentary evidence in support of a pitch fee review, it was often difficult for the resident to identify what was required when the notice did not explain what had been included in the review and the site owner was unwilling to give that information.

7.8 This lack of transparency could often lead to unlawful charges being included in reviews which residents believed they must accept. It also led to unnecessary disputes being taken in the tribunal, which could have been avoided altogether if the information on how the pitch fee had been worked out within the statutory framework were given at the time of the review notice.

7.9 The aim of the prescribed form is to ensure that such information is provided. This will reduce the opportunity for exploitation and can ensure mistakes are avoided when proposing a review. It also means that having been given all the necessary information about how the pitch fee review has been worked out, a resident will be better informed to make a decision about whether or not to agree to the proposal.

7.10 Failure to use the form in connection with a review means that the review is of no effect and the site owner is not entitled to any increase in the pitch fee.

8. Consultation

8.1 In 2012, the Communities and Local Government Select Committee held an inquiry into the park homes sector. In its report published in June 2012, the Committee commented that malpractice in the sector was

widespread "and complaints from residents about unfair fees [and] poor maintenance …are common".[2]

8.2 The Government consulted in the spring of 2012 on reforms to the sector. It asked for views on whether site owners should be required to provide a written statement specifying how the pitch fee is calculated and giving information about its implementation (Question 22).

8.3 The consultation suggested that the statement should identify:

- The rate of change in the Retail Price Index since the previous review and how that rate has been applied to the existing pitch fee;
- Any adjustments (including reductions) that are required or are proposed to be made to that pitch fee in account of relevant changes since the last review and his statement will include a brief description and explanation of those changes;

and contain information about when and how the proposed pitch fee becomes payable.

8.4 We received 263 responses to question 22. There was almost universal agreement to this proposal, with only two consultees disagreeing. Site owners commented that most good site operators already provided this information. They said it could offer a clear and straightforward means of itemising the current pitch fee and any additional charges. However, some said that care needed to be taken to ensure the accounting for the pitch fee did not become overly burdensome.

8.5 The consultation response document can be downloaded from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11086/2238637.pdf. .

8.6 There has been no formal consultation on the content of the form given the tight timetable and the need to bring the regulations into force as soon as possible after the commencement of the relevant sections of the 2013 Act, following the amendment to the commencement provisions of the Bill which was accepted at Report in the House of Commons. However, there has been informal dialogue with key partners representing the industry and residents, which has helped inform the drafting of the form. The form essentially provides the information that we proposed it should provide in the consultation paper.

9. Guidance

9.1 No formal guidance is planned to be published. However, DCLG will be issuing leaflets targeted at all home owners, explaining the changes introduced by 2013 Act and our fact sheets on the website will be updated accordingly. DCLG also plans to launch a telephone advice line operated by

[2] http://www.parliament.uk/business/committees/committees-a-z/commons-select/communities-and-local-government-committee/inquiries/parliament-2010/park-homes/

the Leasehold Advisory Service through which site owners and residents will be able to obtain initial advice on their rights and responsibilities.

10. Impact

10.1 An Impact Assessment has been prepared for the changes introduced by the 2013 Act. This envisages an overall net benefit of £1.87 million per annum and cost to business by measures directly impacting of £0.2 million. A copy of the Impact Assessment can be downloaded from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15288/121120_4_MHA_83_IA_for_publication_final__3_.pdf .

10.2 That Impact Assessment estimated administration costs of providing residents with the form and information required therein is a cost to business of £178,684 per annum.

11. Regulating small business

11.1 The measures in these regulations will have a minimal impact on small businesses, by requiring site owners to serve an additional document on residents to accompany a notice of pitch fee review. The overall scheme in the 2013 Act impacts upon small businesses as most mobile home site owners are small or micro businesses. Clearance from BIS and HM Treasury was obtained to bring into force certain sections of the Act ahead of the end of the moratorium on regulation of micro businesses on 31st March 2014.

12. Monitoring & review

12.1 A review of all the amendments brought in by 2013 Act will be carried out in 2017, three years after commencement of the licensing provisions in sections one to seven of the Act, which will come into force on 1st April 2014. The Department will keep these Regulations under review to ensure the form reflects practice and development of the law on pitch fees as it emerges through precedence.

13. Contact

Robert Skeoch at the Department for Communities and Local Government Tel: 0303 444 3701 or email: Robert.skeoch@communities.gsi.gov.uk can answer any queries regarding the instrument.