These notes refer to the Mobile Homes Bill
as brought from the House of Commons on 3rd December 2012 [HL Bill 66]

MOBILE HOMES BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Mobile Homes Bill. They have been prepared by the Department for Communities and Local Government, with the consent of Lord Best, the peer in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Mobile Homes Bill amends the Caravan Sites and Control of Development Act 1960 ("the CSCDA 1960"), the Caravan Sites Act 1968 ("the CSA 1968") and the Mobile Homes Act 1983 ("the MHA 1983"). It brings the licensing regime that applies to mobile home sites in England under the CSCDA 1960 more closely in line with other local authority licensing regimes and also includes a power to enable the Secretary of State to introduce by way of secondary legislation a "fit and proper" person requirement for managers of sites. The Bill amends section 3 of the CSA 1968 by extending the scope of the offences under that section. It amends the MHA 1983 by removing the requirement for site owners to approve a purchaser of a mobile home (or a person to whom a mobile home has been gifted) and makes new provisions instead for sales, gifts and assignments under the MHA 1983. It also introduces new requirements about site rules and provides a framework for better transparency on pitch fee reviews. Details of these provisions are contained in the commentary to the clauses below.

4. The policy rationale for the new provisions is that the law relating to mobile homes is ineffective and outdated. The problems were highlighted in the Communities and Local Government select committee report published in June 2012 following an inquiry into the

industry. The committee found that "malpractice is widespread across the park home[1] sector" and the current law is inadequate because it "neither deters the unscrupulous park home site owner from exploiting residents nor provides local authorities with effective powers to monitor or improve site conditions"[2]. The committee identified that sale blocking and site conditions were significant problems in the sector and it made recommendations to improve the licensing regime and to remove the opportunity for site operators to block sales. The findings of the committee were mirrored by many of the 600 responses to the Department for Communities and Local Government's public consultation which ran from 16th April to 28 May.

5. The Bill addresses the problems identified by the committee and through the consultation. The Government accepts that although there are good site owners, malpractice in the sector is widespread. It is intended that the Bill will raise standards in the industry so that it delivers a more professional service to home owners and to ensure the opportunity for blocking sales is removed and effective enforcement action can be taken against those operators who fail to comply with their licence obligations. Through these measures unscrupulous operators will no longer be able to profiteer in this sector by ignoring their responsibilities and exploiting home owners. Those operators that choose to remain in the sector without reforming their practices may in the future find themselves unable to do so by the introduction of a "fit and proper" requirement.

TERRITORIAL EXTENT AND APPLICATION

6. The Bill extends to England and Wales but it does not alter the legal position in relation to Wales. The new provisions contained in the Bill apply in relation to England only.

COMMENTARY

Licensing

Clause 1: Fees

7. This clause amends the CSCDA 1960 to allow local authorities to charge fees in relation to the licensing of "relevant protected sites" in England and to enable them to recover

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[1] "Mobile Home" is the term used in the MHA 1983 to describe what are commonly called park homes. The CSCDA 1960 and the CSA 1968 both use the term "caravan" but the definitions of "caravan" and "mobile home" are the same. See section 29 of the CSCDA 1960. These notes use the term "mobile home".

[2] The Report is available on http://www.parliament.uk/business/committees/committees-a-z/commons-select/communities-and-local-government-committee/publications/

the costs incurred in operating licensing schemes. The definition of 'relevant protected site' is being inserted into Part 1 of the CSCDA 1960 by subsections (3) and (7) of this clause. A relevant protected site is a site requiring a licence other than one which is for holiday use only or is otherwise not capable of being used all year round. This is similar to the definition of a 'protected site' provided in the CSA 1968, although the definition of a 'protected site' includes local authority sites, which are excluded from the definition of a 'relevant protected site', as such sites are exempt from the licensing regime. New section 5A(6), inserted into the CSCDA 1960 by subsection (3) of this clause, sets out that if the planning permission or site licence for a site specifies that it is for holiday or seasonal use only, but there are also conditions which allow the occupier or an employee of the occupier (who does not occupy the caravan under an agreement to which the Mobile Homes Act 1983 applies), to live on the site all year round, then these conditions are to be disregarded for the purpose of determining whether a site falls within the definition of 'relevant protected site'.

8. Subsection (2) inserts subsections (2A), (7) and (8) into section 3 of the Act. Subsection (2A) allows a local authority to require that an application for a site licence for land to be used as a relevant protected site is accompanied by a fee, the amount of which is fixed by the local authority.

9. Subsection (3) inserts section 5A after section 5 of the CSCDA 1960. Section 5A applies to a site licence in respect of a relevant protected site. This section provides that the local authority who issued the licence may fix an annual fee which they require the licence holder to pay and must inform the licence holder of the matters to which they have had regard when fixing the fee for the year in question, including in particular the extent to which they have taken account of deficits or surpluses from previous years. The provisions set out that where an annual fee under this section has become overdue, the local authority may apply to a residential property tribunal for an order requiring the licence holder to pay by the date and in the manner specified. Where a licence holder fails to comply with an order from the tribunal made under this section within 3 months, the local authority may apply to a residential property tribunal for an order revoking the site licence.

10. Subsection (4) inserts subsection (1B) into section 8 of the CSCDA 1960. This subsection provides that where the holder of a licence for a relevant protected site in England makes an application to alter the conditions attached to the licence, a local authority can require the application to be accompanied by a fee, which is fixed by the local authority.

11. Subsection (5) inserts subsection (1A) into section 10 of the CSCDA 1960. This subsection provides that where an application is made for consent to the transfer of a site licence of a relevant protected site in England, a local authority can require the application to be accompanied by a fee, which is fixed by the local authority.

12. Subsection (6) inserts section 10A after section 10 of the CSCDA 1960. This section applies where a local authority proposes to exercise the power to charge a fee under section 3, 5A, 8 or 10 of the Act. Subsection (2) of section 10A provides that a local authority must

prepare and publish a fees policy before charging any fee under these sections. The intention is that the new powers to charge fees will be used by local authorities in a way limited to recovering the costs of exercising their licensing functions as they relate to relevant protected sites. Subsection (3) requires local authorities to have regard to the fees policy but also enables them to grant exemptions from the fees and to set different fees in different cases. For example, a local authority may decide to provide an exemption for owners of small family sites that are not run for commercial gain. Subsection (4) sets out certain costs that the local authority may not take into account when fixing a fee for the purpose of this section. Subsection (5) provides that if the local authority propose to charge an annual fee under section 5A, the fees policy must include provision about the time at which any such fee is payable. Subsection (6) provides that the local authority may revise their fees policy, and where they do so they must publish their revised policy.

13. Subsection (8) inserts sub-paragraph (3) into paragraph 19 of Chapter 2 of Part 1 to Schedule 1 to the MHA 1983. Sub-paragraph (3) provides that for protected sites in England, when determining the amount of the new pitch fee, no regard may be had to any fees paid by the site owner to accompany an application for site licence conditions to be altered or an application for consent to transfer a site licence. However, site owners will be able to recover the cost of the annual licence fee through the pitch fee review, by adding this to the pitch fee in the first year that the licence fee is introduced. The cost of the licence fee will then remain part of the pitch fee and any subsequent RPI increases will be applied to it.

Clause 2: Local authority discretion on application to issue or transfer licence

14. Clause 2 amends sections 3 (issue of site licences by local authorities) and 10 (transfer of site licences, and transmission on death, etc) of the CSCDA 1960. The effect of the amendments to subsections (4) and (5) of section 3 made by subsection (1) of clause 2 is to confer discretion on a local authority when deciding whether to issue a site licence to the occupier of land who has made an application for a site licence authorising the use of that land as a relevant protected site under section 3(1). Currently, as long as the applicant can show that the necessary planning permission for use of the land as a caravan site has been granted and has provided the required information, the local authority has no option but to issue the licence. New subsections (5A) to (5F) of section 3, inserted by subsection (2) of this clause, confer a power on the Secretary of State to make regulations (subject to the negative resolution procedure) that:

- require a local authority, where they have the new discretion not to issue a licence, to have regard to the matters prescribed in the regulations when deciding whether to issue one;
- require a local authority, where it decides not to issue a licence, to notify the applicant of the reasons for that decision;
- confer on an applicant a right of appeal to a residential property tribunal against a decision of a local authority not to issue a site licence;

- provide that no compensation may be claimed by the applicant for loss suffered in consequence of the decision pending the outcome of an appeal.

15. Subsection (3) of clause 2 inserts new subsections (1B) to (1F) into section 10 of the CSCDA 1960 – section 10 makes provision about the transfer of site licences with the consent of the relevant local authority where a licence holder ceases to occupy the land. New subsection (1B) confers a power on the Secretary of State to make provision in regulations requiring the person applying for the transfer of a licence for a relevant protected site to provide the local authority with such information as it may require. Under new subsections (1C) to (1F) the regulations may also make provision equivalent to that which may be made in relation to the issue of site licences under new subsections (5A) to (5F) of section 3 as set out above. Subsection (4) of clause 2 amends subsection (3) of section 10 of the CSCDA 1960 so that that subsection will no longer apply where the application concerned relates to a relevant protected site. This is consequential on the amendments to section 3 of the CSCDA 1960 made by the clause.

Clause 3: Site licence conditions: appeals

16. This clause amends sections 7 and 8 of the CSCDA 1960, to provide that where a person appeals against a condition attached to a site licence under these sections, where a site is in England, the appeal shall be brought to a residential property tribunal, rather than a magistrates' court. It also inserts subsection (1A) into section 7 of the CSCDA 1960, which provides that where a residential property tribunal varies or cancels a site licence condition under this section, it may also attach a new condition to the licence in question.

Clause 4: Compliance notices

17. This clause amends section 9 of the CSCDA 1960 so that it applies only to sites other than relevant protected sites in England. New sections 9A to 9C are introduced into the Act to replace the provisions of section 9 for relevant protected sites in England.

18. Section 9A deals with the breach of a licence condition in relation to a relevant protected site in England. Under the existing provisions in section 9 of the CSCDA 1960, an occupier of land who fails to comply with a site licence condition is guilty of an offence. However, new section 9A provides that where it appears to a local authority that an occupier is failing to comply with a licence condition, the local authority may serve a compliance notice on the occupier, which contains the information specified in subsection (2) of section 9A, including the steps that the occupier must take to ensure that the licence condition is complied with. The new provisions provide the occupier with a right of appeal against the compliance notice to a residential property tribunal. They also provide the local authority with power to revoke a compliance notice or to vary it by extending the time period specified for compliance with the notice. This power is exercisable by the local authority on an application made by the occupier on whom the notice was served or on the local authority's own initiative.

19. Section 9B sets out that an occupier of land who has been served with a compliance notice which has become operative under section 9H, is guilty of an offence if he fails to take the steps specified in the notice within the period provided. Subsection (2) sets out the penalty that applies where a person is guilty of the offence. Subsection (3) provides a defence, where an occupier had reasonable excuse for failing to take the steps set out in the notice within the time period specified. Subsections (4) and (5) set out the circumstances in which a local authority can make an application to court for an occupier's site licence to be revoked. These provisions essentially replicate the existing provisions in section 9 of the CSCDA 1960 dealing with multiple offences and the revocation of the site licence, which set out that where an occupier has two or more previous convictions for breach of a licence condition, the local authority can make an application to the court which convicted the occupier, for the site licence to be revoked.

20. Section 9C provides the power to demand expenses where a compliance notice has been served under section 9A. Subsection (1) sets out that where a local authority serves a compliance notice on an occupier of land, the local authority may impose a charge on the occupier as a means of recovering the expenses they have incurred in relation to this. Subsection (2) provides further information about what the expenses may include. Subsection (3) specifies that a local authority's power to recover expenses under subsection (1) is exercised by serving the compliance notice together with a demand, setting out the information specified in paragraphs (a) to (c) of this subsection. Subsection (4) sets out the orders which the tribunal may make about an expenses demand where it allows an appeal against the underlying compliance notice.

Clause 5: Powers for local authority to carry out works

21. This clause inserts new sections 9D to 9F into the CSCDA 1960, which provide local authorities with the power to carry out works on a site in certain situations.

22. Section 9D provides local authorities with the power to take action following the conviction of an occupier. Under the new provisions, where an occupier of a relevant protected site in England is convicted of the offence of failing to comply with the steps specified in a compliance notice, the local authority who issued the notice may take the actions specified in paragraphs (a) and (b) of subsection (1). The provisions set out that where a local authority proposes to take action under this section, they must serve a notice on the occupier of the land which contains the information set out in paragraphs (a) to (e) of subsection (2). Subsection (3) provides that the notice must be served sufficiently in advance of the intended entry to the site as to give the occupier reasonable notice. As section 26(1) of the CSCDA 1960 sets out that 24 hours notice of an intended entry must be given to the occupier, this would be the minimum amount of notice that could be given, but depending on the circumstances, it may be reasonable to provide additional notice. Subsection (4) provides that where a local authority authorises a person other than an officer of the local authority to take action on their behalf, this person shall be treated as being an authorised officer under section 26(1) of the Act, and so will be able to exercise a right of entry to the land.

Subsection (5) sets out that the 24 hour notice requirement in section 26(1) only applies in relation to the day on which the local authority intend to start taking action on the land, which means that if a local authority carries out works which take more than one day, it will not need to provide 24 hours' notice before each day it intends to enter the site.

23. Section 9E provides a local authority with power to take emergency action in certain situations in relation to land in England which is a relevant protected site. Subsection (2) provides that the action which may be taken by the local authority is such action as is necessary to remove an imminent risk of serious harm to the health and safety of any person who is or may be on the land. The provisions set out that where a local authority proposes to take emergency action under this section, the authority must serve on the occupier a notice containing certain specified information, and this notice may state that the local authority would apply for a warrant under section 26(2) of the CSCDA 1960, if entry onto the land is refused. The notice must be served sufficiently in advance of the intended entry as to give the occupier of the land reasonable notice. Subsection (6) provides that where a local authority authorises a person other than an officer of the local authority to take action on their behalf, this person shall be treated as being an authorised officer under section 26(1) of the Act, and so will be able to exercise a right of entry to the land. Subsection (7) sets out that the requirement in section 26(1) for the right of entry to be exercised "at all reasonable hours" does not apply, as this may not be appropriate in an emergency situation. The requirement for 24 hours notice of the intended entry, set out in section 26(1), also does not apply here. The provisions set out that the local authority must serve a further notice on the occupier within seven days of starting to take emergency action, which contains certain specified information. The occupier is provided with a right of appeal to a residential property tribunal against the emergency action, the grounds for which are that there was no risk of imminent serious harm to the health or safety of a person who is or may be on the land or that the action of the local authority was (or is) not necessary to remove such a risk.

24. Section 9F provides local authorities with the power to demand expenses where action has been taken under section 9D or 9E. Subsection (1) provides that where a local authority has taken such action, they may impose a charge on the occupier of the land as a means of recovering expenses incurred by them in taking the steps set out in paragraphs (a) to (c). Subsections (4) and (5) set out the time when a charge may be imposed in respect of emergency action, which is dependent upon whether an appeal is brought. Subsection (6) sets out that the power to impose a charge under subsection (1) is exercisable by serving on the occupier a demand for the expenses that the local authority seeks to recover, in the time period specified in subsection (8). Subsection (7) provides that an occupier of land who is served with a demand under this section may appeal to a residential property tribunal against this demand.

Clause 6: Sections 4 and 5: appeals, operative periods, recovery of expenses

25. This clause inserts sections 9G, 9H and 9I into the CSCDA 1960. Section 9G deals with appeals brought under section 9A, 9E or 9F. Subsection (1) provides that an appeal

brought under these sections must be made before the end of the period of 21 days, starting from the date the relevant document (defined in subsection (2)) was served. Subsection (3) provides that a residential property tribunal may allow an appeal to be made after the end of the appeal period, if satisfied that there is a good reason for the delay. An appeal brought under these sections is to be by way of a rehearing but may be determined having regard to matters of which the local authority who made the decision were unaware. Subsection (5) sets out the order-making powers of the tribunal.

26. Section 9H deals with when a compliance notice or expenses demand becomes operative. Subsection (2) provides that where no appeal is brought within the appeal period against a compliance notice, both the notice and any accompanying demand under section 9C become operative at the end of that period. (An occupier commits an offence under new section 9B if he fails to take the steps specified in a compliance notice which has become operative.) Subsection (3) similarly provides that a demand under section 9F becomes operative, in a case where there is no appeal made against it, at the end of the appeal period. Subsections (4) to (6) deal with cases where an appeal is brought, and set out the point at which a compliance notice (and any accompanying section 9C demand) or a demand under section 9F become operative where a decision on the appeal is given which confirms the notice or section 9F demand.

27. Section 9I deals with the recovery of expenses demanded under section 9C or 9F. Subsection (1) provides that from the time when a demand under section 9C or 9F becomes operative, the relevant expenses set out in the demand carry interest at a rate fixed by the local authority, until all sums due under the demand are recovered. The expenses and any interest are recoverable as a debt. Subsection (2) provides that from the time the demand becomes operative, the expenses and interest are a charge on the land to which the compliance notice relates, until they are recovered. Subsection (3) sets out that the charge takes effect at that time as a legal charge which is a local land charge. Subsection (4) sets out that the local authority can rely on certain powers and remedies set out in the Law of Property Act 1925. Subsection (5) sets out when the power of appointing a receiver is exercisable.

Clause 7: Residential property tribunals: jurisdiction under the 1960 Act

28. This clause inserts subsection (5ZA) into section 230 of the Housing Act 2004, which sets out certain directions which may be given by a residential property tribunal when exercising jurisdiction under the CSCDA 1960. It also amends Schedule 13 to the Housing Act 2004 to make appropriate references to the CSCDA 1960. The effect of this clause is to make the changes needed to the provisions of the Housing Act 2004 which deal with the general powers and procedure of residential property tribunals as a result of the fact that this Bill confers new jurisdiction on them under the CSCDA 1960.

Management of sites

Clause 8: Requirement for manager of site to be fit and proper person

29. Clause 8 amends the CSCDA 1960 by inserting five new sections – sections 12A to 12E – into it. New section 12A confers a power on the Secretary of State to make regulations which provide that the occupier of land in England ("the occupier") may not cause or permit any part of the land to be used as a relevant protected site unless either the local authority is satisfied that the occupier is a fit and proper person to manage the site (or that the person appointed by the occupier to manage the site is a fit and proper person to do so) or the local authority has, with the occupier's consent, appointed a person to manage the site.

30. The regulations may also make provision about the consequences for an occupier who contravenes any requirement contained in the regulations. In terms of criminal sanctions, the regulations may create a summary only offence relating to such a contravention which is punishable by a fine not exceeding an amount prescribed in the regulations. They may also provide that where an occupier has been convicted of the offence on two or more previous occasions, the local authority may apply to the court for an order revoking the occupier's licence. In terms of civil sanctions, the regulations may provide that where an occupier contravenes any requirement of the regulations, the local authority may apply to a residential property tribunal for an order revoking the occupier's licence.

31. New sections 12B, 12C, 12D and 12E confer further regulation-making powers in connection with provision made imposing a requirement under section 12A. Provision that may be made under these powers includes provision:

- requiring local authorities to keep and publish up-to-date registers of persons in their areas that they consider to be fit and proper for these purposes;
- about the making of applications for inclusion in a register (and the payment of fees to the local authority to allow for the recovery of costs incurred in connection with the application process);
- about the assessment of such applications by local authorities (who will be able to grant an application unconditionally, grant it subject to conditions or reject it);
- about the removal of persons from a register.

32. Regulations made under new sections 12A(3), 12C(9) and 12D(6) may also create certain new summary only offences but may only provide for those offences to be punishable by a fine not exceeding an amount prescribed in the regulations. Regulations made under sections 12A to 12D may also make provision by way of amendment to the CSCDA 1960 (see new section 12E(2)). Any regulations made under sections 12A to 12D will be subject to the affirmative resolution procedure, that is, the approval of both Houses of Parliament will need to be obtained (see new section 12E(4)).

Pitch agreements

Clause 9: Site rules

33. Clause 9 amends the MHA 1983 by inserting two new sections into it (which apply in relation to England only) which make provision about "site rules" (as defined in subsection (2) of new section 2C). Under the new provisions (which do not apply to gypsy and traveller sites), every site rule will be an express term of the pitch agreement between the site owner and the mobile home occupier creating certainty for both parties (but there is no requirement for site owners to have site rules in the first place). The new provisions will apply in relation to existing pitch agreements as well as to those made after the new provisions come into force.

34. The new provisions also confer a power on the Secretary of State to make regulations about the procedure to be followed by a site owner who is proposing to make new site rules or to vary or delete existing site rules (for example, requiring prior consultation with occupiers). Under the new sections, the Secretary of State may also make provision in regulations:

- rendering existing site rules (i.e. ones pre-dating commencement of this clause) of no effect by such date as set out in the regulations;
- prescribing matters in relation to which site rules may not be made;
- about the resolution of disputes arising between site owners and mobile home occupiers;
- requiring local authorities to keep and publish an up-to-date register of site rules in their areas.

Clause 10: Implied terms: removal of requirement for site owner consent to sale or gift

35. This clause amends Schedule 1 to the MHA 1983 by inserting new paragraphs into it which make provision about the sale or gift of a mobile home. The new paragraphs make different provision in relation to cases where the proposed sale or gift concerns an existing pitch agreement ("an existing agreement") and in relation to cases where the proposed sale or gift concerns a new pitch agreement ("a new agreement"). A new pitch agreement means an agreement which is made after the new provisions come into force, or one which was made before but which has been assigned after they came into force (see new paragraph 7A(3)). Different provision has been made in recognition of the fact that the new provisions, so far as they relate to existing agreements, will affect site owners' existing contractual rights. The new paragraphs apply in relation to England only. The clause also makes provision so as to apply existing paragraphs 8 (sale of mobile home) and 9 (gift of mobile home) of Chapter 2 of Part 1 of that Schedule to Wales only.

New agreements

New paragraph 7A (sale of mobile home)

36. New paragraph 7A mirrors the existing provision in paragraph 8 of Chapter 2 to the extent that it entitles the mobile home occupier to sell the mobile home and assign the agreement and entitles the site owner to receive a commission on the sale. However, it removes the requirement for the site owner to approve the person to whom the mobile home is being sold and places a requirement on the purchaser of a mobile home to notify the site owner of the completion of the sale and assignment of the agreement. It also confers a power on the Secretary of State to make provision in regulations specifying procedural requirements to be followed by the parties in connection with the sale.

New paragraph 8A (gift of mobile home)

37. New paragraph 8A mirrors the existing provision in paragraph 9 of Chapter 2 to the extent that it entitles the mobile home owner to give the mobile home and to assign the agreement to a member of his or her family. However, it removes the requirement for the site owner to approve the person to whom the gift is being made subject to a requirement that the occupier has provided the site owner with "relevant evidence" showing that the person concerned is a member of his or her family. It places a requirement on the person to whom the mobile home is gifted to notify the site owner of the gift and assignment of the agreement. It also confers a power on the Secretary of State to make provision in regulations specifying what constitutes "relevant evidence" and specifying procedural requirements to be followed by the parties in connection with the gift of a mobile home and assignment of the agreement.

Existing agreements

New paragraphs 7B (sale of mobile home) and 8B (gift of a mobile home)

38. New paragraphs 7B and 8B set out the requirements that must be met before an occupier is entitled to sell the mobile home or give it to a family member and assign the agreement where there is an existing agreement. The first requirement is that the occupier serves notice on the owner that he proposes to sell or gift the mobile home. The notice must include the name of the person to whom he proposes to sell or give the mobile home and such other information as may be prescribed in regulations made by the Secretary of State. In the case of a gift, the notice must also include "relevant evidence" as defined in new paragraph 8A(3). The second requirement is that either the occupier does not, within 21 days of when the owner receives the notice of the proposed gift or sale, receive a notice back from site owner that the owner has made an application to the tribunal for an order preventing the occupier from selling or gifting the mobile home ("a refusal order") or that the owner makes such an application to the tribunal within the 21-day period and the tribunal rejects that

application. Where a sale proceeds under paragraph 7B, the site owner is entitled to receive a commission on the sale.

39. New paragraphs 7B and 8B also confer powers on the Secretary of State to make regulations (subject to the negative resolution procedure) prescribing the grounds on which an owner may apply to the tribunal for a refusal order (see paragraphs 7B(7) and 8B(7)) and specifying the procedural requirements to be followed by the parties in connection with the sale or gift (see paragraphs 7B(10) and 8B(9)). The grounds on which an owner may apply for a refusal order would be likely, for example, to include the age of the buyer or the keeping of pets, where a site has rules in relation to such matters.

New paragraph A1 of Part 3 of Schedule 1: provision of information

40. New paragraph A1 makes provision about the information to be provided by an occupier (who is proposing to sell a mobile home) to the prospective purchaser and about the time by which that information must be provided. It confers a power on the Secretary of State to specify, in regulations, the documents and/or other information which must be provided. The first such regulations will be subject to the negative resolution procedure. Where an occupier fails to comply with the duty to provide the prescribed documents and/or information within the required time, the prospective purchaser may bring civil proceedings in like manner as any other claim in tort for breach of statutory duty. These provisions will ensure that the prospective purchaser is aware of all the relevant information (including, for example, any restrictions in the site rules on who can reside on the site) and so is able to make an informed decision as to whether or not to proceed with the purchase.

Clause 11: Implied terms: pitch fees

41. Clause 11 makes amendments to Chapter 2 of Part 1 of Schedule 1 to the MHA 1983. The amendments apply to existing pitch agreements as well as to those made after commencement of the clause. The effect of the amendments made by paragraphs (a), (c) and (e) of subsection (2) and by subsection (6) is to require a site owner, when serving a pitch fee review notice on an occupier of a mobile home which proposes an increase in the pitch fee, to provide the occupier with an accompanying document which meets the requirements set out in new paragraph 25A (inserted by subsection (6)). New paragraph 25A confers a power on the Secretary of State to prescribe the form of that document in regulations. The first regulations made under that power will be subject to the negative resolution procedure. Where the site owner fails to provide that document, the notice which proposes the increase in the pitch fee has no effect; and in cases where an occupier has, nonetheless, begun to pay the increased pitch fee to the owner, the tribunal (a residential property tribunal, or where there is one, the arbitrator in respect of the agreement) may (on the application of the occupier) order the owner to repay the overpayment.

42. Paragraphs (b) and (d) of subsection (2) amend paragraph 17 of Chapter 2 so as to enable an occupier who does not agree to a proposed pitch fee to apply to the tribunal for an order determining the amount of the new pitch fee. Currently, where an occupier does not agree to the proposed pitch fee, it is only the owner who has the right to apply to the tribunal for an order determining the new pitch fee under paragraph 17. Although the Government does not anticipate applications being made routinely by occupiers under the amended provisions, there may be circumstances in which an occupier who has refused to agree to a proposed new pitch fee wishes to seek an order from the tribunal determining the new pitch fee even where the site owner has not objected to the occupier's refusal; for instance where the occupier is of the view that the existing pitch fee should be reduced.

43. Subsections (3) and (4) make amendments to paragraphs 18 and 19 respectively of Chapter 2 about the matters to which site owners shall have particular regard, and the costs to be disregarded, when determining the amount of the new pitch fee. The existing provision in paragraph 18(1)(b) of Chapter 2 (so far as it applies in relation to England) which requires site owners to have regard to any decrease in the amenity of the site since the last review date is being replaced with two broader requirements contained in new paragraphs 18(1)(aa) and 18(1)(ab) which are being inserted by subsection (3)(a). Similarly, the existing provision in paragraph 18(1)(c) (so far as it applies in relation to England) which allows site owners to take into account the effect of any enactment which has come into force since the last review date when determining the new pitch fee, is being replaced with new paragraph 18(1)(b) which specifies that site owners may only take into account any direct effect on the costs payable by the owner in relation to the maintenance or management of the site of any enactment that has come into force since the last review date. The amendments made by subsections (3)(f) and (4) make it clear that site owners may not take into account any costs incurred in complying with the requirements inserted into the MHA 1983 by this Bill when determining pitch fees.

44. Subsection (5) inserts new sub-paragraphs (A1) and (A2) into paragraph 20 of Chapter 2. Sub-paragraph (A1) provides that when calculating the effect of changes in the retail prices index on the amount of the pitch fee, this must only be calculated by reference to the latest index and the index published for the month which was twelve months prior to the month which the latest index relates to. Sub-paragraph (A2) provides that where a site owner serves the pitch fee review notice late, the last index published before the day by which the owner was required to serve the notice is to be treated as the latest index, for the purposes of this calculation.

Offences

Clause 12: Protection against eviction and harassment, false information etc.

45. This clause makes amendments to section 3 of the CSA 1968. Subsection (2) of the clause makes an amendment to subsection (1)(c) by removing the word 'persistently' in relation to protected sites in England, so that an offence is committed under this subsection if

a person withdraws or withholds services or facilities reasonably required for the occupation of the caravan as a residence on the site. Subsection (3) of the clause makes the same amendment for the offence in subsection (1A)(b) so that an offence is committed if the owner of a protected site or his agent, either during the subsistence or after the expiration or determination of a residential contract, withdraws or withholds services or facilities reasonably required for the occupation of the caravan as a residence on the site.

46. Subsection (4) inserts a new offence into section 3 of the Act, at subsection (1AA). This provides that the owner of a protected site in England, or his agent, commits an offence if, during the subsistence of a residential contract, he knowingly or recklessly provides information or makes a representation to a person which is false or misleading in a material respect. In addition, the owner or agent must know, or have reasonable cause to believe, that taking this action is likely to cause the occupier to abandon occupation of the caravan or remove it from the site, or to not exercise any right or pursue any remedy in relation to this; or that taking the action is likely to cause a person who is considering whether to purchase or occupy the caravan in question to decide not to do so. The penalty for this offence is the same as for the existing offences under this section – on summary conviction a level 5 fine, six months' imprisonment or both and on indictment, a fine, two years' imprisonment or both.

Clause 13: Increase in penalties for certain offences under the 1960 Act

47. This clause makes two amendments to the CSCDA 1960. The first amendment is to section 1(2) of the Act and the effect of the amendment is to increase the level of fine for an occupier of land who commits the offence of causing or permitting any part of the land to be used as a caravan site without holding a site licence in respect of the land. The amendment increases the fine from level 4 to level 5 on the standard scale. The second amendment is to section 26(5) of the Act and the effect of the amendment is to increase the penalty for a person wilfully obstructing any person exercising the power of entry under this section or entering land by authorisation of a warrant under this section. The amendment increases the penalty from a level 1 to a level 4 fine on the standard scale.

Clause 14: Offences by bodies corporate under the 1960 Act

48. This clause inserts section 26A as a new section into the CSCDA 1960. The section applies to any offence under the CSCDA 1960 committed in relation to land in England. It mirrors the provision already included in section 14 of the CSA 1968, which deals with where an offence has been committed by a body corporate. The section provides where a body corporate commits an offence under the CSCDA 1960 and it is proved that the offence was committed with the consent or connivance of an officer of the body corporate, or the offence was attributable to neglect on the part of this person, then this person is guilty of the offence as well as the body corporate. Proceedings can be brought against this person as well as the body corporate and they may be punished accordingly. Subsection (3) of the new section defines what is meant by an officer of a body corporate.

COMMENCEMENT

49. Clauses 1 to 7 (the provisions dealing with licensing reforms) are to come into force on 1st April 2014, after the end of the Government's moratorium on new burdens on micro-businesses. Clauses 9 to 12 and clause 15 are to come into force two months after Royal Assent, with the remaining provisions (clauses 8, 13 and 14) coming into force on such day as the Secretary of State may by order appoint.

IMPACT ASSESSMENT

50. An Impact Assessment has been prepared in relation to the Bill and is available on the website of the Department for Communities and Local Government (https://www.gov.uk/government/organisations/department-for-communities-and-local-government).

PUBLIC SECTOR MANPOWER IMPLICATIONS

51. The Bill will not represent a significant change to public service manpower.

FINANCIAL EFFECTS

52. The Bill will not have significant consequences in terms of total public expenditure. Although the Bill does confer additional functions on local authorities, provision has been made in the Bill so as to allow local authorities to recover the costs of performing those new functions by the charging of fees. The intention is that fees will be limited to cost recovery and that local authorities will be required to justify any fees charged in their published fees policies.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS ('ECHR')

53. This is a Private Member's Bill and the Minister is not required to give a statement of compatibility with the Human Rights Act 1998 under section 19(1)(a) of that Act.

54. The Department for Communities and Local Government has nevertheless considered the question of compatibility and has concluded that the Bill is compatible with the ECHR. The Department's assessment is that the Bill may from time to time engage Article 1 of the First Protocol ('A1P1') (right to peaceful enjoyment of possessions) and Article 6 (right to a fair trial) of the ECHR, but that the Bill is not incompatible with those Articles.

55. The Department considers that A1P1 may be engaged by the provisions in the Bill dealing with sale blocking (clause 10 (implied terms: removal of requirement for site owner consent to sale or gift)), site rules (clause 9) and the powers for local authorities to carry out works (clause 5). However, for the following reasons the Government considers that no breach of A1P1 will arise as a result of the provisions in the Bill:

- Any interference will be in accordance with the law because there is clear provision in the Bill setting out the circumstances in which these provisions operate and the procedure which will apply. Site owners will already be aware of these provisions as the proposals were consulted on earlier this year.

- The provisions are being made to protect the A1P1 rights of mobile home owners. Accordingly, any interference with A1P1 rights is considered to be in pursuit of a legitimate aim.

- Under the new provisions site owners will continue to be entitled to a commission on the sale of a mobile home and will retain the right to terminate pitch agreements in accordance with the existing law. The Bill also contains safeguards to ensure procedural fairness; for instance requiring certain information and evidence be supplied to site owners on the sale or gift of a mobile home and requiring local authorities to give site owners reasonable notice of their intention to carry out non-emergency works on the site. Furthermore, under the provisions in clause 10, different provision is being made in relation to sales and gifts relating to existing agreements than in relation to sales and gifts relating to new agreements. Where the sale or gift relates to an existing agreement, site owners will be able to apply to a tribunal on prescribed grounds for an order preventing the occupier from selling or gifting the mobile home. Accordingly, any interference with A1P1 is considered proportionate.

56. The Department considers that Article 6 may be engaged as it is possible that some of the decisions taken as a result of provisions in the Bill will amount to the determination of a person's civil rights, as they will have an impact on the use or enjoyment of their property. However, adequate routes exist to challenge decisions by way of an independent and impartial tribunal (a residential property tribunal or, in the case of agreements to which the MHA 1983 applies, the arbitrator where one has been appointed by the parties), and it is therefore the view of the Department that the Bill is compatible with Article 6.

MOBILE HOMES BILL

EXPLANATORY NOTES

These notes refer to the Mobile Homes Bill
as brought from the House of Commons on 3rd December 2012
[HL Bill 66]

Order to be Printed,
3rd December 2012

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS

LONDON – THE STATIONERY OFFICE LIMITED

Printed in the United Kingdom by
The Stationery Office Limited

£x.00

HL Bill 66—EN 55/2