

BRITISH HOLIDAY AND HOME PARKS ASSOCIATION

WRITTEN SUBMISSION

SUMMARY

Government's work to ensure local authorities work more proactively in monitoring parks' site licences is welcomed.

BH&HPA asks the Committee to consider, above all, the dangers of unintended consequences of the Bill with its potential for adverse impacts on park owners and park home owners. In particular:

- The Association recognises the need for good, targeted enforcement by local authorities where significant breaches of site licence conditions occur. Decent park owners with businesses where there are no 'wrongs' to be 'righted' are finding the burden of legislation increasingly difficult to manage.
- The principle that the 'Polluter Pays' should apply in site licensing. At-fault businesses should rightly pay for local authorities' work in enforcement, good businesses should not be penalised for the faults of others.
- Time-limited site licences would have adverse consequences for all stakeholders; we would support measures requiring local authorities' five yearly review of site licences.
- We are not convinced that the fit and proper person licensing regime, as proposed, would be practicable and as such would not deliver the desired outcomes.
- It would be a retrograde step if honest, decent and diligent park owners were driven out of the industry by unworkable red tape, feeling they had no option but to sell their parks to the highest bidder.
- The Bill includes provision that a series of regulations may be made by Scottish Ministers; we would urge the fullest possible consultation with the industry in the course of that work to ensure the practicality of further proposed measures.
- Close attention should be given to the transitional and commencement arrangements, especially given the proposed measures to limit the duration of site licences.
- Notwithstanding that local authorities' site licensing work is proposed to be charged for, park owners' experience is that there is often poor understanding among many local authorities who sometimes fail to understand site licensing and the role of Model Standards.

Finally, we would note that the Consumer Focus report, ('Living the Dream?' 2012), and the SPICe briefing paper for the Infrastructure and Capital Investment Committee (15th January 2014), arrive at their conclusions based on a small sample and the failure to identify the nature of respondents. We are concerned at the weight given to these reports in formulating these measures.

Introduction

The British Holiday & Home Parks Association (BH&HPA) is the UK's national representative body of the parks industry. Across the UK, BH&HPA members own and manage 384,137 pitches. These include 969 parks accommodating 47,612 residential pitches.

In Scotland, BH&HPA members own and manage 227 parks providing 30,901 pitches for caravan holiday home and lodges, touring caravans, motorhomes, tents and residential park homes. Members in Scotland own and operate 52 residential parks with 1,892 pitches for residential park homes.

BH&HPA Scotland supports efforts to introduce measures to prevent the actions of the small minority of park owners who abuse park home owners and welcomes the opportunity to provide evidence to the Infrastructure and Capital Investment Committee on behalf of its members. Our concerns are of a practical, legal and economic nature with regard to the detail of the Bill.

Responding to the questions of the Infrastructure and Capital Investment Committee

Q12. Do you have any views on the proposed new licensing scheme?

Q13. What implications might this new scheme have for both mobile home site operators and permanent residents of sites?

In reviewing the proposed measures, we have identified the issues of concerns and the some of the potential consequences in each case.

1. Charges for a site licence (32C in the Housing (Scotland) Bill)

1.1 What objective justification is there that a fee should be levied for local authorities' site licensing work?

We have seen no evidence of a robust Economic Impact Assessment in advance of these measures proposed in the Housing Bill. The Policy Memorandum accompanying the Bill states:

'Economic effects

273. The provisions on mobile home site licences will affect residents, site owners, and local authorities. Local authorities will be able to charge a fee to cover administration costs of providing a site licence, and based on Scottish Government research, it is estimated that this fee would be approximately £600. This fee will be a very small percentage of the turnover of a mobile home site (less than 0.5% for a site with 40 or more mobile homes). The Scottish Government believes that the improved standards of safety, facilities and management that are an intended outcome of the proposals will help ensure that site owners who provide a good service are not undercut by those who are not doing so. This will help to promote fairer competition in the sector. Residents will benefit from a more robust licensing regime that gives local authorities the tools need

to ensure sites are of an acceptable standard, and to tackle unscrupulous site owners, therefore increasing confidence in the sector. Overall the Scottish Government believes that improving the licensing regime will have a neutral or beneficial economic effect.'

The evidence base for these assertions is not provided.

1.2 The principle that the 'Polluter Pays' should apply in site licensing. At-fault businesses should rightly pay for local authorities' work in enforcement, good businesses should not be penalised for the faults of others.

1.3 While Government is empowering local authorities to levy fees it should be included in supporting regulations that:

- all site licence charges must be on cost-recovery basis and ring-fenced so that good park owners would not pay for the work to ensure licence compliance by rogue park operators
- charging regimes must be transparent in each local authority area, be on a cost recovery basis and any future increases justified according to these criteria
- any fees would be proportionate to the size of the park/number of pitches and the work required by the local authority in administering the park's site licence
- any fees should reflect the targeting of local authority enforcement – it would be unjust for a park to pay the same rate for five-yearly inspections as one requiring six-monthly checks.

1.4 Our underlying concern is that most parks are well run and require minimal attention from the local authority. Why should decent park owners, and the park home owners on their parks, be required to foot the bill for local authorities' work in policing the rogues? Why should home owners on rogues' parks be required to pay for the site licensing necessary to protect them?

1.5 Adopting a 'polluter pays' approach, whereby the rogue is charged directly – and without the ability to pass on the cost to his/her customers – would:

- provide a stronger deterrent against park management failures
- give a stronger incentive to local authority staff to act, and,
- be fair and proportionate.

1.6 Where is the incentive to take action for the local authority who can charge what they like, essentially, whether or not they take action and/or provide good service?

1.7 If local authorities are going to be able to charge for licensing parks, it is essential that any fees should reflect the targeting of local authority enforcement – it would be unjust for a park to pay the same rate for say five-yearly inspections/reviews as one requiring six-monthly checks.

- 1.8 Adopting a 'polluter pays' approach, whereby the rogue park operator is charged would:
- provide a stronger deterrent against park management failures
 - give a stronger incentive to local authority staff to act, and,
 - be fair and proportionate.

2. Issue, renewal and transfer of site licences (32D in the Housing (Scotland) Bill)

- 2.1 The reprehensible activities of a minority of rogue park operators should not be taken as typical of the sector. The vast majority of park owners have committed no civil or criminal wrong. Why increase the administrative burden on those businesses by having them re-apply for their licences within a 24 month period following the introduction of the Housing (Scotland) Bill?
- 2.2 Park businesses are typically established small family businesses where little changes year on year; for good reasons, some park owners have had no contact from their local authority in connection with site licensing for many years, nor have they, or their customers, had any need of it.

Renewal of existing Site Licences within two years

- 2.3 There is no sound reason for making park owners apply for a new Site Licence within 2 years as proposed. The Local Authority has the power at any time to alter licences under the 1960 Act, item 8 (1), which states: *'The conditions attached to a site licence may be altered at any time whether by variation or cancellation of existing conditions, or by the addition of new conditions, or by a combination of any such methods by the Local Authority but before exercising their powers under this subsection the Local Authority shall offer to the holder of the Licence an opportunity of making representations'*.
- 2.4 If there is a case for government to act to tackle criminality in the sector, it will not be best served through requiring good park owners to reapply for their site licence, or similar regulatory change, but rather through targeting police and local authority resources at the issue.

3. The time to be allowed for a local authority to decide whether or not a licence should be granted (32F in the Housing (Scotland) Bill)

- 3.1 The Housing (Scotland) bill states that local authorities will have 12 months to decide whether or not to grant a site licence. That timescale is far too lengthy -how can parks can be expected to do business on that basis?
- 3.2 We would ask the Committee to consider the practical implications for the sale of residential parks if potential purchasers had to wait up to 12

months for a decision. It could be disastrous for the seller of the business, make the situation untenable for the buyers and indeed work against the interests of home owners who may be in the process of selling/buying a home. Such uncertainty would have grave, adverse consequences for all parties.

- 3.3 The matter of the suitability of the location for establishing the park will have been addressed in the granting of planning permission for the park. As stipulated in the Caravan Sites and Control of Development Act 1960, in issuing the site licence, local authorities can control the maximum numbers of caravans permitted, make provisions about the amenity of the park and ensure adequate and appropriate facilities and service provision for customers of the park in the interest of hygiene, health and safety etc.
 - 3.4 Leaving aside the matter of a Fit and Proper Person Test, it is difficult to imagine circumstances in which a decision to approve a site licence would take more than a few weeks at most. To grant planning consent and then deny a site licence after the developer has invested what are usually considerable sums would be unjust. In the process of granting planning permission the local authority will have carried out the usual enquiries as to the appropriateness of the site for the establishment of a park.
 - 3.5 Two months is adequate for the issue of any Site Licence in Scotland. A similar timescale is in place for Local Authorities to deal with applications for planning permission most of which are far more detailed than a site licence application. It is our understanding that the Scottish Government is considering whether penalties should be applied where Local Authorities don't deal with planning applications in a timely manner. The same arrangements should be put in place for site licensing applications.
 - 3.6 Virtually all deals to purchase a caravan park have a condition stating the purchase is subject to the transfer of the Site Licence. It is therefore critical that there is a sensible practical time limit for dealing with the issue of, or transfer of, a Site Licence. The deal cannot be completed until a licence is issued so time is of the essence.
 - 3.7 We would urge that the Committee recommend a shorter time period within the legislation, say two months maximum, to enable the process of a new site licence being granted, or an existing one being transferred to a new owner, to be completed within a practical time frame in the interests of all stakeholders.
- 4. Transfer of a site licence on sale of a park/death of a park owner (32E and 32H in the Housing (Scotland) Bill)**
- 4.1 The procedure for Local Authorities to transfer a licence on the sale of a park or death of an owner should be simple.

- 4.2 If the Local Authority is undertaking its responsibilities appropriately, residential parks in their area will be of a good standard and complying with their Site Licence conditions. The Local Authority should therefore be capable of transferring a licence in a short time - certainly within eight weeks.
- 4.3 On the death of a park owner similar legislation to what currently exists should be in place (the licence automatically transfers). If that is not the case, on a park owners death the person who becomes entitled to the park will be trading without a licence until such time as they receive Fit and Proper status and a transfer of the Licence.
- 4.4 The existing legislation allows for an automatic transfer of the site licence on the death of a park owner and this should be retained, albeit it is understood that the new licence holder would require Fit and Proper person status. Item 10 (4) of the 1960 Act states:
“Where any person becomes, by operation of law, entitled to an estate or interest in land in respect of which a site licence is in force and is, by virtue of his holding that estate or interest, the occupier of the land within the meaning of this Part of this Act he shall, for the purpose of this Part of this Act, be treated as having become the holder of the licence on the day on which he became the occupier of the land, and the local authority in whose area the land is situated shall, if an application in that behalf is made to them, endorse his name and the said date on the licence”.

Item 11(1) of the 1960 Act states that:

“A local authority who has issued a site licence may at any item require the holder to deliver it up so as to enable them to enter in it any alteration of the conditions or other terms of the licence made in pursuance of the provisions of this Part of this Act”.

This leaves the Local Authority with all the powers they require if they wish to add conditions, etc. to the licence transferred after the death of a park owner.

5. Proposed 3 yearly renewal of site licences (32J in the Housing (Scotland) Bill)

- 5.1 Introducing a 3 yearly renewal system would create uncertainty and destroy confidence in the sector. It would be detrimental in terms of funding for park businesses.
- 5.2 In Wales, funding has become hugely problematic where, from October 2014, the licences issued to residential parks must be renewed every 5 years. Funding for park business or park home purchase has virtually dried up. Banks are unwilling to finance the purchase of parks, and worryingly, finance companies are also unwilling to finance the purchase of park homes. Estate agents and lawyers are also

discouraging people from purchasing park homes as they advise their clients against buying park homes on parks licenced for just five years.

- 5.3 There is no indication that any economic impact assessment has taken account of this serious matter. Impacts are likely to include a reduction in values of privately owned park homes and a fall in the values of parks themselves with serious danger of a downward spiral in the sector. This would have disastrous consequences for, not only parks, but also the homeowners whose circumstances these measures seek to improve.
- 5.4 It is noteworthy that the proposed new legislation for *holiday parks* in Wales begins with the statement that licences for holiday parks should continue to be granted in perpetuity although they will be subject to five yearly reviews (not renewals). Taking such an approach avoids the funding problems arising in the residential park sector in Wales as a direct consequence of the introduction of time limited licences and should be considered for Scotland.
- 5.5 Moving to 3 yearly licences will impact on the level of confidence and security of consumers in purchasing a home on a park and potentially have a knock on effect on the upkeep/investment on parks. Rather than provide protection to consumers, which is the Scottish Government's avowed intention, this change could put consumers off a park home purchase with disastrous knock-on impacts for the viability of residential park businesses and their customers' assets.
- 5.6 We would strongly recommend a change from the proposed 3 year renewal for licences to a system whereby 'rolling' licences are subject to a 5 yearly review with a legal presumption in favour of renewal of the licence unless there have been problems within the 5 year period.
- 5.7 The significant support for a move to a 3 yearly licence referred to in the 'Reason for Taking Power' document issued by the Scottish Government was primarily from local authorities. In that document it says '*once the new licensing regime becomes established, it may be desirable to **review** whether 3 years remains the most appropriate licence period.*' Surely it would be more practical to start with a workable system of 5 yearly reviews? Licensing for residential parks is in no way comparable with HMO style licensing or other forms of licensing which don't involve people investing in the purchase of their own home or ongoing investment by the business owner.
6. **Fit and proper person test (320 in the Housing (Scotland) Bill)**
 - 6.1 BH&HPA Scotland understands the appeal of the proposal to introduce a Fit and Proper Person Test as part of the residential parks' site licensing regime.

- 6.2 The Association has long supported the principle of a 'fit and proper' licensing regime as measures are necessary to prevent those who abuse park home owners from continuing to purchase and manage parks. However, this support is given with the caveat that a workable solution must be identified that is practical and sufficient to deter the rogues.
- 6.3 Typically, local authority environmental health departments oversee parks' site licences; while they have the expertise and proximity to administer a site licence addressing the physical infrastructure of a park, are they best placed to assess the proposed 'fit and proper person' criteria?
- 6.4 There is a need for more clarity on what criteria will apply for a fit and proper person test. The criteria for judging 'fit and proper person' status should be:
- objective, fair, transparent and clearly defined
 - consistently applied across the industry
 - start with the assumption that an individual is 'fit and proper' unless there is evidence to the contrary
- 6.5 There is also a need for clarity on what is required of a potential park purchaser to achieve 'fit and proper' status *and* for reassurance that this process can be undertaken (perhaps in advance) in a sensible timescale to avoid unwarranted delay in the park sales process.
- 6.6 There is no legal definition within the proposed legislation to enable identification of '*the holder of the most senior position within the management structure*' and no mention of the role of controlling park owners and/or shareholders and their associates when a 'fit and proper' person test is being applied.
- 6.7 Difficulties will arise in situations where there is a gap between a manager who has been the subject of a fit and proper person test leaving and a new person taking their place. Park managers may come and go and this should not be able to place the park owner in breach of the law.
- 6.8 The vast majority of parks in Scotland have only one employee, usually a site warden rather than a manager, as the average park size is small. The park owner must therefore, for practical reasons, be in a position to appoint a new employee quickly. They would not be able to do that until the person has been deemed a fit and proper person and could find themselves 'unlicensed' and unable to remedy the position despite their best efforts.
- 6.9 To ensure practicality, we would suggest that the proposed legislation should not preclude continuation of the site licence while the local authority carries out its enquiries.

- 6.10 We would further recommend that a standard procedure be set-up to establish fit and proper status for applicants so that it can be used across all local authorities in Scotland to ensure consistency throughout the country.
- 6.11 There are many park managers/wardens already employed in Scotland. The Bill needs to address their employment protections if they are not found to be fit and proper under the new regime.
- 6.12 We would ask the Committee to consider that:
- The likely success in achieving the goal of ridding the industry of rogue operators, or otherwise, through the application of fit and proper person criteria to owners/managers of residential parks is unknown. Welsh Local Authorities will start to gather experience after October 2014 once they begin to apply the new regime to the managers of 93 residential parks in Wales.
 - For English residential parks, the Coalition Government has *not* introduced a fit and proper person regime. Instead, these powers are held in reserve in case unscrupulous residential park owners '*choose to remain in the sector without reforming their practices*'. This approach would meet the concerns to ensure the industry and local authorities are not overburdened given the volume of changes, whilst creating a 'Sword of Damocles' encouraging the industry to 'shape up', without the cost and red tape.
- 6.13 We would recommend the Scottish Government adopt measures akin to those allowing Ministers to make regulations in due course, allowing the measures in the Housing Bill to bed in, also permitting careful reflection on the impacts of the introduction of comprehensive, revised Implied Terms (in all agreements between park owners and park home owners) that took place in September 2013.

7. Fines (32R and 32S in the Housing (Scotland) Bill)

- 7.1 In considering the matter of fines, it should be noted that breach of site licence conditions can occur due to circumstances beyond the park owner's control. For example, the action of a home owner may put the park owner 'in breach'; matters may only be able to be resolved through the courts where the determination could find in favour of a home owner leaving the park owner still in breach of their licence conditions. How is this matter to be resolved 'fairly' between the park and the local authority?
- 7.2 The level of fines proposed is exorbitant and disproportionate – a maximum of £50,000 if a park is operating without a site licence or not

complying with an improvement notice, or £10,000 if a park is not complying with a site licence condition.

- 7.3 Fines in Scotland will be imposed at a relatively high level, given the maxima are set so extremely high. It is noteworthy that in Wales the fine applicable for non-compliance with a site licence condition on a holiday park is being set at £500.
- 7.4 The Association understands that the figure of £50,000 is included in the Housing (Scotland) Bill on the basis of having consistency with the level of fines included in other legislation.
- 7.5 We question the practicality of having such a high maximum fine for operating without a site licence; we have seen no evidence to support this proposed measure and no justification for consistency with the level of fines included in other legislation.
- 7.6 Although the likelihood of the vast majority of park owners being in a situation whereby they will be fined is very minimal, the fact remains that a risky situation could arise through a technical oversight which may or may not be of the park owner's making.

8. Improvement notices (32U in the Housing (Scotland) Bill)

- 8.1 The measures proposed for improvement notices must be set in context; in many areas, local authorities have not proactively monitored site licence conditions for many years. It is not in the interests of park owners or home owners that unrealistic expectations with regard to site licence compliance should exist and overly challenging deadlines set where local authorities have not been proactive in the past in terms of visiting parks. A new regime may bring things to light which have not been brought to the attention of a park owner previously.

We note that on Item 65 (32X) (4) it states:

'the Local Authority must, as soon as practicable after serving a notice under this section (Improvement Notice) and in such manner as it thinks fit, notify the occupiers of caravans on the site of the existence of the notice'

This will trigger the residents into not making any payments to the park owner.

- 8.2 It is BH&HPA's view that payment to the park owner should not be withheld at that point as the park owner has a right of appeal within 28 days. Payments should therefore continue as normal either until any appeal has been determined by the Sheriff or the appeal process has been abandoned. Natural justice dictates that payments to the park owner should not be capable of being stopped on the say so of the

local authority **before** the opportunity to lodge an appeal has expired or an appeal determined.

- 8.3 If payments were to be withdrawn prior to any appeal and the appeal was subsequently successful, the residents may well not have the funds for back payments of pitch fees, electric, gas, water and sewerage charges, unpaid commission etc. Such a scenario would clearly cause severe difficulties for the park owner. Would he then be faced with seeking reimbursement from the local authority via the Sheriff Court?

We are of the opinion that a Local Authority should not have the power to deprive a park owner of his livelihood. Only a Sheriff should be in the position to take that decision after hearing all the available evidence and only where the park has been put under local authority management.

- 8.4 Most residential parks in Scotland have between 30 and 40 pitches, are family owned and charge very reasonable pitch fees. Given that this is the case, one of the main reasons that a park owner would not comply with an improvement notice would be because he could not afford to do the work requested. For example, it is not unknown for Local Authorities to impose a condition that older parks upgrade/resurface all the roads in the park. This is a very expensive undertaking. Taking away the income from the park owner in such circumstances would only make matters worse. Other examples of local authority requests that cannot be complied with in the short to medium term include increasing the distance between homes, adjusting the distance from the home to the boundary or increasing the width of the roads on the park. None of these actions can be taken as the homes are privately owned and cannot be moved.

- 8.5 Under the 1960 Act 1(5) Local Authorities are not constrained in what they are able to request. The Act states that:
'for the avoidance of doubt, it is hereby declared that a condition attached to a Site Licence shall be valid notwithstanding that it can be complied with only by carrying out works which the holder of the Site Licence is not entitled to carry out as of right'.
This could result in the park owner being deprived of their income, brought to court and fined for not complying with a condition which they are unable to comply with.

- 8.6 There is also concern about the lack of a level playing field in terms of local authorities' approach to parks throughout Scotland. There is a need for consistency across the country.

9. Non-payment of pitch fees when a park has no site licence (32X in the Housing (Scotland) Bill)

9.1 The proposal that home owners on a residential park would be entitled to withhold payment of pitch fees, rent and amounts due for gas, electricity, water, sewerage, commission and other services on the park where a penalty notice has been served, causes great concern.

If, for example, no payment is made by the home owners using the gas, electricity etc on the park, how are the bills for these utilities to be paid? The park owner is unlikely to be in a position to settle these accounts if his income has ceased. There is then a risk of these services being cut off by the supplier which would obviously cause great difficulty for the residents on the park.

9.2 If no income is being received by the park, how will any maintenance required for the benefit of the residents be carried out?

9.3 Under the proposed new licensing regime it would be quite possible for a park owner to have to operate without a licence as, on the death of a park owner, the beneficiary will have to apply to be considered a fit and proper person before they can apply for a transfer of licence. This could take some considerable time during which, technically the park will not have a valid licence holder; therefore, no licence will be in place.

10. Ability to appoint an Interim Manager (32Y in the Housing (Scotland) Bill)

10.1 Whilst it is technically correct that the security of tenure of home owners is not affected by the withdrawal of a site licence, there are practical concerns for them - particularly when they want to sell their homes.

10.2 Buyers want to know what they are getting when they buy a park home and that includes who will be managing the park. They are unlikely to be attracted by the prospect of an apparently responsible operator facing a renewal of his licence every 3 years, with failure resulting in the appointment of a local authority nominee, who is unlikely to be versed in the complexities of running a park, to undertake the management role.

10.3 Much more detail is needed about the responsibilities of, and powers available to, any Interim Manager such as:

- who will be responsible for funding the cost of their salary?
- how will any existing loans secured against the park be serviced?
- who will negotiate sales of homes owned by the park?
- who will be empowered to enter into new agreements with new purchasers?
- what will be the legal standing of the interim manager entering into contracts with third party contractors carrying out work on the park?
- where will funding be found to carry out maintenance etc. where this is not covered by pitch fee income?

- compliance with Site Licence conditions is a requirement under the 1960 Act – how will this work in practice during the tenure of an Interim Manager?
 - has government identified potential candidates, competent in residential park management which includes matters as diverse as compliance with health and safety obligations, financial management and control, park operation including repairs and maintenance, as well as park home law, to assume such a role?
 - will an Interim Manager appointed by the local authority be required to be a fit and proper person?
 - given many parks hold Credit Licences to allow them to sell park homes on finance, how would this be accommodated during the tenure of an Interim Manager; without such provision, the park's income, and in consequence its viability, could be seriously compromised.
- 10.4 We would urge the committee to recommend that this proposal be subject to further more detailed consideration before being progressed.

British Holiday and Home Parks Association
10 February 2014