A Better Deal for Mobile Home Owners

Response to Department of Communities and Local Government consultation

May 2012

The Chartered Institute of Environmental Health

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We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

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Introduction

The proposals in the consultation paper contained in Chapters 1-3 of the consultation paper do not have a direct implication for the role and function of work of environmental health practitioners (EHPs) in local authorities, so we have no particular comments to make on these. In relation to the section on criminal sanctions, we consider it important that local authorities share good practice in taking action.

The consultation paper fails to address adequately the condition of individual mobile homes, which is only indirectly affected by site licensing. It is the experience of our members that where homes are not of decent quality, it is a struggle to enforce reasonable living conditions. This is a particular problem where homes are rented and fail the HHSRS standard. Since mobile homes currently fall outside the accepted definition of a dwelling for the purposes of the Housing Act 2004, local authorities cannot use notices under Section 11 of that Act to improve properties and remedy category 1 hazards. Considering mobile homes offer a valuable source of housing, favoured by certain groups of the population, they should be covered by the Housing Act 2004 Part 1.

Operating different schemes may be complicated for local authorities and would likely prove overly burdensome and more resource intensive than the current licensing scheme. It is equally important to ensure a high level of health and safety protection for holiday site users as it is for residential occupiers. We consider that there is a possibility that less reputable residential site operators may move into the holiday renting sector if they believed that enforcement of standards was relaxed in any way.

Response to questions

29 Do you agree that local authorities should be able to charge a fee for consideration of these issues? Are there any other licensing functions for which charges should be levied?

Local authorities should be able to charge a reasonable fee in relation to an application for a license, and transfer and alteration of a license. This would bring it in line with other local authority licensing functions. The fee should be variable, depending on the size of the proposed site. These should be published on the council web site.

30 Do you agree that local authorities should be able to charge an annual fee for administration of the licence?

Yes, a local authority should be able to levy an annual fee for inspection of the site. Therefore an initial licensing fee could be payable for an initial license/transfer/alteration and then an annual fee to cover a site inspection. In most cases an annual inspection should be sufficient but where a local authority has concerns about the management of a site, additional inspections may need to be made and the local authority should be able to reflect this cost in the fee.

Options for charging include either a blanket fee to be applied at the same rate to every site operator in the local authority area, or the level of fee could be on a sliding scale being dependent on the size of the site. Fees do however need to be based on a risk assessment

of the site; touring sites usually will need only light touch enforcement whereas residential sites are likely to need an annual and detailed inspection. The annual fee needs to reflect this and the fee should be about covering expenses only.

31 Do you agree that the requirement to pay a fee should be a condition of the licence?

Yes, although a concern here is that non-payment would become a breach of conditions, which if maintained would leave the local authority in a position of having to take the license holder to court. Under current legislation this may lead to a revocation of a license and the possible subsequent closure of the site without any ability for the local authority to carry on the management of the site and maintain existing residents in their homes.

If a notice procedure were to be introduced, the license holder would have formal notification of fees due although ultimately the consequences would be similar.

32 Do you agree that local authorities should have the power to exempt certain owners of non-commercial sites from any licensing fees?

Yes, as is presently the case. It is reasonable to exempt non-commercial sites from annual licensing fees as monitoring of such sites is far less resource intensive or burdensome on the local authority. However, any application for a new license, transfer of license, alteration of a license could still attract a fee from non-commercial sites as the level of administration will be similar regardless of the size of the site.

33 Do you think that site operators should be able to recover licensing costs from home owners through pitch fees? Please give your reasons.

These should not be recoverable. The running of a mobile home site is a commercial operation and any licensing fees should be regarded as business costs only and should not be passed on to owners. If the intention of introducing licensing fees is to better resource the local authority with a view to improving the regulation and enforcement of caravan sites, then the burden of the fees should lie solely with site operators. When an application for a license of an HMO is submitted under the terms of the Housing Act 2004, it is the applicant that pays the fee, not the tenants.

34 Do you agree the local authority should be required to serve a notice of the breach of condition which should specify how it can be remedied?

Most local authorities on finding a breach will (where suitable) try to remedy the breach by informal means. In some cases this informal process may carry on longer than it should as there is a reluctance to take a license holder straight to court and there is no other option available. This is reflected in some local authority processes where officers have delegated authority to serve notices but not to seek a prosecution. A formal notice, would, provide a structure to the proceedings in which all parties are aware of what is required and, as in other aspects of Environmental Health, an appeal process would be available.

Consideration should be given to an appeal process for such notices as with the Housing Act 2004, which can be appealed via the Residential Property Tribunal. It is understood that the Government is considering a notice procedure that would involve a local authority having to prosecute and ask the court for an order to carry out the work following the service of a notice and if the site owner failed to comply, with emergency situations requiring authorisation from a JP.

If there is no appeal to the notice - if the site owner fails to comply and is then prosecuted - the owner could potentially argue, at the prosecution, that for example the works in default were unnecessary or notice was served on the wrong person etc - making it highly unlikely that risk averse local authorities would consider serving a notice or prosecuting if they could not be certain of success in court or at least some awareness of the possible defences.

35 Do you agree the local authority should be prohibited from going straight to prosecution and must serve a notice of remedy first?

On balance, we do not agree with this proposition. Local authorities have the power in relation to HMOs to serve both notices requiring work and the power to take a prosecution under Management Regulations for a breach. Local authorities should be able to decide the most appropriate action. We believe the same should apply in respect of mobile and park homes.

There could be certain situations however where a breach is so severe that remedial work cannot be undertaken or is not feasible and the only option would be to look at revoking the license.

The consultation does not appear to have contemplated an option to remove a license once granted for severe breaches of the conditions and therefore any option to revoke the license would remain with the magistrates' court following prosecution(s).

36 Should a local authority be able to recover its expenses in connection with the notice from the site operator? If you disagree please state why.

Yes.

37 Do you agree that a local authority should require authority from a court before being able to do works either in default or in an emergency? If not, please give your reasons.

No, nor is it necessary to protect licensee rights. Currently works in default under other housing legislation such as the Housing Act 2004 or the Building Act 1984 are allowed without the need to obtain authority from a court. There seems no justification for a different or second-rate enforcement regime to operate for caravan sites. We feel the same should apply for emergency works. While the law surrounding caravan sites is certainly more complicated, local authorities still have the power to carry out works in default in for example leasehold properties provided the appropriate notice is given.

There should be a right of appeal against the notice, as is the case under the Housing Act 2004, which should be exercised within a given period. After non-compliance the local authority could then carry out the work in default to protect residents, prosecute or take both courses of action.

Also as with the 2004 Act, there should be a process for the license holder to challenge the work in default costs.

38 Do you agree the local authority should be able to recover its cost of doing work in default, including administrative expenses, from the site operator?

Yes, without the ability for the local authority to be able to recover work in default costs, it may be reluctant to carry them out.

39 What is your experience of local authorities prosecuting for breach of licence conditions?

The experience of our members involved in this area of work varies. In some authorities officers inspect sites annually and on request. Any breaches are in the first place taken up with the owner. If this fails, officers do seek permission from The Licensing and Regulation Committee to prosecute. In other authorities prosecution for breaches of license conditions is rare and when it does happen, the courts tend to see such prosecutions as trivial.

Many local authorities try to resolve issues informally, since prosecutions can be expensive, uncertain in relation to results and seen by the magistrates as minor. The power to serve notices will help in circumstances where conditions are breached and will hopefully mean greater enforcement of standards by local authorities occurs.

40 Do you agree that the current maximum fine for a breach of a site licence condition is inadequate and should be increased? Please give your reasons.

Yes. A maximum fine of £2,500 as is the case at present is very low, especially for larger site operators, and serves as no deterrent. Very often the fine is mostly cheaper than rectifying the breach of the license condition. This is also the case in other areas of housing enforcement where fines do not reflect the financial advantage that can be gained from breaching legislation.

Fines should be brought into line with other areas of enforcement sanction, for instance at the same level as breaches of the Health and Safety at Work Act, where a maximum fine of £20,000 can be applied for offences heard in a Magistrates' Court.

41 Do you agree with this approach to recovering costs?

Yes.

42 Do you think these changes would be beneficial?

Yes, although long leases should be considered as owned, making a distinction between owners who lease land to individuals who then operate it as park home site.

43 Do you agree that if the site operator is a body corporate which commits an offence, then the relevant officer who is responsible for the offence should also be guilty of it?

Yes.

44 Do you agree that the local authority should be able to refuse to grant a licence if it is not satisfied that the site is fit for purpose?

Yes. However, there should be an option to revoke a license where the site becomes unsuitable or where non-compliance with site conditions results in notices and/or prosecutions also results in the management of the site being deemed to be unsatisfactory.

We would welcome guidance at national level on criteria to be taken into consideration to assess whether an operator is a fit and proper person. Without such guidance local authorities will set their own criteria, causing problems for site operators who operate in more than one local authority area, as is often the case. At present the operator is not considered, and it is only after three prosecutions that a local authority can seek the Magistrates court to revoke a license.

45 Do you agree that the local authority should be able to charge the site operator for providing advice and assistance on suitability?

Yes.

46 Do you agree that the current maximum fine for operating a site without a licence should be increased? Please give your reasons.

Yes, see our answer to Q 40. Considerable fines now exist for failing to apply for a license for an HMO where one is required. Similar fines should apply in this situation.

47 Do you agree that the maximum fine level for obstruction should be raised from £200 and if so to how much? Please give your reasons.

Certainly, obstruction could be considered a more serious matter than not complying with site license conditions as it may prevent discovery of breaches and hinders enforcement. The maximum fine level should be raised in line with other relevant legislation such as the Housing Act 2004. Level 4 of the standard scale would equate to the same level of fine for obstruction under the provisions of the Housing Act 2004 and seems a reasonable comparison.