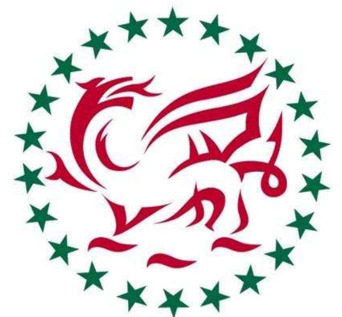
Communities, Equality and Local Government Committee
CELG(4)-17-14 Paper 1

Holiday Caravan Sites (Wales) Bill 2014

20th May 2014



INTRODUCTION

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities, the three fire and rescue authorities, and four police authorities are associate members.

2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.

3. We are pleased to provide evidence to the Committee on the proposed Bill. The modernisation of the legislation surrounding holiday caravans is well overdue, and local government welcomes the opportunity to assist the ongoing work to finalise the framework.

4. We broadly welcome the content of the Bill, and its intentions. One of the fundamental concerns of local government is however, that new duties placed upon local authorities are supported properly by Government in terms of financial arrangements and a robust cost recovery framework.

5. Local authorities recognise the fact that the vast majority of caravan site owners wish to comply with legal requirements. It is in that spirit, that local authority officers approach their work – primarily to assist and advise businesses on how to achieve compliance. Local authorities also recognise the significant importance of the positive impact that the industry has on the Welsh economy.

6. The use of the Mobile Homes (Wales) Act 2013 as the starting point for the drafting of this new bill is a sensible approach and will assist local authorities in applying the legislation consistently and effectively and will also be of benefit to those park owners with dual use sites.

7. The numbers of holiday sites across Wales is significantly greater than residential park home sites. A realistic timescale for the introduction of any new legislation in this area will therefore be required in order to allow local authorities and park owners' time to implement the legislation alongside other priorities.

Fees

8. It is noted that there is a provision within the Bill to "passport" existing holiday sites licensed under the Caravan Sites and Control of Development Act 1960 into the new regime without need for application or fee payment to the local authority (Section 9).

9. Effectively, this will place significant burden on local authorities to undertake checks on managers, review licences and inspect sites with no up front income to recover costs. We have real concerns on this point.

10. The Regulatory Impact Assessment states that the costs the local authority will be diminished as a result of this "passporting" provision however the assumptions used should be challenged.

11. If sites have permitted residency over the years, it is feasible that they will be able to demonstrate this to planning authorities and obtain a certificate of lawful use, permitting individual vans to be occupied as residential units while the surrounding vans remain restricted for holiday use. As we understand matters this would mean that individual vans would need to be regulated under the Mobile Homes (Wales) Act 2013 and others under the proposed holiday parks provisions. This would need to be considered in any final proposals.

12. This requirement places a significant burden on local authorities to undertake checks on managers within 12 months of the Act coming into force with no income with which to offset the additional costs. Thereafter the costs of reviewing licences, checking residence tests and responding to failure reports and the inspection of sites will need to be met by local authorities that are already stretched.

13. The power of local authorities to charge an annual fee is welcomed. The concerns expressed above however in relation to income from existing sites remain as an annual fee that is set in accordance with Bill, will not cover all local authority costs. Clear guidance on the fee calculation and fee setting policy to be adopted would be required.

Licence duration and guidance

14. To ensure local authorities are able to properly enforce the provisions (ie by securing fee income), it would be beneficial to set a maximum of five years duration for a site licence. It would appear sensible to mirror the Mobile Homes (Wales) Act 2013 in this regard.

15. We would also welcome a revision of the current "model conditions" at the same time as the introduction of the Bill. This should negate the need for regular review and amendment of conditions, and would ensure the model conditions are updated to take account of other legislative changes which have already occurred – and that the model conditions are enforceable.

16. The renewal rather than review of the site licence and conditions could generate cost recovery income for local authorities in Wales and ensure consistent application of caravan and mobile home legislation to all parks across Wales. All licences should be renewed every 5 years as with residential sites. Unless the model standards are to be reviewed every 5 years, it is unclear what the benefit of this formal review stage would be given the need for regular inspection and enforcement of standards. As stated in the Regulatory Impact Assessment, the power to review, revoke and amend existing licences exists under the 1960 Act so the purpose of this additional requirement on local authorities is unclear.

Site inspection and risk assessment

17. The proposal to give local authorities greater flexibility in determining the inspection frequency of sites is welcomed. However, the detail of the proposal does give rise to some concern. Local Authority enforcement officers operate well established risk assessment programmes which control the frequency of inspections of businesses – based on the risk posed. Currently the large majority of sites would be classed as low risk, and in line with the "better regulation and enforcement" regime, would currently not be subject to routine inspection. It is likely that local authorities would not be in a position to achieve the number of physical visits, or paperwork checks based upon current and dwindling numbers of officers.

18. We would consider a risk based approach to inspection as being a necessary product of the legislation, where site size and conditions, confidence in management, and previous history are taken into account when determining inspection frequencies.

19. The potential of "no inspectable risk" sites, and a reduction in annual fees would reflect local authority costs and act as a driver to improve compliance and standards for site owners.

20. The ability of local authorities to use fixed penalty notices and or compliance notices to secure improvements on sites is welcomed as these are often more appropriate enforcement tools than prosecution alone as in the 1960 Act.

21. The ability for local authorities to recover the cost of issuing legal documents and taking enforcement action is also welcomed.

22. There appears to be a contradiction between the Power of Entry provisions in Section 37 and the enforcement options available to local authorities in emergency situations. Unlike the Mobile Homes Act where the site is the sole residence of dwellers and therefore their home, the need to provide 24 hours notice to site owners of holiday parks is unnecessary. Local authorities already have extensive powers of immediate access to deal with health and safety laws and food hygiene laws on these sites and the onerous power of entry requirements set out in the Bill are disproportionate. The Power of Entry to sites should be available at all reasonable times to authorised officers.

Fit and proper test

23. The ability of local authorities to determine the fitness of a person is welcome. We would seek clarity on a number of issues though in this regard. Are local authorities required to used a standard or enhanced disclosure check?

24. The term "trading standards law" requires some more thought – the scope of TS law is very wide, from weights and measures, sale of goods, estate agency, to cosmetic product and toy safety legislation. If it is to be included, tighter definition will be required to ensure consistent application.

Residence test

25. In general terms, the power to control the use of holiday sites as residential sites exists within planning legislation and this should remain the primary legislation for controlling site use. Additional measures should not be required, rather additional

guidance for local planning authorities in respect of residency tests etc should be considered. Local authorities would wish that this issue be clarified before the Bill progresses further.

26. The remedy for unauthorised residential occupation of holiday sites may exist through the prevention of local housing allowance claims, bus pass applications and GP registrations for persons with a holiday park address rather than the measures contained in this Bill. These and other potential measures should be fully explored as alternatives to the tests proposed in this Bill.

27. The requirement for site owners to undertake the residence test annually is an onerous requirement and will be challenging for local authorities to regulate. In the absence of the detailed guidance on the residence test proposed, it is difficult to comment on this aspect of the Bill. In general terms, it is accepted that owners of sites should be aware of and accountable for the occupiers of their site, however local authorities already have examples of situations where this type of test will be very difficult for an owner to apply.

28. Where confidence in the management of sites is high, with robust systems in place for monitoring for potential residential use (e.g. using the methods advocated by the BHHPA and evidence listed in Schedule 2 to the Bill) we would question the necessity for the proposed requirement for an annual inspection of the evidence of residency checks. We consider that these checks could reasonably be made as part of the routine risk-based inspections, reducing the projected costs to the Authority and in turn to the industry.

29. Details of how the residence test should be applied are required as there are opportunities for abuse of this requirement depending on when in the year site owners undertake the test. Given that many caravan owners have agreements over many years to remain on site, the requirement for an annual test may be burdensome. What evidence will be required by the residence test? Will a residence test be robust enough to ensure that an 'occupier' has a home address elsewhere?

30. There are flaws with requiring an 'occupier' to provide documentation detailing a permanent home address, as they could use relatives or a friend's address. The extent of expectations on local authorities when making enquiries in such matters will need to be clarified by the proposed guidance. It would be burdensome on both a site owner and a local authority to prove that the information provided is false.

31. If owners make reasonable enquiries with regard to the residence test but it is held that there is a breach, is it reasonable that they are penalised for abuses of the legislation by third parties? What steps should be taken and against whom where a residency test is applied by the site owner and upon completion of the pitch agreement, the caravan owner subsequently sells their permanent home?

32. If an occupier fails the residence test, the owner must notify the local authority of the failure as soon as possible*.* It is unclear how a local authority would regulate this requirement and it is unlikely that a caravan site owner would notify the local authority of a failure of a residence test especially as this could result in a compliance notice being served on them.

33. The restriction on occupation of a holiday caravan on the site in excess of 6 weeks should be amended to include "any holiday caravan on the same site" to control for moves between caravans within the same site/ ownership e.g. by migrant workers. Some holiday sites comprise of a number of older and smaller caravan sites that have amalgamated over the years, which may still have separate licences and be called different names. An 'occupier' could potentially stay in a holiday caravan on one section of the site, with a different licence, then move to another caravan on a different section of the site etc.

34. A local authority must give a compliance notice if there appears to be a breach of the condition prohibiting occupation of a holiday caravan as a person's only or main residence*.* It is also noted that this power already exists in Planning Legislation enforcement and has been used by some local authorities to remove occupiers of caravans with holiday use planning condition. Is this additional power necessary therefore or should local planning authorities be provided with strengthened guidance on the use of existing powers?

35. Caravan occupiers that are held to be using the caravan as their main residence should be afforded the same protection in terms of minimum notice periods as occupiers of residential sites. Vulnerable occupiers in particular may enter into agreements with third parties to hold a shorthold tenancy of a caravan only to find that the agreement is invalid. Local authorities as Statutory Housing Authorities wish to ensure that appropriate protection is afforded to all such individuals to enable them to make alternative housing provision when facing eviction. In addition, where the local authority require the eviction of such occupiers, it has been held that the persons are not intentionally homeless therefore presenting a potential homelessness duty to

the local authority. This needs to be appropriately managed by local authorities and a minimum notice period will enable housing advice services to work with affected individuals in a timely manner.

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