



Department for
Communities and
Local Government

Consultation on A Better deal for Mobile Home Owners

Summary of consultation responses and next steps

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Section 1

Background

1.1 On 16 April, the Government published a consultation paper on proposals to reform the law relating to mobile homes. The proposals aimed to improve the contractual rights and obligations between the parties to an agreement and to reform the local authority site licensing regime to give local authorities the tools and resources to take enforcement action when the need arises.

1.2 Approximately 85,000 households live on about 2000 mobile home sites in England. It is clear from the experience of home owners that the Mobile Homes Act 1983 does not offer effective protection for home owners and that “rogue” or criminal site operators can prevent home owners from exercising their rights. Rogue site operators and poor quality sites have an unacceptable impact on both home owners and on reputable operators who are working hard to improve the reputation of the industry.

1.3 The consultation paper sought views on:

- options to reform the buying and selling process of mobile homes and in particular to combat unreasonable sale blocking;
- reforms to the Mobile Homes Act 1983 to improve residents’ rights and reduce the scope for abuse;
- criminal sanctions for those who harass or intimidate people living in a mobile home;
- options to reform caravan site licensing under the Caravan Sites and Control of Development Act 1960, particularly to allow local authorities to charge for their services, to seek robust fines for breaches of licence conditions, do works in default and refuse to grant licences in certain circumstances.

1.4 The consultation process closed on 28 May. We received 621 responses to the consultation and are grateful to the organisations and individuals who took the time to respond. Please note that not all respondents addressed every question, and this is reflected in the summary of responses. Nor have we been able to summarise every point that was made by consultees , although we have had regard to them.

Section 2

Introduction and Executive Summary

2.1 The publication of this summary of consultation responses marks the end of an intensive examination of the park home industry, both through our own consultation process, and the Communities and Local Government Select Committee's inquiry. This process has shown that, despite the potential for this sector to provide an attractive alternative to bricks and mortar housing, particularly for older people, the reality is often a poor quality, poorly managed sector in which home owners are unable to exercise their rights.

2.2 The Communities and Local Government Select Committee described malpractice in the industry as widespread, and the Government agrees with this assessment. Malpractice is clearly not universal and we are aware of professional managers and well-run sites. But they face unfair competition from some site operators who do not meet their legal obligations and others who are simply unscrupulous and in some cases criminal.

2.3 Our objective is to put the park home sector on a sustainable footing for the future, where site operators can run a good business, offering a decent service to residents, and residents can live peacefully in their homes knowing that the law protects them from abuse. The sector should no longer be seen as easy pickings for unscrupulous operators. We aim to achieve this through light-touch reforms which target the worst practices while minimising the burdens on good operators.

2.4 The Government will, therefore, support legislation through Peter Aldous' Private Members Bill which:

- Reforms the licensing system that applies to park home sites, whilst leaving the holiday sector within the existing regime;
- Prevents site operators from blocking residents' sales in the open market, including through the misuse of site rules;
- Strengthens the existing law relating to the protection of occupiers from harassment and makes it an offence to say something which is untrue to prevent a home being sold;
- Makes pitch fee reviews more transparent and sets new rules on what is to be taken into account on a review so they are fairer and reflect the condition of the site.

How the legislation will achieve this is explained in the Government's response to the relevant consultation questions set out in section 3.

2.5 We will also support the inclusion in the legislation of an enabling power so that a fit and proper registration requirement can be introduced in the future if that proves necessary. This is set out in section 4.

2.6 We have focused on those reforms which will make the most significant impact. In some cases we have concluded that changing legislation is not the right or only solution – in many cases poor understanding and enforcement of the existing law would be better addressed through joint working between Government, industry and residents. This is explained in greater detail in the Government's response to the relevant consultation questions in section 3.

2.7 Should the Bill receive Royal Assent, we shall bring in the reforms to the Mobile Homes Act 1983 and the Caravan Sites Act 1968 as soon as we can. Licensing reforms (except fines) will, however, not be brought into effect until the end of the moratorium on micro businesses.

Section 3

What consultees said and the Government response

3.1 621 responses were received to the consultation paper. These were from local authorities and representative organisations; home owners and residents' associations; site operators and their trade bodies; MPs, councillors, the legal profession, consultants and other interested parties. This latter group is collectively referred to as "other professionals" in the tables in this chapter. The table below sets out the breakdown of the origin of responses:

Type of Respondent	Number of responses
Site operators and trade bodies	242
Home owners and Residents' Associations	302
Local authorities	57
Other professionals	20
TOTAL	621

3.2 The tables below set out how each group of consultees responded to the questions in the paper. We then summarise the main points each of those groups have made in response to the question and set out the Government's view and next steps.

Selling and gifting of mobile homes

Q1: Are you aware of sales being blocked on mobile home sites? If so, how?		
	Yes	No
Local authorities	27	12
Site operators and trade bodies	7	10
Home owners and Residents' Associations	160	30
Other professionals	14	0
Total	208	52

3.3 *The consultation sought views on whether consultees were aware of sales being blocked*

3.4 Most local authorities were aware of sale blocking through anecdotal evidence or from local experience. Some examples given of this practice included site operators digging a hole or parking a JCB close to a home for sale for several weeks and failing to say why; threatening estate agents coming onto a site with physical harm and in some cases referring purchasers to publicity showing the site operator as unscrupulous.

3.5 The majority of site operators who responded to this question were not aware of this practice in the industry. However, a significant minority were aware of sale blocking through their involvement in meetings with Government, anecdotal evidence or through media reports. None of the site operators who responded had been involved in the practice, but some agreed that the buying and selling process needed radical reform to combat rogue operators.

3.6 Some home owners were not aware of sale blocking, but a significant number were. Many had heard of it either through the media or anecdotal evidence. Some had directly experienced sale blocking. Examples of methods used to block sales included site operators putting conditions on the sale, asking for 10% commission from both the buyer and seller, delays in signing papers and telling purchasers the home was in a bad condition and had to be removed.

3.7 Other professionals were aware of sales being blocked through personal experience, research and the work of the Residential Property Tribunal. They agreed that the law should be changed. They mentioned that attempts to block sales which were overt, covert or a combination of the two. An example was provided of a site operator who raised concerns about the condition of a home in a letter to an executor and offered to remove the home at a cost to the executor. However, after being challenged the site operator conceded that the home did have value and paid the executor an amount equivalent to seven times the removal cost.

Q2: Alternatively are you aware of open market sales proceeding smoothly?		
	Yes	No
Local authorities	8	8
Site operators and trade bodies	11	0
Home owners and Residents' Associations	110	65
Others	3	3
Total	132	76

3.8 *The consultation sought views on whether consultees were aware of sales proceeding smoothly without interference.*

3.9 The small number of local authorities who responded to this question were evenly divided. Some were aware of problems, but others had not received complaints about sale blocking.

3.10 The site operators who responded said that the vast majority of sales went through without any problems. Some site operators also said that they actively assisted the buyer and seller during the sale process

3.11 Many home owners who responded were aware of some sales proceeding smoothly and those who gave reasoned answers said this was more in relation to sales in recent years of fairly new homes.

3.12 The Government’s response (Questions 1 and 2)

It is clear both from consultation responses and other evidence that sale blocking is a significant and widespread problem in this sector. We have received documentary evidence of this practice. Whilst it is clearly not a universal practice (as evidenced by the 110 home owners who thought some sales proceeded smoothly), it is not confined to a few rogue operators. Sometimes sale blocking appears to be opportunistic but in some parts of the industry, it seems to be considered a normal and acceptable business practice.

Q3: Do you agree that the law should be reformed to prevent sale blocking?		
	Yes	No
Local authorities	38	0
Site operators and trade bodies	13	4
Home owners and Residents’ Associations	193	1
Other professionals	15	0
Total	259	5

3.13 The consultation proposed to introduce new legislative measures to prevent the blocking of open market sales and sought views on whether the law should be reformed to prevent sale blocking.

3.14 The vast majority of all respondents agreed that the law should be reformed to prevent sale blocking. Most site operators stressed however that any further changes to the legislation should target rogue operators specifically and not penalise decent park owners and home owners.

3.15 The Government’s response (Question 3)

The Government agrees that there is an urgent need to reform the law to prevent sale blocking and find a better balance between the interests of the home owner, the purchaser and the site operator.

Q4: Which of the three options do you prefer?			
	Option A	Option B	Option C
Local authorities	4	27	1
Site operators and trade bodies	0	2	24
Home owners and Residents' Associations	114	57	8
Others	13	5	1
Total	131	91	34

3.16 The consultation set out three alternative options to prevent sale blocking and sought views on the favoured option.

- *A - the requirement to obtain the site operator's approval of a purchaser would be abolished.*
- *B - the purchaser would be deemed to be approved unless, on application of the site operator, a Residential Property Tribunal declares him unsuitable.*
- *C - the approval requirement would remain in place, but where there is evidence of abuse, the home owner could apply to a Residential Property Tribunal for the Tribunal to exercise that role instead of the site operator.*

3.17 Overall, most respondents supported option A, removing the site operator's role altogether. The majority of home owners and other professionals favoured this option. However, all site operators and a few local authorities opposed it. Many who supported it did so because it would remove the opportunity for site operators to engage with prospective buyers to put them off. Others thought it was the fairest system since home owners should not have to seek permission to sell their own homes. Some also thought this would be the quickest and cheapest of the three options.

3.18 Option B was supported by most local authorities and a significant number of home owners. It was also supported (subject to modification) by one trade body and a major site operator. It was seen as a compromise option because it retained the role of the site operator (thereby ensuring that the buyer would comply with the site rules) whilst providing an adequate deterrent to those who routinely blocked sales by requiring them to challenge a purchaser's suitability at the tribunal.

3.19 Option C was favoured in the main by site operators, although a handful of home owners supported it too. It was preferred by site operators because they retained their existing role in the process, and would be able to ensure that prospective purchasers were suitable and understood their rights and obligations.

3.20 The Government's Response (Question 4)

Under the current law a resident is entitled to sell their home and assign the pitch agreement to the buyer. The role of the site operator is to approve the purchaser - i.e. to ensure his suitability under the site rules (if any). The site operator cannot impose conditions on the approval and he cannot refuse permission to sell or assign. The role of the approval process is, in fact, very limited, but it opens up the potential for significant abuse. In considering the way forward, we have had to consider the expectations of the parties under their agreement; the value of the approval process in securing good estate management and the real and potential abuse that the process creates. We have also considered whether there would be other ways to achieve the aims of the approval process while reducing the potential for abuse. In forming the way forward we have carefully balanced these considerations.

We recognise that site operators prefer Option C which is most similar to the current system. However, it also leaves open most potential for rogue operators to block sales because an application to the tribunal can only be made once approval has been refused. Securing the tribunal's role in future sales would depend on demonstrating that the previous purchase was blocked by the site operator which could be prove difficult to prove unless the previous purchaser is available to give evidence. Overall it could prove to be a complex, time consuming and expensive process.

Option B is widely supported and would certainly reduce the opportunity for sale blocking. It would be a clear improvement on the current system, although some opportunities for sale blocking would remain.

Option A would remove the role of the site owner altogether. Some respondents emphasised the role of the site operator in ensuring the buyer has all the information they need and understands what park home living is about. However, it is the obligation of the seller, not the site owner, to ensure the buyer has all the right information so they can make an informed judgement as to whether to purchase. Indeed a purchase was made on the basis of false or missing information then the redress would be against the seller, not the site operator. Furthermore, there is evidence that some operators will take the opportunity in checking the paper work, to unlawfully change terms, including the pitch fee.

Overall therefore our view is that option A would be an effective means of eradicating sale blocking. In the long term, there should be no role for site operators in approving sales on the change of ownership of the mobile home. We, therefore, intend to implement that option for new agreements entered into by site operators and on the second assignment of an existing agreement following the introduction of the legislation.

However, we accept that there are good arguments for retaining a role for the site operator in existing agreements, where that was the basis on which

agreements were entered into. We will, therefore, implement option B in relation to sales by existing home owners. This will retain the site operator's role, while minimising the opportunity for abuse by reversing the burden of proof of suitability from the home owner to site operator. We also propose to limit the grounds on which an application to refuse approval can be made. These limited grounds are likely to relate to the proposed purchaser meeting certain site rules relating to age, family composition and the keeping of pets.

We will also introduce certain safeguards to ensure transactions move smoothly and the parties' positions and that of the site operator are adequately protected. Key to these safeguards will be the requirement that site operators deposit accurate site rules with the local authority, so a potential buyer has an independent source from which to check his suitability against the rules (see below for more details). We will also be introducing a form (in relation to new agreement transactions) that a seller and purchaser must use in order to complete a sale and rules about how a sale is transacted and completed, including provision to ensure that the site operator receives the correct commission,

Q5: Do you agree that the new scheme should also apply to gifting of homes?		
	Yes	No
Local authorities	36	0
Site operators and trade bodies	13	1
Home owners and Residents' Associations	184	4
Other professionals	14	0
Total	247	5

3.21 *The consultation sought views on whether any changes should also apply to the gifting of homes.*

3.22 All local authorities, other professionals, most home owners and site operators agreed that the new scheme should apply to the gifting of homes. Site operators however expressed concern that it could be used to avoid the payment of commission, particularly if the site owner no longer had a role in the approval process. Site operators also argued that gifts were a different transaction from sales and in addition to the documents normally seen on a sale, the park owner was entitled to see documentary evidence to prove that the recipient of the gift qualified as a member of the donor's family, in accordance with the definition within the Mobile Homes Act 1983.

3.23 The Government's response (Question 5)

We agree that broadly the same rules should apply in relation to gifting as they apply to selling a home. We therefore intend to implement the same changes as set out above for sales of homes. We note the concern of site operators for the potential abuse of the gifting rules to avoid payment of

commission, if the site operator's role in approving is removed. We will ensure that legislation includes safeguards, so that site operators are able to ensure that the gifting rules have been complied with and that the two parties involved can demonstrate a family connection.

Altering express terms

Q6: Do you agree the time limit of six months should also apply to agreements that are assigned to new home owners?		
	Yes	No
Local authorities	36	1
Site operators and trade bodies	5	9
Home owners and Residents' Associations	172	12
Other professionals	14	1
Total	227	23

3.24 *If either party to an agreement wishes to vary, alter or delete an express term they can apply to a residential property tribunal within the first six months of the agreement. However, it only applies between the original parties to an agreement. The consultation sought views on whether the time limit should also apply to assignments.*

3.25 Those who supported this proposal did so, because it would make it easier for parties to challenge unfair or unreasonable agreements.. They also argued that this mechanism would increase confidence in the buying and selling process.

3.26 Site operators who opposed the proposal thought it was unreasonable for a new resident to enter into an existing agreement and then subsequently seek to change it. They also pointed to the existing legal processes, which enabled residents to challenge terms, which they considered fair. Home owners who opposed this proposal did so on the misunderstanding that it would enable a site operator to change the terms of the agreement unilaterally.

3.27 The Government's response (Question 6)

It is clear that, at present, some site operators take the opportunity to change the terms of an agreement in their favour when an agreement is assigned. In future, this opportunity will not be available, because we intend to remove the site operator's role in approving sales. Given this, we have decided not to proceed with this change at present as it is unnecessary to do so. In any case the terms of a pitch agreement are subject to the Unfair Consumer Contract Terms Regulations and can, therefore, be challenged at any time if the home owner believes they are unreasonable.

Site rules

Q7: Do you agree that site rules should not be changed without prior consultation with the home owners (or in default the tribunal)?		
	Yes	No
Local authorities	41	0
Site operators and trade bodies	16	1
Home owners and Residents' Associations	192	0
Other professionals	16	0
Total	265	1

3.28 Usually site rules form an integral part of the pitch agreement and procedures for making rules or changing existing ones will normally be included in the agreement itself. If not, the rules may not be binding or enforceable. This uncertainty can leave home owners feeling vulnerable. We proposed that, in future, any proposed changes to the rules by a site operator must be consulted on with the home owners or, if there is one, any qualifying residents' association.

3.29 There was almost universal agreement across all consultees that when it is proposed to change site rules there should be consultation with the home owners. In particular some site operators recognised that there was a valid role for all with an interest in the park to be involved in. Other professionals commented that this requirement would be a useful way of protecting home owners against site operators who tried to implement unreasonable changes to the site rules. Some suggested that it may be more effective to specify certain rules which were not enforceable against an occupier, such as those which could be used to block sales.

Q8: Do you agree that a new site operator should not be able to unilaterally change or make site rules without agreement with the home owners (or in default the tribunal)?		
	Yes	No
Local authorities	48	0
Site operators and trade bodies	16	1
Home owners and Residents' Associations	194	0
Other professionals	16	0
Total	274	1

3.30 Existing site rules bind a new site operator until any changes have been consulted on and agreed or authorised. We proposed that a new site operator should not be able to impose rules where the site is not subject to rules unless home owners agree to this or in default the tribunal does so.

3.31 All consultees bar two supported this.

Q9: Do you think that certain rules that are unreasonable, such as those that could be used to block sales should be excluded and not enforceable?		
	Yes	No
Local authorities	28	0
Site operators and trade bodies	5	1
Home owners and Residents' Associations	163	10
Other professionals	16	0
Total	212	11

3.32 *We proposed to limit and exclude site rules which might be used as a device to prevent open market sales by home owners, such as an interview requirement.*

3.33 All local authorities, other consultees and the majority of site operators and home owners, thought that unreasonable rules should be excluded and not enforceable. It was suggested by one consultee that a set of model park rules could be drawn up in association with the trade bodies, Residential Property Tribunal and relevant home owners associations.

3.34 Examples given of what were considered unreasonable site rules included rules that either directly or indirectly discriminated against travellers;; that restated criminal or civil law; that limited home owners' access to external goods and services; that permitted unlimited access to homes; that enabled the site owner to reduce plot size or orientation without prior approval of the local authority and home owner; and those which stated that "*Violation of site rules will incur eviction from site.*"

3.35 Examples given of site rules thought to be used to block sales included rules requiring a structural survey before a sale; requirements to notify the site owner of an intention to sell; rules which required all visitors to report to the site office; rules which required purchasers to attend an interview and those which banned estate agents' boards.

3.36 The Government's response (Questions 7, 8 and 9)

It is clear from the responses to these questions that site rules are important tools in effective estate management of park home sites. However, it is also clear that rules are sometimes imposed and changed arbitrarily and sometimes contain "rules" that have nothing, or little, to do with the management of the site. In particular, from the examples cited to us, some rules are put in place to deny home owners their rights, for example, in choice of services, and to prevent the sale of their homes in the open market.

The Government therefore believes that legislation should be introduced to regularise how park rules can be made or changed, including a requirement for consultation with home owners. In particular we propose that existing site

rules, which have not been subject to previous consultation with the home owners, will cease to be enforceable after a specified period, and should be replaced with new rules agreed in consultation with home owners.

We also propose that once site rules are agreed these will form part of the express terms of the pitch agreement so as to be binding on both site operators and residents. Where the site rules cannot be agreed through consultation, we propose the site operator will have a right to apply to the Residential Property Tribunal to ask it to approve the proposed site rules.

Q10: (a) Do you agree that site rules should be deposited with the local authority and available for inspection by a prospective purchaser? (b) Do you agree with the consequences that should follow if a site operator does not deposit the rules or the correct rules?

	(a)		(b)	
	Yes	No	Yes	No
Local authorities	32	5	28	6
Site operators and trade bodies	9	4	7	4
Home owners and Residents' Associations	192	0	186	3
Other professionals	16	0	12	0
Total	249	9	233	13

3.37 We proposed that all sites rules must be deposited with the local authority and published alongside the site licence to allow any prospective purchaser to check their suitability for living on the site against them as well as other rules that apply to the site. If the rules are not deposited or the deposited rules are not accurate the site operator will not be entitled to rely on the rules at all (in the former case), or would be entitled to rely only on those in the published version (in the latter case) in any proceedings against a new home owner.

3.38 Most local authorities supported the proposal for site rules to be lodged with the authority and the consequences that would follow. It was pointed out however that only a small minority of prospective home owners would currently contact a local authority about a site prior to purchase of a park home.

3.39 Although the majority of site operators who responded to this question agreed that site rules ought to be deposited with the local authority, some thought that the rules were not a matter for local authorities to get involved in. There was also concern about the ability of local authorities to administer the process. Buyers may also not know of the existence of rules and it was unclear how they would know that they were lodged with the local authority. A suggested alternative was to require the rules to be displayed on the park notice board.

3.40 The Government's response (Question 10)

It is important that residents and prospective buyers are aware of the rules that apply to a site and that this information is available from an independent source. A resident needs to know what rules they are expected to comply with, whilst a prospective purchaser needs to be able to satisfy himself that he meets the eligibility requirements. This is particularly important given the changes we propose to make to the buying and selling process.

Whilst existing home owners would be kept informed and consulted on site rules by the process we have outlined in response to the previous question, a prospective buyer would not. Therefore, there needs to be somewhere they can independently check the rules that apply. A notice board on the site is not an independent source and there is no guarantee that the correct information would be posted.

In the same way as local searches in respect of bricks and mortar housing is done through a local authority, the most obvious independent source to hold the site rules will be the local authority in whose area the site is situated. We are clear, however, that there should be no further role for local authorities in determining site rules, or disputes about them.

We will, therefore, support legislation to require site rules to be deposited with the local authority on payment of a reasonable fee by the site owner and that the authority is to maintain a register of site rules for public inspection, including through its website.

If rules are not deposited at all or, if the rules that are deposited have not been agreed by the home owners or, in default, the tribunal, they will not be enforceable.

Home Owners' Improvements

Q11: Do you agree that home owners should be able to make internal alterations and improvements to their home without consent of the site operator?		
	Yes	No
Local authorities	43	0
Site operators and trade bodies	13	3
Home owners and Residents' Associations	193	1
Other professionals	14	1
Total	263	5

3.41 Site operators sometimes obstruct home owners who want to carry out improvement works even within their own homes. In the consultation we asked whether a home owner should be able to make any internal improvements to their home without the site operator's permission.

3.42 There was overwhelming agreement to the proposal that home owners should be able to make internal improvements to their homes. Only five consultees disagreed. However, a number of caveats were suggested. These included that the improvements did not alter the definition of the structure, as a caravan or interfere with any site licence conditions and that they would not cause a fire hazard or otherwise compromise the safety of occupants or visitors. Site operators added that internal alterations must not infringe the manufacturers structural or maintenance warranty or compromise the safety of utilities. Examples were given of home owners installing electric showers, which overloaded the electrical system and blew fuses.

Q12: Do you agree that consent for external improvements should not be unreasonably withheld and there should be a right of appeal to the tribunal?		
	Yes	No
Local authorities	44	0
Site operators and trade bodies	16	1
Home owners and Residents' Associations	192	1
Other professionals	15	0
Total	267	2

3.43 *In some cases it will be appropriate for the site operator's permission to be sought for external improvements to the home or the pitch. We asked for consultees views on whether consent for external improvements should not be unreasonably withheld.*

3.44 Almost all consultees agreed that consent for external improvements should not be unreasonably withheld by site operators. However, some site operators and other professionals suggested a balance must be struck between home owner's requests to make reasonable changes, the park owners need to remain within the law and the interests of all other home owners in the community on the park. Several consultees said that it should not be considered unreasonable for a park owner to refuse consent to any external alterations which may breach the terms of the site licence or fire safety requirements or which may take the home outside the statutory definition of a caravan. Almost all consultees agreed there should be a right of appeal to the Residential Property Tribunal, if permission was unreasonably withheld.

3.45 The Government's response (Questions 11 and 12)

Government is clear that home owners should be free to make reasonable improvements to their homes, and there was hardly any disagreement to the propositions in these questions. But neither was there any suggestion that unreasonably withholding permission for improvements was a widespread

practice, even though there is some evidence that individual site operators have acted unreasonably in refusing permission.

The Residential Property Tribunal has a wide power under section 4 of the Mobile Homes Act 1983 to determine any question arising under the Act or under an agreement to which the Act applies. In *Potter v A Hartley (Bir/41 UG/PHC/2011/0001)* (5 October 2011) the tribunal ruled that where an agreement contained a provision that only permitted improvements to be made at the absolute discretion of the site owner (i.e. that consent could be withheld per se) then it is implied into that contract that permission must not be unreasonably withheld. We understand that many contracts contain an express provision similar to that in the *Potter* case. Furthermore, if the agreement contained an absolute prohibition against making any improvement, this might fall foul of the Unfair Terms in Consumer Contract Regulations 1999 and could be challenged in the tribunal.

Given that terms prohibiting or regulating the making of improvements can be challenged through an application under section 4 and the tribunal's ruling confirms the Government's view that permission cannot be unreasonably withheld, we do not think it is necessary at this stage to make any change to the law.

Succession

Q13: Do you think this change simplifies the existing rules provides greater clarity and is practical?		
	Yes	No
Local authorities	40	1
Site operators and trade bodies	6	5
Home owners and Residents' Associations	188	1
Other professionals	18	1
Total	252	8

3.46 We asked whether the rules on succession should be changed to make any joint home owner party to that agreement, so that if the named person died elsewhere, the joint owner living in the home would automatically continue to have protection under the Mobile Homes Act.

3.47 Site operators were almost evenly divided in their response. They confirmed that succession to an agreement is an area which gives rise to disputes. Some were unclear what precisely the Government's proposals were trying to achieve here. It was thought by some that the changes would cause problems as it would be difficult for the site owner to know exactly who he had an agreement with. Concern was expressed that the legislation could also be used to avoid paying commission on sales. Some consultees suggested that the objectives of the reform could be achieved by removing the

wording “...at a time when he is occupying the mobile home as his only or main residence...” in section 3 and this was the safest way to avoid disputes.

3.48 Although the majority of other professionals supported the proposal “in principle”, some were of the view that it was already the case that the spouse or other family member would be entitled to succeed to the agreement. Other professionals took the view that the consultation paper proposal went further than the current law, as that requires the successor to be residing with the deceased, who must be occupying the home at time of death. There was also concern about “deeming” a person to be a party to a contract when they are not.

3.49 The Government’s response (Question 13)

Although the vast majority of consultees agreed that it would be helpful for the law on succession to be simplified, there was no consensus on the best solution. We will continue to work with partners to identify what practical and effective measures can be introduced to clarify the law.

Q14: Do you agree that someone inheriting the home should be entitled to live in it (or nominate another family member to do) providing this would not breach the site rules?		
	Yes	No
Local authorities	39	1
Site operators and trade bodies	11	5
Home owners and Residents’ Associations	196	2
Other professionals	17	1
Total	263	9

3.50 *If no one residing in a park home is entitled to succeed when the owner dies, then ownership is determined by their will or under intestacy provisions. At present, someone who inherits a mobile home in this way is bound by the pitch agreement but does not have a right to live there. We asked for views on whether someone who inherits a mobile home should be able to:*

- (a) live in the home under the terms of the agreement; or*
- (b) gift the home to a family member so that they can live in it under the terms of the agreement.*

3.51 The majority of respondents supported this proposal, although some felt appropriate sanctions would need to be put in place for those who abused the rules and that it might be difficult for the site owner to work out who the agreement was with. It was also suggested that if a partner, spouse, or family member living in a home at the time of death of the owner chose not to live in it and gifted it to some one else or someone else inherits the home, they should not have an automatic right to live in it. It was suggested that local

authority or registered provider sites should be excluded from any change because of a shortage of that kind of pitch.

3.52 The Government’s response (Question 14)

Although there was much support for this proposal, it was less clear that there were a significant number of people who would wish to live in homes they had inherited. Rather, the main issue affecting inheritors was their inability to sell the home in the open market, which we are addressing through reforms to the selling process. Although we will therefore keep the current rules under review, we do not see that there is a pressing need for reform.

Moving a home

Q15: Do you think that the rules governing a home move need to be changed?		
	Yes	No
Local authorities	41	0
Site operators and trade bodies	7	7
Home owners and Residents’ Associations	187	3
Other professionals	13	1
Total	248	11

3.53 *We proposed to improve and clarify the law so that a home could only be moved with the authorisation of a tribunal. The consultation paper sought views on whether the rules governing a home move should be changed.*

3.54 Those who thought the rules should be changed did so because in their view “it is the most disturbing event to home owners.” This was reiterated by one consultee who said there was evidence of the site owner giving spurious reasons to move a mobile home to people who are vulnerable, elderly or infirm, causing them hardship. Another consultee thought that relocation, due to emergency repairs, currently permits site owner latitude to define ‘emergency works’ and this can be abused. Site operators were evenly divided on this question. Some thought that the proposed changes seemed reasonable. Another consultee thought the proposals should only apply if the home move was not agreed to by the resident.

3.55 Some site operators argued that the current rules are adequate and strike the correct balance between the interests of the park owner and those of the resident. Another respondent did not think the rules needed to be changed. The 1983 Act already defines what is meant by “essential repair” or “emergency works” and where there is a move which is not authorised by the Residential Property Tribunal and does not fall within these provisions, the home owner is likely to have a remedy for breach of contract. There was also a concern that the Residential Property Tribunal’s urgency powers would not be adequate in all cases where a move was required immediately.

Q16: If so, do you agree:								
(a) the tribunal should give authority for the home move in all cases;								
(b) if the move is to facilitate works to the pitch or base there should be								
 a presumption in favour of returning the home to its original pitch;								
(c) that on a permanent home move the new pitch should be comparable								
 and the agreement should be on the same terms as the old pitch agreement; and,								
(d) that the tribunal decide who moves the home and that site operator								
 must fund move in advance?								
	A		B		C		D	
	Yes	No	Yes	No	Yes	No	Yes	No
Local authorities	33	9	41	0	40	0	38	2
Site operators and trade bodies	5	4	8	3	11	1	6	1
Home owners and Residents' Associations	163	9	181	1	177	1	173	3
Other professionals	14	0	12	0	14	0	13	1
Total	215	22	242	4	242	2	230	7

3.56 Most consultees thought the Residential Property Tribunal should approve all moves. Some emphasised that this should be the case even if the parties had agreed the terms of the move. Those who disagreed took, in the main, the opposite view, that the tribunal should not be involved if the site operator and home owner had agreed the move, as this would add more bureaucracy and costs. This was the view of most site operators and some local authorities.

3.57 A significant majority also supported the proposition that a home should be returned to its original pitch after repairs to the base and that in the meantime the current terms should apply to the temporary pitch.

3.58 There was also a significant consensus that any permanent move should be to a comparable pitch and on the same terms as the old pitch agreement. The majority of respondents thought that the tribunal should decide who moved the home and that the site operator must fund the move in advance. However, one consultee thought that it should be up to the site operator to decide who moved the home and pay the costs of any move. Another commented that it would be very unusual for the home owner to arrange a move themselves for the purposes of works to be done by the site operator.

3.59 The Government's response (Questions 15 and 16)

It is clear that the rules about moving a home are not well understood and this has led to some operators making unreasonable and unenforceable demands in connection with home moves which some residents have complied with. However, from the examples cited in the consultation responses, it is clear that better understanding and enforcement of the existing law should be the priority, rather than a change to the law. We will work with residents and industry partners to achieve this.

Site improvements, operator's repairing liabilities and pitch fees

Q17: Do you agree that the site operator's maintenance and repairing obligations would benefit from this clarification?		
	Yes	No
Local authorities	43	1
Site operators and trade bodies	10	3
Home owners and Residents' Associations	191	1
Other professionals	17	0
Total	261	5

3.60 The consultation asked if it would be useful to clarify the site operator's repairing liabilities by specifying they included the common areas of the site, and the supply of water, electricity and gas (including infrastructure) where these are supplied by the operator.

3.61 The overwhelming majority of consultees agreed that the site operator's repairing liabilities needed to be codified. It was felt this might prevent any dispute about the site operator's repairing obligations. Other professionals welcomed it, as it would bring the repairing provisions in line with the equivalent provisions for bricks and mortar estates.

Q18: Do you think anything else needs to be included or anything that ought to be removed from these obligations?		
	Yes	No
Local authorities	19	18
Site operators and trade bodies	5	4
Home owners and Residents' Associations	64	102
Other professionals	6	3
Total	94	127

3.62 The consultation asked if anything needed to be added to or removed from the site operator's repairing liabilities.

3.63 Almost half of the respondents thought the definition did not cover all obligations and should include for example the maintenance of all fire safety equipment and any repairing obligations specified in the site licence. In relation to local authority traveller sites there was concern there could be widescale dumping of unwanted items in common areas (flytipping) if the site operator was made responsible for those areas.

3.64 There was some suggestion that consideration should also be given to distinguishing between capital items of renewal and cyclical repairs which can sometimes become quite complicated. It was also suggested that some modern written agreements include a “service charge”, as well as a pitch fee and administration charge and that these “extras” can cause hardship to home owners who are on fixed incomes.

Q19: Do you agree with the definition of “improvements”?		
	Yes	No
Local authorities	41	1
Site operators and trade bodies	9	6
Home owners and Residents’ Associations	174	9
Other professionals	12	0
Total	236	16

3.65 *The consultation asked for views on the definition of ‘improvements’ which covered anything done on the site which increased the services available to home owners and which they had been consulted about.*

3.66 Most consultees agreed with the proposed definition of an improvement. Site operators emphasised there needed to be a clear distinction between what constitutes an improvement as opposed to a repair of an existing benefit, service or amenity. Some felt the proposed definition was too limited as in practice, most improvements related to the improvement of an existing facility.

Q20: Do you agree the works should be permitted to be phased and recovered over two or more review periods?		
	Yes	No
Local authorities	38	0
Site operators and trade bodies	13	2
Home owners and Residents’ Associations	165	11
Other professionals	15	0
Total	231	13

3.67 *The consultation sought views on whether the cost of works carried out can be recovered over two or more periods. At present, large one-off improvements can only be charged for in the year in which the costs are incurred.*

3.68 Most consultees agreed that works should be phased and the costs recovered over two or more review periods. Home owners said that they would be more likely to agree to improvements, if costs could be recovered over an extended period. Other professionals supported the proposal saying it was in line with a system of “planned maintenance”, which is encouraged in residential leasehold management. Site operators agreed with the proposal, adding that improvement works were critical and greater clarity and transparency to manage expectations of all involved could only be of benefit. Some added these arrangements should not be mandatory, as they should not be obliged to spread out costs beyond the year in which they were incurred.

Q21: Do you think the site operator should be required to remove the cost of improvements from future pitch fees when those costs have been recovered?		
	Yes	No
Local authorities	34	5
Site operators and trade bodies	13	3
Home owners and Residents' Associations	184	3
Other professionals	16	0
Total	247	11

3.69 *The consultation asked for views on whether the site operator should remove the cost of improvements from future pitch fees once those costs had been recovered.*

3.70 Although most consultees agreed, some local authorities queried how this could be monitored and enforced by home owners. Some site operators said it was already the practice to remove the charge once the cost had been recovered and that the courts were alert to this. All site operators said that the ongoing cost of maintenance to the improvement must be taken account of in determining future pitch fees.

3.71 Some home owners commented that it was unfair that there was an ever increasing cost because RPI could also be applied to the capital cost if it stayed in the pitch fee. Other professionals added that pitch fee increases resulting from improvements caused concern to home owners. It was suggested that an alternative approach might be to remove the cost of improvements from the pitch fee and establish a separate “service charge”, which could be reviewed independently from the pitch fee.

Q22: Should the site operator be required to provide a written statement specifying how the pitch fee is calculated and giving information about its implementation? If so, is the information specified above the right amount and type?		
	Yes	No
Local authorities	37	0
Site operators and trade bodies	15	1
Home owners and Residents' Associations	193	1
Other professionals	16	0
Total	261	2

3.72 The consultation asked if it would be useful for home owners to have more detailed information about a proposed new pitch fee at the outset rather than having to seek the further information from the site owner.

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

3.74 The Government's response (Questions 17 to 22)

It is evident the difference between a "repair" and an "improvement" is not well understood by either home owners or site operators, particularly since some changes were made to the system in 2006. In particular, the difference between repairs and improvements is not always clear. The 2006 changes were designed to help clarify this by providing a mechanism by which the cost of agreed improvements (but not repairs) could be included in a pitch fee review. Despite this, practice varies significantly and some site operators continue to pass on ineligible costs through pitch fee reviews by not telling the home owners how the proposed pitch fee has been calculated.

In the Government's view it is clear that the priority for reform is not the law around repairs and improvements, but the transparency of pitch fee reviews. This is why we propose legislation should be introduced which requires the site owner to use a statutory notice when proposing a higher pitch fee. That form will require the operator to specify how the new pitch fee has been calculated, including all the charges and what they are for. Home owners will be more able to determine whether the charges are eligible and reasonable. The form will also contain prescribed information about the rights and obligations of the parties. If the form is not used, then the pitch fee review is invalid and not payable.

We also propose two other changes. Firstly, we will limit the extent to which site operators can pass on costs related to "legislative changes", which

directly affect the management and maintenance of the site. Secondly, we will clarify that home owners have a right to refer a proposed review to the Residential Property Tribunal and that, in considering whether there has been a decrease in amenity, the site owner and tribunal must consider the condition of the site and the quality of the services.

These changes will not apply to local authority traveller sites as there is no evidence that local authorities act unfairly in proposing new reviews.

Q23: Do you agree that site operators should not be able to pass on their costs of implementing the changes outlined in chapters 1 and 2 of this paper through pitch fees?		
	Yes	No
Local authorities	37	1
Site operators and trade bodies	5	8
Home owners and Residents' Associations	187	7
Other professionals	16	0
Total	245	16

3.75 The consultation sought views on whether site operators should be able to pass on any costs they incur of implementing changes to the Mobile Homes Act 1983 on to home owners.

3.76 The majority of consultees thought it was reasonable that site operators should not be allowed to pass costs on through the pitch fee and that home owners should not be financially penalised because site operators have to comply with new legislation.

3.77 However, site operators were clear that they should be able to recoup the costs through pitch fees, both because the changes would benefit residents and because there was no other way for them to recoup costs.

3.78 The Government's response (Question 23)

Our impact assessment shows that the burdens on site operators from the proposed changes would be minimal. The main purpose of the proposed changes is to prevent site operators from blocking sales and overcharging in pitch fee reviews. Given this, it seems unreasonable that home owners should be called to pay the costs of site operators in their compliance of the law. We, therefore, intend to include in legislation a prohibition on the site operator recovering costs through a pitch fee review for implementing the changes to the Mobile Homes Act 1983 that are being proposed.

Damages and compensation

Q24: Do you agree there is a need for a specific provision that damages and compensation can be claimed for breaches under the agreement and the Act?		
	Yes	No
Local authorities	36	0
Site operators and trade bodies	15	1
Home owners and Residents' Associations	193	1
Other professionals	15	1
Total	259	3

3.79 We asked whether the rules should be clarified to allow someone who incurs loss or expenses because of a breach of contract or a duty under the Act to be entitled to damages and or compensation in all circumstances.

3.80 An overwhelming number of consultees thought there should be a specific provision so claims for damages and compensation could be made, although some added that any right to award damages must however apply equally to park owners and to occupiers who breached the terms of the agreement.

3.81 However, some respondents thought that additional powers were unnecessary as section 230(5) (e) of the Housing Act 2004 already gave the tribunal power to make directions "requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise."

3.82 The Government's response (Question 24)

The Government agrees that the Residential Property Tribunal has a power to award damages and compensation and although they rarely do so, they have awarded compensation in some sale blocking cases. Any doubts over whether this power was effective have been resolved by amendments to the legislation in 2006. We are, therefore, satisfied that there is no need for further legislation.

Criminal offences in the Caravan Sites Act 1968

Q25: What is your experience of local authority intervention in harassment and intimidation cases?		
	Positive	Negative
Local authorities	20	12
Site operators and trade bodies	0	7
Home owners and Residents' Associations	2	168
Other professionals	6	3
Total	28	190

3.83 We asked consultees about their experiences of local authority intervention in harassment or intimidation cases.

3.84 Some local authorities said that they rarely received complaints and admitted to not being proactive in dealing with cases of harassment and intimidation. Most authorities found dealing with disputes between home owners and site operators to be time consuming and frustrating. In most cases they believed that there was little or nothing they could do to satisfy the complainant except suggest they take legal advice. Home owners were often afraid to give witness statements or evidence because they feared reprisals, and the police tended to consider these as civil matters.

3.85 Site operators generally had little experience of harassment prosecutions under the Caravan Sites Act 1968. They said that the police and local authorities should be encouraged to exercise their powers proactively and target their enforcement actions on rogue operators. They also called for better information and better contacts between the industry, police and local authorities.

3.86 Home owners, in general, had very little or no contact with local authorities. However, those that did found their complaints rejected for reasons, such as a lack of power or insufficient funding. Home owners felt that local authorities were poorly informed and hesitant to act.

3.87 Other professionals said that local authorities were sympathetic but would not intervene in disputes even when reminded of their statutory roles.

3.88 The Government's response (Question 25)

The responses from many local authorities were candid in their admission that dealing with complaints from home owners was difficult, even though they have made good use of similar powers elsewhere – notably enforcement of the Protection from Eviction Act 1977 in the private rented sector. It is important that authorities use their powers under the 1968 Act effectively, since potentially criminal operators might be more willing to use harassment to deter home owners from selling their homes. The Government will work with

the Local Government Association to ensure better awareness of the Act amongst local authorities.

Q26: Do you think we need to make it clearer that section 3 applies to (a) all acts of interference of a criminal nature and if so, how do you suggest that might be achieved and (b) all persons lawfully occupying a park home, including temporary guests?

	a		B	
	Yes	No	Yes	No
Local authorities	31	2	31	2
Site operators and trade bodies	15	1	4	0
Home owners and Residents' Associations	164	4	144	2
Other professionals	15	1	12	0
Total	225	8	191	4

3.89 The consultation sought views on whether to clarify the law on eviction and harassment.

3.90 Local authorities said the legislation would benefit from some further clarification because the language used is not easily understood. Site operators welcomed the measures to improve clarity in the law as it is important that those who occupy a residential park home have the confidence and security in the home of their choice. They said that any changes should be backed up by stronger enforcement from the police and local authorities.

3.91 Other professionals argued that the current provision was drafted in wide terms which already included the proposed clarifications. They said that clarification could be given in guidance to site operators, mobile home owners and the courts rather than by legislation.

3.92 The Government's response (Question 26)

It is clear that the existing law is poorly understood and enforced and we will work with the Local Government Association to raise awareness of the law. We agree that the current law is widely drafted and that, for example, section 3 of the 1968 Act is likely to already provide protection to temporary visitors residing with the occupier. However, there are two areas in which we propose changes. Firstly, we will make clear that acts of harassment could be one-off events because clearly a one off act could be sufficient to deter a home owner from exercising a right - such as to sell the home. Secondly, we will be extending the scope of section 3 to make it a criminal offence for a site operator to provide false or misleading information or make such representations with a view to block a sale. This is an important change that will complement the changes to the role of site operators in the approval process.

Applying licensing under the Caravan Sites and Control of Development Act 1960 to Holiday Sites

Q27: Do you think holiday and restricted occupancy sites should be (a) excluded from licensing, (b) left within the scope of the existing scheme (c) brought within the new scheme or (d) only brought within the scope of the new regime where local authority enforcement becomes necessary?

	A	B	C	D
Local authorities	8	8	30	0
Site operators and trade bodies	0	212	0	1
Home owners and Residents' Associations	6	11	100	18
Other professionals	0	1	9	2
Total	14	232	139	21

3.93 We asked for views on whether the new licensing requirements should apply to holiday and restricted occupancy sites or whether to leave the old regime in place for those sites.

3.94 The majority of local authorities thought that holiday sites should be brought within the new scheme to ensure a good level of protection for holiday site users and home owners of restricted occupancy sites. Some mentioned that there were huge problems on these sites, including unscrupulous mis-selling of holiday homes as residential. Having separate regimes was likely to create anomalies and inconsistencies that could be exploited by unscrupulous site operators. Many sites also had mixed holiday and residential use.

3.95 Site operators of holiday and touring caravan sites expressed concern about the proposals to alter the site licensing arrangements for their sites. They said that there was no evidence that the abuses these measures seek to address were replicated across holiday and touring parks.

3.96 The majority of home owners and other professionals thought that holiday and restricted occupancy sites should be brought within the new scheme because in many cases this is because people were living permanently on them...

3.97 There was little appetite from any consultees for excluding holiday sites from licensing altogether or bringing them into the new regime in a hybrid form.

3.98 The Government's response (Question 27)

Although there is little evidence of poor conditions on touring caravan sites, we have heard of poor standards on some static holiday caravan sites. Problems seem to be concentrated on sites in which people live permanently, sometimes in breach of planning permission.

We have considered the options for applying licensing to sites used exclusively for holiday and restricted occupancy purposes. We are clear that there is a continuing role for the licensing of holiday caravan sites. However, it is not clear that there is a compelling case for applying any significant changes to the holiday licensing regime, as the abuses which they are designed to tackle are limited to the residential sector. There is also little evidence that genuine holiday sites are routinely in poor condition, that holiday site operators do not comply with their licensing obligations or that local authority intervention in the holiday sector is routine.

Q28: Do you agree that any alternative arrangements for holiday sites should only apply when they are for exclusive holiday use, and that mixed sites should be treated as residential?		
	Yes	No
Local authorities	32	7
Site operators and trade bodies	1	6
Home owners and Residents' Associations	129	24
Other professionals	6	8
Total	168	45

3.99 *The consultation sought views on whether any alternative arrangements for holiday site should only apply to sites used exclusively for holidays and that mixed sites should be treated as residential.*

3.100 Most local authorities agreed that any alternative arrangements for licensing holiday sites should only apply when they are for exclusive use and that mixed sites should be treated as residential.

3.101 Site operators did not want any alternative arrangements applied to holiday sites. Most other professionals did not support the proposal because in their view all sites should have adequate protection and must be treated the same.

3.102 Most home owners agreed that alternative arrangements should apply to holiday sites and that mixed sites should be treated as residential. Some suggested that mixed sites should be split into two parks to avoid confusion, keep the rules of each site separate.

3.103 The Government's response (Question 28)

It is not possible to divide mixed sites into two separate parks and as we have said in response to the above question we propose that holiday sites are not included in the new licensing regime. Therefore, the issue is whether a mixed site should be treated as a "residential" site or as a "holiday" site. No one suggested they should not be treated as a residential site. Indeed that is the legal position now by virtue of the definition of a "protected site" in section 1 (2) of the Caravan Sites Act 1968. As our focus is on protection of the

residential sector, this means we will support legislation that applies the new licensing regime to mixed sites.

For the avoidance of doubt, a mixed site does not include a site which contains permanently occupied static caravans occupied as staff accommodation.

Licensing Fees

Q29: 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?		
	Yes	No
Local authorities	46	0
Site operators and trade bodies	6	10
Home owners and Residents' Associations	155	15
Other professionals	17	0
Total	224	25

3.104 *This question concerned the types of applications for which a fee could be charged. These were listed in paragraph 4.11 of the consultation paper and included applications for a new licence, a transfer of a licence and for alteration of a licence.*

3.105 A significant majority of respondents (including all local authorities) agreed that local authorities should be able to charge fees for considering applications. The proposal was also supported by a large majority of home owners and all other professionals. It was suggested that authorities should be able to set variable fees and charges up to the full economic cost based on a risk assessment that took account of the type of site, management and past experience of problems.

3.106 The majority of site operators did not agree that local authorities should be able to charge licensing fees as this would place further burdens on good site operators.

Q30: Do you agree that local authorities should be able to charge an annual fee for administration of the licence?		
	Yes	No
Local authorities	38	6
Site operators and trade bodies	3	13
Home owners and Residents' Associations	165	17
Other professionals	15	2
Total	221	38

3.107 *The consultation sought views on whether local authorities should charge annual licence fees for ongoing management of licences.*

3.108 Most consultees agreed with this proposal, although with some qualifications. One local authority was unsure what would happen if the fee wasn't paid. Home owners thought that an annual charge was justifiable, but only if local authorities provided regular checks to ensure that sites were meeting the requirements. Other professionals commented that a site licensing regime would only be effective if the local authority was able to meet the costs of administration, enforcement and inspection.

3.109 The minority of local authorities who disagreed thought charging would be difficult to administer and should be limited to enforcement activity. Most site operators did not agree with the proposal as it would place further burdens on good site operators. They also suggested that any income from fees must be ring fenced and only used to fund resources and activity incurred in this area.

Q31: Do you agree that the requirement to pay a fee should be a condition of the licence?		
	Yes	No
Local authorities	43	1
Site operators and trade bodies	4	10
Home owners and Residents' Associations	173	11
Other professionals	16	1
Total	236	23

3.110 *The consultation sought views on whether the requirement to pay a fee should be a condition of the licence.*

3.111 The majority of respondents agreed with the proposal. Some local authorities suggested that if the fee was not paid, the licence should be automatically suspended as soon as the owner was notified in writing. They also noted that civil recovery of debts rarely work as companies often stop trading and set up similar companies to avoid the debt or in the case of County Court Judgements, the majority are never paid as there is no sanction for non-payment. Other professionals were mainly supportive.

3.112 There was some suggestion that if licences are revoked for non-payment of licence fees it would mean that local authorities no longer had powers to ensure that the site remained safe.

3.113 The majority of site operators opposed the proposal. They suggested that any new regime needed to set out clearly what services will be charged for and when and also, all fees should be subject to an agreed framework which was reasonable and transparent. Where a fee was a legal requirement,

it should be paid and local authorities should follow due process to recover unpaid fees.

Q32: Do you agree that local authorities should have the power to exempt certain owners of non commercial sites from any licensing fees?		
	Yes	No
Local authorities	33	9
Site operators and trade bodies	1	7
Home owners and Residents' Associations	135	34
Other professionals	12	3
Total	181	53

3.114 We asked consultees for their views on whether local authorities should have the discretion to exempt certain owners from licensing fees.

3.115 The majority of respondents supported the proposal that non commercial sites could be exempted from fees, subject to certain caveats. Local authorities suggested they should have discretion to reduce fees or exempt certain sites at their discretion, rather than blanket exemptions. Some home owners thought that the consideration of the size of the site should be the key factor in determining whether to apply an exemption. Other professionals commented that it was important that an exemption rule did not create a two-tier approach, with residents of smaller sites less well protected than those on larger sites.

3.116 Almost all site operators who responded to this question did not agree with the proposition. They were concerned that it could create a loophole and that, it might be inconsistently applied. Some home owners also disagreed, saying that all site operators should be required to pay some form of registration fee. Other professionals argued the need for equality across the board with fees applying to all sites.

3.117 The Government Response (Questions 29 to 32)

The Government believes that the inability of local authorities to charge for their licensing functions under the Caravan Sites and Control of Development Act 1960 (the 1960 Act) is a key flaw in the current system, leaving local authorities unable to carry out their role effectively.

We note that site operators have argued that fees should be raised in relation to enforcement action, and not on a routine basis. However, there is a risk that this would leave local authorities under-resourced to monitor compliance with licence conditions and therefore to take enforcement action. This may also incentivise local authorities to take enforcement action when informal advice and assistance would be more appropriate.

The Government will, therefore support legislation that will enable local authorities to set fees for dealing with licence applications and annual fees for the administration and monitoring of licences granted. In order to ensure that licence fees are reasonable, transparent and based on a cost recovery principle only, local authorities will be required to publish their licence fee policies. These policies should also specify the criteria for any exemption. We will support the industry and local authorities to work together to develop appropriate fee models. We propose that the legislation is also framed to permit the local authority to seek an order from the Residential Property Tribunal if an annual fee is not paid in time and that if the order is not complied with to enable the authority to ask the tribunal to revoke the licence.

Q33: Do you think that site operators should be able to recover licensing costs from home owners through pitch fees?		
	Yes	No
Local authorities	15	24
Site operators and trade bodies	16	0
Home owners and Residents' Associations	12	174
Other professionals	4	13
Total	47	211

3.118 We asked consultees for their views on whether licence fees should be passed on to homeowners or whether they are business costs and should be borne by the site operator.

3.119 Views on this issue were starkly polarised with all site operators saying they should be able to recover their costs and almost all home owners saying they should not be able to. Home owners were of the view that licensing costs would be a business cost and should not be passed down to the resident through pitch fees or otherwise. Most other professionals agreed these costs should not be recoverable pointing out that the running of a mobile home site was a commercial operation and any licensing fees should be regarded as business costs.

3.120 Site operators, on the other hand said licensing fees must be recoverable from home owners, who would be the main beneficiaries of improvements to site licensing. Many local authorities saw licensing costs as a business cost and therefore not recoverable, but others felt the costs should become part of the annual running costs of a site. For those costs to be borne by only the site owner could be burdensome and may result in less money being ultimately available to carry out maintenance and improvements to the site.

3.121 The Government's response (Question 33)

In future, annual licensing fees will be an unavoidable cost to the site owner, with significant benefits to home owners. However, the costs of enforcement

action are entirely avoidable and it is not right that home owners should be expected to meet those costs. We will support legislation that will not prevent a site operator from treating an annual licence fee (but no other licensing costs) as a cost that can be included in the first pitch fee following implementation of the requirement.

Compliance Notices

Q34: 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?		
	Yes	No
Local authorities	40	2
Site operators and trade bodies	15	1
Home owners and Residents' Associations	182	2
Other professionals	16	0
Total	253	5

3.122 We asked for views on whether local authorities should have the power to serve formal notices on site operators requiring works to be done to comply with the licence and in certain circumstances, to enable local authorities to do the works themselves and recover their costs.

3.123 There was almost unanimous agreement to this proposal. Some local authorities said that any revisions to the existing legislation should follow similar procedures to those under the Housing Act 2004. They also commented that there should be a right of appeal and this should be set out in the legislation. This was agreed by the professional respondents who thought that in the absence of an appeal right, risk averse local authorities are unlikely to prosecute for a breach if they could not be certain of success. They added that any notice should also explain what work is required and how long the operator has to complete it.

3.124 Site operators also agreed that the local authority should be required to serve a notice of a breach of condition. They shared the view of other professionals that the notice must be laid out clearly and specify the breach and what is required to remedy it.

Q35: Do you agree the local authority should be prohibited from going straight to prosecution and must serve a notice of remedy instead?		
	Yes	No
Local authorities	18	24
Site operators and trade bodies	16	0
Home owners and Residents' Associations	148	37
Other professionals	12	4
Total	194	65

3.125 *The consultation asked if a local authority should be prohibited from prosecuting for a breach of condition unless a notice has been served requiring the breach to be remedied.*

3.126 Whilst there was considerable support for this proposal from across all consulted, some local authorities suggested that in some cases prosecution may be the most appropriate course of action and they should have the discretion to do this immediately. This view was shared by some of the professional respondents.

3.127 On the other hand, all site operators said that authorities should be prohibited from going straight to prosecution. A site operator should be given the opportunity to understand and acknowledge any potential breach of a notice and have the opportunity to remedy the situation in advance. Home owners mainly agreed that local authorities should be prohibited from going straight to prosecution and must instead serve a notice of remedy.

Q36: Should a local authority be able to recover its expenses in connection with the notice from the site operator?		
	Yes	No
Local authorities	44	0
Site operators and trade bodies	13	3
Home owners and Residents' Associations	183	0
Other professionals	16	0
Total	256	3

3.128 *The consultation asked whether a local authority should be able to recover all its expenses in the preparation, serving and execution of the notice; including administrative, legal and surveying costs, from the site operator.*

3.129 All local authorities agreed that they should be able to recover expenses in connection with notices from the site operator.

3.130 Site operators, in the main, agreed with the proposal, but said that the costs should be set out clearly. If the authority serves a notice without good reason, it should be unable to recover costs. Any costs that are recoverable should be limited to the test of reasonableness.

3.131 Unanimously home owners and all other professionals agreed local authorities should be able to recover their expenses, but thought the mechanism for how they would actually secure payment needed to be considered.

Q37: 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?		
	Yes	No
Local authorities	23	23
Site operators and trade bodies	16	1
Home owners and Residents' Associations	68	109
Other professionals	8	7
Total	115	140

3.132 The consultation asked whether a local authority should be required to obtain a warrant before entering a site to do emergency works.

3.133 Most consultees disagreed with this proposal. Local authorities and other professionals were evenly divided. Home owners in the main disagreed, but without giving reasoned answers, whilst site operators agreed with the proposition.

3.134 Local authorities and professional respondents who disagreed said this approach conflicted with other legislation, including the Housing Act 2004 and the Building Act 1984 under which works are allowed without the need to obtain authority from a court. They said that there was no justification for a different enforcement regime to operate for caravan sites and also, having to go to court added costs to the process.

3.135 Site operators agreed with the proposal but added that there should be a way for local authorities to act immediately in response to an emergency.

Q38: 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	No
Local authorities	45	0
Site operators and trade bodies	13	3
Home owners and Residents' Associations	183	0
Other professionals	15	0
Total	256	3

3.136 The consultation asked whether the local authority should be able to recover its cost of doing work in default and any associated charges.

3.137 There was almost universal agreement to this proposal. Local authorities suggested that the debt should be registered as a charge attached to the land as some sites have management companies acting as the occupier of the land through 6 year leases issued by the parent company (such leases are not registerable as they are less than 7 yrs). The

management company has no assets and the lease could be extinguished at anytime. The risk to the council of carrying out substantial works would therefore be too great.

3.138 Site operators said the recoverable costs would need to be reasonable and other professionals thought that that making it easier for authorities to carry out work and then recover costs would encourage more authorities to take action.

3.139 The Government's Response (Questions 34 to 38)

In general, the proposal to require a local authority to serve a notice before prosecuting has been welcomed by a significant majority of all consultees and this is the approach we shall support in legislation. However, we do not agree that local authorities should have discretion to go straight to prosecution as that would undermine the notice procedure.

The notice procedure (compliance notices) will be similar to that for the service of improvement notices under part 1 of the Housing Act 2004 and site operators will have a right of appeal to the residential property tribunal. However, works in default cannot be initiated under this scheme unless there has been a prosecution for failure to comply with the notice, although, we will not require local authorities to seek permission of the court to carry out default works.

We will also allow local authorities to enter a site and carry out works in an emergency, in a similar way to part 1 of the Housing Act. However, the emergency must relate to a breach of the licence condition and as a result of this breach, there must be an imminent risk of serious harm to the health or safety of any person who is or may be on the land. The local authority could still eventually prosecute for an ongoing breach of a licence condition, which the site owner refused to remedy after the local authority had remedied the immediate danger. There will be a right of appeal against the local authority's decision to enter the site, but not one to prevent them from doing so in the first place.

Local authorities will also be able to recover their expenses in taking enforcement action and serving notices and their costs in doing works in an emergency or in default. Those costs and expenses, together with interest, become a debt due from the site operator and may be registered as a land charge. The site operator will have a right of appeal against the service of demands for costs and in certain circumstances claims for expenses.

Given that we intend to permit appeals to the Residential Property Tribunal against compliance notices and emergency works, we think it is only logical that appeals against the imposition of site licensing conditions or proposals to alter or refusal to alter licence conditions should be to that tribunal as well. This will also apply to holiday sites.

The Government is firmly of the belief that the Residential Property Tribunal with its expertise in local authority licensing and enforcement and its knowledge and experience of mobile home sites through its jurisdiction under the Housing Act 2004 is the correct destination for civil appeals under the 1960 Act. All appeals to the tribunal will attract fees.

Fines for not doing works under a Compliance Notice

Q39: What is your experience of local authorities prosecuting for breach of licence conditions?			
	Positive	Negative	None
Local authorities	14	19	
Site operators and trade bodies	3	8	
Home owners and Residents' Associations	4	44	125
Other professionals	4	3	
Total	25	74	125

3.140 The consultation sought views on what knowledge and experience consultees had of local authorities prosecuting for licence breaches.

3.141 Most local authorities had not been involved in prosecutions for breach of licence conditions. The reasons for this included the cost, a lack of resources and the low level of fines. Some authorities also preferred to resolve any breaches of the licence conditions amicably with the site operator before taking enforcement action. With no notices available under the legislation the choice was currently to prosecute or take no formal action. Home owners and other professionals agreed prosecutions were rare because of the small fines that result or lack of resources to mount a prosecution.

3.142 Most site operators had little or no experience of local authorities prosecuting for breach of licence conditions. They said that proper enforcement of the law along with adequate penalties to remove the criminals was required, not more regulation or penalties that might drive small park owners out of the industry.

Q40: Do you agree that the current maximum fine for a breach of a site licence condition is inadequate and should be increased?		
	Yes	No
Local authorities	46	0
Site operators and trade bodies	14	2
Home owners and Residents' Associations	177	1
Other professionals	16	0
Total	253	3

3.143 *The consultation sought views on whether the cap on the maximum penalty of £2,500 for a breach of site licence should be lifted.*

3.144 Local authorities, home owners and other professionals agreed that fines were too low and should be increased. Site operators agreed that fines were currently inadequate and should be increased but suggested that an unlimited fine would be excessive. Though some thought the approach to recovering debts would be draconian, the majority agreed with the suggested approach. Also, there must be a mechanism for site operators to challenge the reasonableness of the costs being claimed.

3.145 The Government’s Response (Questions 39 and 40)

It is evident that local authorities rarely prosecute for breach of licence conditions and this seem to be mainly because they lack resources to do so. The cost of prosecution can also be high and the fines imposed when a prosecution is successful are small.

We will support legislation to impose a level 5 fine for failure to comply with a compliance note (see paragraph 3.136 and 3.138). This will enable the court to impose a fine that more accurately reflects the economic benefit or saving that the site operator has obtained by his failure to do the works, when the cap on level 5 fines is lifted by the commencement of section 85 of Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Recovery of costs and expenses under emergency action and compliance notice procedures

Q41: Do you agree with this approach to recovering costs?		
	Yes	No
Local authorities	45	1
Site operators and trade bodies	12	4
Home owners and Residents’ Associations	174	8
Other professionals	14	0
Total	245	13

3.146 *The consultation sought views on a number of ways in which a debt due under a compliance notice or, works in default or an emergency could be recovered, including with interest. These included recovery through appropriate court action and as a local land charge attached to the site.*

3.147 Some site operators felt the suggested approach was draconian. However, some others as well as local authorities, other professionals and home owners agreed with the proposed approach for recovering costs.

3.148 The Government's Response (Question 41)

We will support legislation which permits the local authority to charge a reasonable rate of interest on sums due until they are paid and to register any debt as a local land charge which can be enforced by requiring the site to be sold if the debt is not paid.

Licence Holders

Q42: Do you think these changes would be beneficial?		
	Yes	No
Local authorities	46	0
Site operators and trade bodies	13	2
Home owners and Residents' Associations	179	2
Other professionals	15	2
Total	153	6

3.149 The consultation sought views on whether there was a need to make joint owners of the land joint licence holders, so as to avoid licences being transferred from one person to another to avoid liability under the licence. It also sought views on whether the term "occupier" used to denote the site operator should be changed.

3.150 Local authorities agreed with the proposal for all owners of a site to be joint licence holders and the proposed change to the definition of a licence holder. The definition of site operator (person/company etc who can operate a site) should also be reconsidered and if possible, restricted to the freeholder, a leaseholder with a minimum lease of 7 yrs (so it is registerable) or to the person/company that receives the benefit of the pitch fees.

3.151 Site operators agreed that the changes would be beneficial. Other professionals also agreed but added that the paper did not address the problem of one company dissolving and another company taking over a site. In terms of the "occupier", some said that it would be simplest to use the term "tenant". Others did not think the changes would be beneficial unless there was legislation to require and specify 'fit and proper' person for purposes of a licence.

3.152 The Government's Response (Questions 41 and 42)

The Government proposes to tackle the issue of sites changing hands between individuals and between companies, to escape liability under licences and otherwise, by introducing local authority discretion to refuse to grant a licence or transfer one from the existing site operator to another person or company. The test in agreeing a transfer or a grant of a licence will be whether the person or company is suitable to manage the site. There will be a right of appeal against the local authority's decision to refuse to grant a

transfer of a licence. We will support legislation which introduces these measures.

We see no pressing need to change the definition of “occupier”.

Liability of Directors etc. for offences

Q43: 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	No
Local authorities	44	0
Site operators and trade bodies	11	3
Home owners and Residents' Associations	181	0
Other professionals	16	0
Total	252	3

3.153 The consultation proposed that where an offence is committed by a company and if it is proven that the offence was commissioned by, or resulted from the negligence of a director or other officer of the company, they as individuals, as well as the company would be liable to be punished for the offence.

3.154 Local authorities, other professionals and home owners supported this proposal. Site operators generally agreed that a relevant officer of a body corporate who was responsible for an offence should also be guilty of that offence. They felt that there should be a clear list of offences for which such liability might attach and the level of involvement which amounts to being “responsible” should be clarified. They said that the powers should be used sparingly and consistently.

3.155 The Government’s Response (Question 43)

The Government will support legislation which makes directors and relevant officers of corporate bodies liable for offences committed by the body if they were involved in the offence. This brings the offences in the 1960 Act into line with the Caravan Sites Act 1968, where officers may already be found liable along with the body corporate for offences committed by the body corporate.

Sites to be fit for purpose

Q44: 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	No
Local authorities	48	0
Site operators and trade bodies	11	1
Home owners and Residents' Associations	184	0
Other professionals	18	0
Total	261	1

3.156 *The consultation sought views on whether a local authority should be able to refuse to grant a licence if it was not satisfied that the site was fit for purpose.*

3.157 Local authorities agreed that they should be able to refuse to grant a licence as proposed but there must be a clear definition of 'fit for purpose'. Other professionals agreed with the proposal but expressed some concern that the proposals did not go far enough and that local authorities should also be able to judge whether a proposed or current licence holder was a fit or proper person.

3.158 Site operators suggested that to grant planning consent and then deny a site licence after the developer has invested what are usually considerable sums would be unjust. They said that it would be important to ensure that the process was clear to applicants so that the consideration of the licence took place before the park developer committed to expenditure on infrastructure and marketing/sales of park homes on the site.

Q45: Do you agree that the local authority should be able to charge the site operator for providing advice and assistance on suitability?		
	Yes	No
Local authorities	30	13
Site operators and trade bodies	2	14
Home owners and Residents' Associations	160	20
Other professionals	13	1
Total	205	48

3.159 *The consultation sought views on whether local authorities should be permitted to charge for advice and assistance in ensuring a site was properly equipped and laid out before receiving a licence.*

3.160 Most authorities wanted to be able to charge for providing advice to site operators. There was concern, however, that it could act as a deterrent to people seeking advice.

3.161 Site operators disagreed with the proposals saying they already faced significant costs e.g. for planning advice and had concerns that local authorities had a poor understanding of the rules. Site operators should also not be prevented from seeking advice because of costs.

3.162 The Government’s response (Questions 44 and 45)

Government’s view is that local authorities should have the power to be able to refuse a licence until it is satisfied that the site is fit for purpose. In the long term, it seems appropriate that they should be able to charge for advice and assistance. However, we want to consider further how this impacts and interfaces with local authorities’ planning functions.

Other Offences under the 1960 Act

Q46: Do you agree that the current maximum fine for operating a site without a licence is inadequate and should be increased?		
	Yes	No
Local authorities	46	0
Site operators and trade bodies	11	3
Home owners and Residents’ Associations	176	1
Other professionals	18	0
Total	251	4

3.163 The consultation sought views on what the fine level should be, currently a maximum of £2500, for operating a site without a licence.

3.164 Local authorities agreed that the maximum fine for operating without a licence should be increased to a suggested maximum of £20,000. Site operators generally also agreed that the current fines did not represent a significant deterrent to rogue park operators. Local authorities should also make clear on the grant of planning permission what penalties existed for operating a park without a valid site licence. Other professionals and home owners also agreed that the maximum fine should be increased.

Q47: Do you agree that the maximum fine level for obstruction should be raised from £200?		
	Yes	No
Local authorities	44	0
Site operators and trade bodies	13	1
Home owners and Residents’ Associations	179	1
Other professionals	18	0
Total	254	2

3.165 The consultation sought views on whether the maximum fine for preventing a local authority from entering a site should be raised from £200.

3.166 Almost all consultees agreed that the current maximum fine was no longer an effective deterrent and should be increased, many suggesting a maximum fine of £2500.

3.167 The Government's Response (Questions 46 and 47)

We will support legislation which raises the fines for the offence of operating a site without a licence to level 5. This will enable the court to impose a fine that more accurately reflects the economic benefit or saving that the site operator has obtained by his failure to obtain a licence whilst operating a mobile home site, when the cap on level 5 fines is lifted by the commencement of section 85 of Legal Aid, Sentencing and Punishment of Offenders Act 2012.

We will also support legislation which increases the maximum penalty for obstruction of entry to an authorised officer of the local authority from £200 to £2500 maximum (Level 4), which is in line with other powers of entry offences. This power is to enter the site - and not individual pitches or homes within it.

These new fines will also apply to holiday sites.

Section 4

Fit and Proper Registration

4.1 In deciding the way forward, the Government has had regard to the recommendations of the Communities and Local Government Select Committee which published its report in June 2012.

4.2 One of those recommendations was that a power was introduced in primary legislation that would enable the Secretary of State to introduce a “fit and proper” scheme should that prove necessary after a comprehensive survey of the sector three years after other legislative changes (as outlined in this paper) were introduced.

4.3 In the Government’s view, there is no need to introduce a “fit and proper” scheme at present. Although we accept that malpractice in the sector is widespread, we are confident that the reforms proposed in the preceding sections of this document should remove the opportunity for criminal operators to make easy profits through unscrupulous practices. We believe that a “fit and proper” scheme could be bureaucratic, and would impose costs on all operators. These costs would be unnecessary if our other reforms are successful.

4.4 However, given the strength of response to the consultation and evidence given to the Select Committee, we accept that there is a chance that our proposed reforms may prove not to be sufficient to ensure that the most unscrupulous operators reform their practices. We will therefore support the introduction of legislation to permit the Secretary of State to introduce a “fit and proper” scheme should that prove necessary following a review of the effectiveness of the legislation, no less than three years after its introduction, and following full public consultation.

4.5 We hope that this power will prove an effective deterrent to the worst operators, and that the significant time we are proposing before it could be implemented will allow the industry sufficient time to demonstrate that significant improvements have been made. The Government does not intend to bring forward secondary legislation until it has conducted a review of the effectiveness of the legislation three years after it has been introduced and only following a full public consultation on the proposals.

4.6 If introduced, a scheme would ensure that only site operators who were registered as “fit and proper” persons could be involved in the management of a mobile home site. Local authorities would be required to maintain a register of site operators who were approved to be “fit and proper” persons to be

engaged in the management of park home sites. Conditions could be imposed on the approval. Where a person was not deemed fit and proper, or was removed from the register, he would be required to appoint, with the approval of the local authority, a person who was suitable to manage the site. There would be a right of appeal against any decision to refuse to register a person as fit and proper or remove him from the register and against any conditions imposed on the registration.