

Agenda



Cabinet Member for Licensing & Statutory Functions

Date: Friday, 17 April 2015
Time: 12.00 pm
Venue: CM Licensing & Statutory Function Office
To: Councillors R Poole

Item		Wards Affected
1	<u>Mobile Homes (Wales) Act 2013 & Associated Fees</u> (Pages 3 - 10)	All Wards

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Report



Cabinet Member for Licensing & Statutory Functions

Part 1

17 April 2015

Item No 1

Subject **Mobile Homes (Wales) Act 2013 & Associated Fees**

Purpose To advise the Cabinet Member of the new Mobile Homes (Wales) Act 2013 and to seek approval for the associated fees to be charged for various functions under the Act

Author Acting Principal Environmental Health Officer – Housing (Licensing) and Environmental Health Manager

Ward City Wide

Summary The Mobile Homes (Wales) Act 2013 received Royal Assent on 4th November 2013 and introduces a new licensing, inspection and enforcement regime for residential mobile homes sites across Wales. Newport City Council will be the Licensing Authority for the Act. The Act came into force on the 1st October 2014 and all mobile homes sites will need to be relicensed by 1st April 2015.

The Act allows local authorities to charge a fee for certain functions under the Act.

Proposal **To note the detail of the new Mobile Homes (Wales) Act 2013 and to agree the fees charged for the licensing of the sites.**

Action by Head of Law & Regulation

Timetable Immediate

This report was prepared after consultation with:

- Head of Law & Regulation
- Public Protection Manager
- Head of Finance
- Head of People and Business Change

Signed:

1 Background

- 1.1 Across Wales approximately 5000 residents live in a mobile home (also known as a static caravan or park home) as their permanent residence on caravan sites. Such sites are defined as any land in Wales on which a mobile home is stationed for the purposes of human habitation other than (a) a site for which schedule one of the Act provides is not a regulated site (mobile homes within the curtilage of a dwelling house, sites owned by the local authority, site for agricultural or forestry workers) and (b) a holiday site.
- 1.2 Caravan sites used as a permanent residence must have planning permission for such use and are currently licensed under the Caravan Sites and Control of Development Act 1960. The new Act was introduced in order to provide greater protection to occupiers of residential park homes as the existing legislation has not been updated for more than 50 years.
- 1.3 In Newport there are 3 such mobile home sites, which are known as Light House Park and Church House Inn, both located at St Brides, and Greenacres Park located at Broadstreet Common. Church House Inn and Greenacres Park are small sites and consist of 8 pitches each and Light House Park is a very large site having 154 pitches. All 3 sites have been licensed for many years under the Caravan Sites and Control of Development Act 1960, have been regularly inspected by Environmental Health and operate within the conditions set in their current licence.

2 The Mobile Homes (Wales) Act 2013

- 2.1 On the 4th November 2013, Welsh Government passed the Mobile Homes (Wales) Act 2013. This Act amends the Caravan Site and Control of Development Act 1960 and introduces a new licensing, inspection and enforcement regime for residential mobile home sites in Wales with Newport City Council being the Licensing Authority for the Act. The Act gives greater powers to local authorities to ensure compliance with the licence conditions.
- 2.2 On the 1st October 2014, the new Act came into force requiring all Mobile Homes sites to be relicensed by the 1st April 2015.
- 2.3 The Council on consideration of an application for a Mobile Homes licence, may issue a licence with conditions, and it may also vary and revoke licences. Licences may be issued for a period of no more than 5 years. Conditions remain in place for the length of the licence issued, unless they are varied by the Council.
- 2.4 Once a licence is issued, Environmental Health must inspect the site at least once in the licensed period to ensure compliance and now has new powers to deal with non-compliance such as issuing a fixed penalty notice (FPN) or a compliance notice if a condition of the licence is breached.
- 2.5 Site owners have a right to appeal to the Residential Property Tribunal if they disagree with conditions set by the licence, or enforcement action.
- 2.6 When considering an application for a licence, the Council must now consider if the owner or manager of the site is a 'fit and proper' person. The Council must also ensure physical standards of the site are suitable for the health, safety and wellbeing of the residents and may set conditions relating to the physical conditions or management of the site.

- 2.7 When setting conditions, the Act requires the Council to have regard to the Model Standards. The Model Standards set out conditions that would normally be expected as good practice on sites and are published by Welsh Government.
- 2.8 The current Model Standards for Caravan Sites in Wales was published in 2008 but are only applicable to new sites or those being substantially redeveloped. All of the sites in Newport operate in accordance with older standards.
- 2.9 The Welsh Government will be reviewing the 2008 Model Standards but the new standards will not be in place for the 1st April 2015. These standards will only be applicable to new sites and not existing ones and therefore would have no impact on the existing sites in Newport.
- 2.10 The Council is able to charge a fee for a licence application or an application for a variation to a licence. Before fees can be charged, the Act requires the Council to prepare and publish a fees policy that must be consulted upon. Should the Cabinet Member agree the fees proposed by this report, this decision will form the Council's fees policy.
- 2.11 The Welsh Government and All Wales Expert Panel (which comprises of a number of experienced officers from across Wales, working on behalf of Wales Heads of Environmental Health) developed a fees toolkit to assist councils to set a fee structure that is clear, transparent and is consistent across Wales and therefore reduces the risk of challenge. This toolkit was finalised in late 2014. It includes full guidance on how to populate the spread sheet to calculate the fees and provides a clear methodology for calculating the application fee and other fees set out in the Act. In completing the toolkit officer hourly rates and fixed inspection times were used for the various steps in the processes. The Council's Finance team has provided the hourly rates for the officers involved in the licensing process.
- 2.12 The Act enables the Council to charge for enforcement work where a Compliance Notice is served. Where a Compliance Notice is served, the Council will charge to recover its costs for the drafting and service of the Notice and subsequent work up until the Notice is compiled, including further visits to site and drafting and sending further related correspondence. In Newport the charge made will reflect the full cost of the officer's time, including on-costs.
- 2.13 Caravan sites that are used as holiday sites are not affected by this Act and will still be regulated under the Caravan Sites and Control of Development Act 1960. The Act also does not apply to Gypsy & Traveller sites.

3 Anticipated Impact

- 3.1 The current scheme under the existing Act means that once a licence is issued it remains in force indefinitely. The new Act allows that licences are issued for a period of 5 years and then require renewal. This will place a small extra burden on Environmental Health with regard to the additional administrative processes that need to be followed including the processing of applications, consultations and issuing of licences. However this can be absorbed within existing resources.
- 3.2 It should be noted that the Welsh Government has made no additional resources available to local authorities to enact the new legislation, even for the extra "start-up" work described above as the statutory scheme comes into being. However because the 3 sites in Newport have been regulated by Environmental Health for many years and are managed to a good standard by existing site operators, we have been able to complete this work within existing resources.

4 Proposed Fees

4.1 The Mobile Homes (Wales) Act 2013 includes powers for local authorities to charge fees for their licensing functions in respect of relevant sites.

4.2 Under the new Act a fee can be charged for the following:

- Applications for granting a new licence under the Act
- Applications to vary the site licence conditions
- Depositing of site rules (if applicable)
- Replacement of a site licence
- Renewal of a site licence

4.3 The Act also makes provision for compliance notices and fixed penalty notice fees as further enforcement tools.

4.4 All regulated sites require a new site licence other than those which the Act deems to be outside of its scope. Failure to apply for a licence is an offence under section 5(2). The Council may only issue a licence for a site with a valid and correct planning permission for such use. It is proposed that the fee for a new site licence will be dependent on the size of the site to take into account the extra inspection time a larger site takes and will be of 5 year duration. The fees have been calculated using the toolkit as follows:

- a) Small site - **£600** (3 -10 caravans)
- b) Medium site - **£670** (11- 49 caravans)
- c) Large site - **£800** (50+ caravans)

It is proposed that small sites of 2 or fewer pitches which are not operated for financial gain are not charged an application fee. Such sites represent a low risk and require little or no enforcement and light touch monitoring.

4.5 Where a site owner requests an amendment to the site licence conditions, the Council can charge a fee for this function. In cases where significant amendments to the site licence conditions are requested an additional site visit outside the inspection regime will be required and therefore the fee will increase. The fee will be payable on application. If the Council deem it necessary to alter conditions themselves then there will be no fee payable. The fee for a variation has been calculated using the toolkit as follows:

- a) Variation - **£55**
- b) Variation requiring an inspection - **£140**

4.6 Site rules are different to site licence conditions and are put in place by the owner of a site and which relate to the management and conduct of the site. The Act states that if any rules are present they must be agreed between parties following a period of consultation. If the site operator chooses to lodge the site rules with the Council, the Council must keep an up to date register of the rules and publish them on their website. However it is not a legal requirement to lodge the rules with the Council. The fee for depositing the rules for the first time or to vary or delete existing site rules is the same as the process is similar for all types of deposits and this is as follows:

- a) Fee to deposit site rules - **£45**

4.7 In the event of a site licence being lost or damaged a site owner can request a new copy of the site licence. There will be an administrative cost in producing the licence and therefore a fee will apply as follows:

- b) Fee for replacement licence - **£13**

4.8 If it appears to the local authority that the site licence conditions have been breached, the local authority may issue a Compliance Notice or carry out emergency remedial

action. The local authority will impose a charge on the owner as a means of recovering expenses incurred in:

- c) Deciding whether to serve the Notice, and
- d) Preparing and serving the Notice or a demand
- e) Taking action (emergency works).

The expenses referred to include (but are not limited to) the costs of obtaining expert advice (including legal advice). Charges would be based on an hourly rate.

In conjunction with the Compliance Notice the local authority will issue a demand for payment which sets out

- f) The total expenses the local authority seeks to recover
- g) A detailed breakdown of the relevant expenses
- h) Where the local authority propose to charge interest, the rate at which the relevant expenses carry interest.

Example breakdown table

<i>Legal advice</i>	£
<i>Inspection</i>	£
<i>Administrative cost in serving notice</i>	£
<i>Other</i>	£
<i>Total</i>	£

Each Compliance Notice issued will vary in cost; therefore it is not possible to set a flat fee for this action. If any works in the Compliance Notice are not carried out the licence holder commits an offence and the Council may consider taking legal action. Any costs associated with this process would be awarded at the discretion of the courts.

- 4.9 For minor breaches of site licence conditions, the Act allows the local authority to issue a Fixed Penalty Notice (FPN). The amount specified for an FPN must not exceed level 1 on the standard scale which is currently £200. As a FPN only serves to fine the site licence holder and does not require the breach to be rectified, then their use may be limited although they should serve as a useful deterrent.

The processes involved in the service of Mobile Home FPNs are going to be very similar to those involved in the service of FPNs issued by the Council for dog fouling and littering offences in accordance with the Clean Neighbourhoods and Environment Act 2005. The Council currently impose a £75 FPN in respect of these offences and therefore it is proposed that the charge for Mobile Home FPNs will mirror this charge at £75.

- 4.10 A site licence is issued for a period not exceeding 5 years, unless terminated by its revocation. The licence requires renewing prior to the expiry date. The application process is similar to the original application process and the fee will be set based on recovering the cost of processing and administering the renewal application and for compliance checks programmed for the duration of the licence. Since it will be April

2019 before such a fee will be levied these will be calculated with up to date figures closer to the time.

5 Financial Summary

- 5.1 There will be minor financial implications associated with the implementation of the Mobile Homes (Wales) Act 2013 due to the issuing of new licences and the renewal of these licences on their expiry. The Welsh Government is not providing additional revenue to implement or enforce the Act, however the legislation now provides the opportunity to charge appropriate fees for various activities set out previously and these have been accurately calculated to ensure that the costs of undertaking the functions are recovered.
- 5.2 Enforcement of the Act will largely have to be met from existing resources, however this is not predicted to be a problem, given that the sites in Newport comply with the conditions set and a well-managed.

6 Risks

Risk	Impact of Risk if it occurs(H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
The proposed fees are not approved.	M	L	This report seeks approval of the fees in order to cover the majority of the costs of implementing the legislation, as allowed for by the legislation.	Environmental Health Manager

7 Links to Council Policies and Priorities

- 7.1 Ensuring that this work is completed as required by statute will support the following Council Policies and Strategies:
- 7.2 Newport City Council's Corporate Plan "Standing Up for Newport" 2012-2017 (Relevant priorities: "A Greener & Healthier City"; "A Safer City").
- 7.3 Newport's Single Integrated Plan April 2013 (Relevant themes: "To be a prosperous and thriving city"; "To have a better quality of life"; "To have vibrant and safe communities").

8 Options Considered/Available

- 8.1 To approve the proposed fees as detailed throughout this report and summarised at Appendix A. This will allow Newport City Council to recover the majority of its costs associated with operating the new statutory duties, as provided by the legislation.
- 8.2 Not to approve the proposed fees as detailed throughout this report and summarised at Appendix A. This would increase the financial impact on the Council of implementing this new legislation.

9 Preferred choice and reasons

- 9.1 To approve the proposed fees as detailed throughout this report and summarised at Appendix A. This will allow Newport City Council to recover the majority of its costs associated with operating the new statutory duties, as provided by the legislation.

10. Comments of Chief Financial Officer

The recommendations under the Mobile Homes (Wales) Act 2013 and associated fees have been noted. There will be no additional funding available from Welsh Government to fund the implementation or enforcement of the Act.

The charging of fees for various activities is supported to ensure that the costs of undertaking the functions are recovered. Any resulting costs over and above this will need to be absorbed by the service area.

11. Comments of Monitoring Officer

The proposed licensing fee structure for the new Mobile Homes (Wales) Act is in accordance with the Council's statutory powers under the legislation and the national toolkit established by the expert Panel in order to ensure that the proposed fees reflect the actual costs to the Council of administering the licensing scheme. The Mobile Homes (Wales) Act introduced a new licensing, inspection and enforcement regime for residential mobile home sites as from 1 April and gives the Council greater powers to regulate the management of these sites, impose conditions and take enforcement action to secure compliance. This is an executive function which is delegated to officers in accordance with the general scheme of delegation of regulatory and licensing functions under the Council's Constitution. The only appeals would be to a Residential Property Tribunal. However, the setting of fees and charges is an executive function which is delegated to the Cabinet Member.

12. Comments of Head of People and Business Change

As this report relates to the implementation of a new licensing, inspection and enforcement regime there are no HR implications, other than additional or different elements of work which the report states can be met from within existing resources.

13 Comments of Non Executive Members

None received.

14. Background Papers

Mobile Homes (Wales) Act 2013

<http://www.legislation.gov.uk/anaw/2013/6/contents>

Appendix A – Summary of fees – Mobiles Homes (Wales) Act 2013

Site licence fees:

- a) Small site - **£600** (3 -10 caravans)
- b) Medium site - **£670** (11- 49 caravans)
- c) Large site - **£800** (50+ caravans)
- d) Sites of 2 or fewer pitches - **£0**

Amendment to site licence conditions

- e) Variation - **£55**
- f) Variation requiring an inspection - **£140**

Other fees and Fixed Penalty Notice charge

- g) Fee to deposit site rules - **£45**
- h) Fee for replacement licence - **£13**
- i) Fixed Penalty Notice charge - **£75**