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Dear Christine

Holiday Caravan Sites (Wales) Bill

Thank you for your letter of 9 May following my session with the Committee on 7 May to give evidence on the Holiday Caravan Sites (Wales) Bill.

Current Legislative Position

Before I address your specific questions, it may be helpful if I make some more general points about the current legislative position. My Bill does not seek to introduce regulation into a currently unregulated area. It extends only to Holiday Caravan Sites which are already subject to licensing and planning regulation under the Caravan Sites and Control of Development Act 1960, the Caravan Sites Act 1968 and under other relevant planning law.

As I have explained in the Explanatory Memorandum, holiday caravans are not intended, or in many cases designed, for permanent occupation. More to the point, current legislation was not designed to allow or facilitate holiday caravan sites for use as permanent residential accommodation.

Unfortunately, current legislation and action by the holiday caravan industry has proved ineffective in preventing the use of holiday caravan sites for residential purposes. The purpose of my Bill is to give local authorities the tools they need to regulate holiday caravan sites effectively and to support holiday caravan site owners to ensure that caravans on their sites are used for holiday-making rather than as permanent residences, which as I am sure everyone would agree is not their purpose.

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At the session on 7 May, Members of the Committee expressed some concern that there might be insufficient evidence to justify legislation. Members will appreciate that given the timescale and resources provided by the National Assembly to support 'backbenchers' seeking to introduce legislation, further research has not been possible. However, whilst I accept that the evidence available may not be able to demonstrate precisely the scale of the problem of residential misuse, the evidence which does exist clearly points to a problem in Wales and a lack of enforcement to address it.

Given that the evidence set out in the Explanatory Memorandum more than adequately makes the case that there are a considerable number of holiday caravans in Wales being misused as permanent residential accommodation, and that it is beyond dispute that the current legislation was not designed to permit such occupation, I believe that there is now a strong case to modernise the licensing regime, which is over 50 years old, and make it fit to tackle this issue.

I turn now to your specific questions.

Part 2 - Licensing

- *Is the estimation in the Explanatory Memorandum of the local authority resources involved in renewing the 1,500 existing site licences in the first year robust, given it is based on discussions with two local authorities?*

I believe the estimate is robust. All 22 local authorities in Wales were contacted as part of the development of the Bill and 18 of them provided responses. The 4 that did not respond have relatively few holiday caravan sites in their areas. Further detailed discussions were held with two local authorities that have considerable experience in this area.

In addition, it should be noted that all sites will have existing licenses under current legislation and that most of the provisions of these will roll forward. It is not the case, therefore, that licences will need to be developed from scratch.

- *Why does the Bill provide for a holiday caravan site licence to continue indefinitely (until specifically terminated), unlike the Mobile Homes (Wales) Act 2013, which provides for a licence to be issued for a maximum of 5 years?*

Sites already licensed under the 1960 Act will be treated as holding a licence under this Bill. This will reduce the administrative burden for both site owners and local authorities. This continues the current arrangements under the 1960 Act and reflects concerns from the industry about the impact on their businesses of time-limited licences, particularly in terms of accessing finances for business development. However, site licences will be subject to review every five years.

It is anticipated that the review will be straightforward for most sites and licence conditions would not be expected to change without justifiable reason. As local authorities already have powers to vary licence conditions or apply to the magistrates' court to revoke licences under the 1960 Act, the new duty is merely intended to introduce consistency to the informal 'review' arrangements that already happen on an ad-hoc basis.

- *What is the intended purpose of requiring local authorities to review site licence conditions at intervals of not more than five years?*

See answer to previous question.

- *What is the basis for requiring local authorities to inspect sites at least once every three years and whether the approach to inspection is reasonable and proportionate?*

My initial inclination was to have more regular annual inspections. However, consultation responses and discussions with industry representatives convinced me that a longer period would be better.

It is important that all sites are subject to inspection in order that concerns regarding some sites escaping inspection and the need for a level playing field can be addressed.

By requiring inspections at least every three years local authorities can adopt a risk-based approach and conduct tests earlier or more often if they believe this is necessary.

The maximum period of three years is both reasonable and proportionate. A shorter period might have been criticised for being too resource intensive for all concerned while a longer period would have allowed drift and poor standards to creep in.

- *Have I had any discussions with*
 - *Natural Resources Wales about the practical and financial implications of section 15;*
 - *the Fire and Rescue Service and Natural Resources Wales about the practical and financial implications of providing advice as part of the renewal of existing site licences (of which there are an estimated 1,500) within the first year of commencement of the legislation?*

I have not had any discussions with the Fire and Rescue Service. However, I can confirm that there are no additional implications for Fire Authorities. Fire risk management is already part of current legislation through section 5 of the 1960 Act. These requirements are retained as part of my Bill but there are no additional requirements.

I have discussed the Bill with Natural Resources Wales, which has expressed support in principle for my proposals. The implications of the Bill are neither onerous nor unreasonable and the availability of online resources, such as the TAN15 Development and Flood Risk advice maps, provide an instant view on whether a site may be located in an area of flood risk.

The flooding over the winter shows how important it is to have adequate flood risk plans in place for Holiday Caravan Sites located in flood risk areas and, given the key responsibilities of Natural Resources Wales in relation to flood risk management in Wales, I hope Members of the Committee will welcome the additional safeguards that the Bill proposes.

- *Will I outline the evidence base for the need to introduce a fit and proper person test for managers of a holiday caravan site?*

Holiday Caravan Sites are an important part of the tourism economy. It is my belief that they are run in the main by honest and capable people. Good operators have nothing to fear from these provisions.

However, it is important to ensure that this continues to be the case and that the highest of standards are maintained. Holiday caravan sites should continue to be places of enjoyment and safety for the many families and children who use them. The introduction of a robust Fit and Proper Person Test will ensure that high standards continue and any rogue operators are rooted out.

- *Why the fit and proper person test provided in section 33 of the Bill has been drafted so as to apply more widely than the test in the Mobile Homes (Wales) Act?*

The Business model and scale of the Holiday Caravan Site industry is different to the park homes sector. Holiday Caravan Sites are often owned and operated by large companies and rather different arrangements (to those for Park Homes) are needed to ensure that the test applies to the right people within a company's management structure.

The test proposed in the Bill will ensure that all persons responsible for the day-to-day management of the Holiday Caravan Site (i.e. the managers on the ground) are subject to it.

This will prevent the situation where there is a fit and proper person on the ground receiving instructions about the management of the site from a senior person within the organisation who is not fit and proper. Therefore, the test applies to all persons who have a role in the management of the site and persons who give instructions about the management of the site.

There are of course also robust appeal arrangements in the Bill should anyone wish to challenge a local authority decision that someone is not a fit and proper person.

- *The practical and financial implications for local authorities of the requirement to undertake a fit and proper person test on existing site managers within 12 months of commencement of section 9?*

Estimates of costs and related implications for site owners are set out in paragraph 203 of the Explanatory Memorandum. In summary, these are estimated at £95,000 in the first year following commencement and £9,500 in subsequent years.

Costs to local authorities of reviewing licences, including ensuring they have provided sufficient evidence to satisfy criteria relating to fit and proper persons managing the site are set out in Paragraph 191 of the Explanatory Memorandum.

- *What is the reason for requiring local authorities to consider, as part of the test, evidence that shows the manager has contravened trading standards law?*

Holiday Caravan Sites need to be places of safety and enjoyment for families and their children. The test will help ensure that appropriate people are in charge of sites to ensure that this is the case. Many holiday sites will, of course include retail and entertainment outlets where being beyond reproach on Trading Standards issues is very important.

In addition, residential misuse of holiday caravans sometimes arises as a result of misinformation by Holiday Caravan Site operators when a holiday caravan is being purchased by a customer. Consideration of any contraventions in relation to holiday caravan sales, or sales in a similar industry, should therefore be an important factor in determining whether someone is a fit and proper person for the purposes of the test.

However, it is important to be clear that although local authorities must have regard to the matters set out Section 34 of the Bill, none of these matters are in themselves bars on being considered a fit and proper person. Similarly, local authorities will also be under a duty to have regard to any other matters, which they consider appropriate.

Possible Unintended consequences

- *What is the evidence base for the assertion in the Explanatory Memorandum that 'significant numbers of people should not become homeless purely as a result of this Bill' and how this can be reconciled with the absence of robust data as noted in paragraph 144 of the Explanatory Memorandum?*
- *How this assertion fits with the fact that some of the people who will be affected by the Bill are claiming housing benefit and it could be presumed that they are likely to present themselves as homeless to local authorities?*

Current legislation was not designed or intended to facilitate the use of holiday caravans as permanent accommodation. The Bill seeks to ensure that in future holiday caravans are used for holiday purposes rather than as permanent residences. This will mean that some people currently living in holiday caravans will need to find alternative accommodation, but there will be sufficient time for those residing in holiday caravans to prepare and make alternative accommodation arrangements prior to the provisions in the legislation coming into force.

In addition, the timing of the commencement of the legislation, should it be enacted, is almost wholly at the discretion of the Welsh Ministers. I would expect them to consult widely before commencing key provisions. In some instances, there are further requirements on the face of the Bill for consultation prior to powers being used.

Even after commencement, and any necessary consultation, site owners will have a further three months to undertake the residence test and occupiers will then have rights of appeal.

There will therefore be significant time for holiday caravan occupiers to make alternative accommodation arrangements, bearing in mind that many of those living on holiday caravan sites often have significant resources and would not therefore, present as homeless.

Data was collected from local authorities in developing the Bill. This showed that significant, though not large, numbers of people claiming Housing Benefit were living in holiday caravans. Some of these claimants may seek the assistance of the local authority under homelessness legislation but the numbers are unlikely to be large, particularly as many of them will make alternative arrangements well before they are legally required to leave their accommodation.

Of course, local authorities should take steps to assist vulnerable people living in unsuitable accommodation and I am encouraged by the increased emphasis on homelessness prevention by local authorities and I am confident that they will be pro-active in this respect. I note that the Housing (Wales) Bill will put homelessness prevention work on a statutory footing and I welcome this development.

Whilst I note wider concerns regarding the need for a greater supply of affordable housing across Wales I am sure that Members will agree that the use of holiday caravans as cheap permanent housing is undesirable.

Finally, even if there are some unintended consequences these should not be recurring as the Bill will prevent any permanent significant residential occupation of holiday caravans in future.

- *Whether any assessment has been made of the potential for the fees paid by holiday caravan owners to rise as a consequence of this Bill, given that the Bill does not specifically prevent site owners from passing on the costs of complying with the Bill?*

It is not possible to rule out completely that site owners will pass on additional costs to caravan owners. However, it is a competitive market and this is likely to mitigate the risk to some extent. More than that, the costs involved are relatively small. The estimates in the Explanatory Memorandum at paragraph 199 indicate a total cost per unit of only £3.43 per annum over the first 5 years following commencement. I have also set out estimated costs for site owners in paragraph 225 of the Explanatory Memorandum, which are further summarised in the table on page 65.

In addition, the written statements required under Section 55 of the Bill will help ensure that occupiers have greater clarity around fees before they enter into agreements.

- *Is there a danger that, if the Bill is passed, holiday caravan site owners may apply to become licensed as residential sites to avoid the new regulatory regime?*
- *If so, what impact could this have on the holiday caravan industry in Wales?*

I see no reason why significant numbers of holiday caravan sites would choose to change their business model and apply to be regulated under a more restrictive regulatory framework than proposed in my Bill. However, there may be a limited number of cases where this might happen. If site owners choose to do this, then they will be regulated under the Mobile Homes (Wales) Act 2013, which would be the appropriate regulatory framework for residential sites.

The Committee also asked for further clarification on the following points that were raised during the meeting.

- *whether the provisions in section 61 apply only in cases where a site owner is taking action in accordance with instructions given by a local authority under section 53;*

No. The defence applies in the circumstances set out in section 61, and needs to be considered in all the circumstances that might prevail, although this could include circumstances brought about by instructions under section 53. The defence is based on reasonableness, which would need to be determined by a court. Where the interference is unreasonable, the defence will not be available.

The wording has been taken from the 2013 Act and provides sensible defences for persons who inadvertently interfere with an occupier's enjoyment of a holiday caravan.

For instance, there may be lack of clarity as to when a holiday caravan agreement ends, e.g. a site manager may have a reasonable belief that a holiday caravan agreement has ended, when in fact the agreement is still in force. (Although it should be noted that the Bill makes specific provision to prevent such confusion arising, as there is a specific requirement for clarity around the start and end dates of holiday caravan agreements.)

It should also be noted that the defence in Section 61 does not affect other criminal law that deals with harassment.

- *Could pension records be used as evidence for the purpose of the residence test; exemptions from the requirements of the Bill for touring caravan sites and land owners who allow touring caravans to stay on their land from time to time?*

Evidence for the purpose of the residence test includes the occupier's address for correspondence with a financial institution. I see no reason why this should not include a pension provider.

- *What is the basis for the figures provided in the Explanatory Memorandum, which estimate the administrative costs to site owners of meeting all the requirements in relation to the Bill to be £100 per site in the first year and, specifically in relation to the residence test, to be £75 per year from years 2 onwards.*

The assumptions behind the estimate are set out in paragraph 205 of the Explanatory Memorandum. It is based on administrative time of around a day every two years plus annual updating and providing local authorities with information in terms of caravan owners primary addresses and any visitors staying over 6 weeks. Costs will be somewhat higher in the first year so we have assumed a figure of £100 for that year.

In addition, we have estimated the total annual cost of monitoring sites by Local Authorities to be £110,000 a year, which is based on discussions with local authorities. The assumption of a total annual cost to site owners of £150,000 in the first year and £112,500 thereafter is a reasonable one in comparison.

Finally you also agreed to provide a note in relation to opportunities for consumer protection that could arise from the Bill.

As I explained at the meeting, the Bill is not primarily about consumer protection, over which I understand the Assembly does not have full legislative competence. However, there are specific aspects of the Bill that I am sure will be welcomed by consumers. These include the new requirements in relation to:

- Written agreements (Section 55);
- Standard implied terms for agreements (Section 56);
- The right to be consulted on significant changes in the management and operation of sites (Section 56);
- Flood risk management (Section 12, 15, 16 and 18);
- Protection from harassment (Part 5);
- The reassurance offered by the Fit and Proper Person Test (Section 33);
- Repayment orders (section 38); and
- The use of interim managers (section 35).

I look forward to giving evidence to the Committee again once it has had an opportunity to consider the evidence from other witnesses.

Yours sincerely,



Darren Millar AM