

2014 No. 1760 (W. 175)

MOBILE HOMES, WALES

**The Mobile Homes (Pitch Fees)
(Prescribed Form) (Wales)
Regulations 2014**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the form of the document that must accompany a pitch fee review notice (served under paragraph 17(3) or (8)(b) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013) which proposes an increase in the pitch fee. The document must be in the form prescribed in the Schedule to these Regulations or in a form substantially to the same effect. A pitch fee review notice which proposes an increase in the pitch fee is of no effect unless it is accompanied by such a document.

The document, to be completed by the site owner, provides occupiers with information about how the proposed new pitch fee has been calculated and information about the pitch fee review process.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a Regulatory Impact Assessment as to the likely costs and benefits of complying with these Regulations. The Impact Assessment prepared for the Mobile Homes (Wales) Bill 2013 is relevant and a copy may be obtained from the Department of Housing, Welsh Government, Rhydycar Business Park, Merthyr Tydfil, CF48 1UZ.

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(Prescribed Form) (Wales)
Regulations 2014

Made 2 July 2014

Laid before the National Assembly for Wales
July 2014

Coming into force 1 October 2014

The Welsh Ministers, in exercise of the powers conferred by paragraph 23 of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013⁽¹⁾, make the following Regulations:

Title and commencement

1. The title of these Regulations is the Mobile Homes (Pitch Fees) (Prescribed Form) (Wales) Regulations 2014 and they come into force on 1 October 2014.

Pitch fees: Prescribed form

2. The document referred to in paragraph 17(4) and (9) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013 must be in the form prescribed in the Schedule to these Regulations or in a form substantially to the same effect.

Carl Sargeant

Minister for Housing and Regeneration, one of the
Welsh Ministers

2 July 2014

(1) 2013 anaw 6.

SCHEDULE

Regulation 2

Pitch fee review form

FORM T0 ACCOMPANY A PITCH FEE REVIEW NOTICE
Form prescribed under paragraph 23 of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013
<p>Important note: This form, or a form substantially to the same effect, must be sent by the site owner with the pitch fee review notice where the site owner proposes to increase the pitch fee, otherwise the pitch fee review will not be valid. This form may also be used if the site owner is proposing to reduce the pitch fee. Both the site owner and the occupier(s) should read the notes at the end of this form as they contain important information about pitch fee reviews.</p>
<p>Section 1: Parties</p> <p>From [<i>Insert name of the site owner(s)</i>] (“I/We”).</p> <p>To [<i>Insert name of occupier(s)</i>] (“You”).</p>
<p>Section 2: Proposed new pitch fee</p> <p>I/We propose to increase/reduce your pitch fee for:[<i>Insert address of the home</i>]</p> <p>The last review date was:[<i>insert date</i>]</p> <p>The current pitch fee is £.....[<i>insert amount</i>] per week/month/quarter/year</p> <p>The proposed new pitch fee is £[<i>insert amount</i>] per week/month/quarter/year</p>
<p>Section 3: Date new pitch fee proposed to take effect (effective date)</p> <p>The review date is 12 months after the last review date.</p> <p>The <u>effective date</u> is the date when it is proposed the new pitch fee is payable from, which may be on the review date or, in the case of a late review, a later date.</p> <ul style="list-style-type: none">• The proposed pitch fee will take effect on the review date on.....[<i>insert date</i>]• The proposed pitch fee will take effect on [<i>insert date</i>] which is later than the review date <p>[<i>Complete whichever is appropriate</i>]</p> <p>Note: <u>For further information on the review, late reviews and effective dates, see the notes at the end of the form.</u></p>

Section 4: Calculation of the proposed new pitch fee

The proposed new pitch fee has been calculated as (A) + (B) + (C) – (D) where:

(A) is the current pitch fee of £.....[insert amount]

(B) is the Consumer Prices Index (CPI) Adjustment £.....[insert +/- amount]
[calculated from a percentage [increase]/[decrease][delete as appropriate] of%[insert amount]]

(C) is the recoverable costs of £.....[insert amount]

(D) is the relevant deductions of £.....[insert amount]

(B) The CPI adjustment

In accordance with paragraph 20 of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013, I/We have calculated the CPI adjustment by reference to the percentage [increase]/[decrease] [delete as appropriate] in the Consumer Prices Index (CPI) over 12 months. This is the published annual percentage change in the CPI for[insert month and year of latest index] which was [insert CPI annual percentage change for that month].

Note: For further information on the correct CPI figures to use, refer to the section on the CPI adjustment in the notes at the end of this form.

(C) Recoverable costs

I/We have added a charge that I/We have incurred and believe can be recovered through the pitch fee. The details of the costs incurred are set out below [complete as appropriate].

Description of Item relating to the costs	The period in which the cost was incurred	The total cost	How this has been divided across the homes	The net charge to the occupier is

The total net charge to You is £[insert amount] per [week]/[month]/[quarter]/[year] [delete as appropriate].

(D) Relevant deductions

I/We have deducted the sum of £..... [insert amount] per [week]/[month]/[quarter]/[year] [delete as appropriate] to take account of the following matters [insert details of any matters(s) which have been taken into account in calculating the amount arrived at].

I/We have arrived at that amount as follows

[insert explanation of how the amount for (D) has been calculated].

Note: The matters to which the site owner(s) must have particular regard to when carrying out the pitch fee review include those set out in paragraph 18 of Chapter 2 of Part 1 of Schedule 2 to the

Mobile Homes (Wales) Act 2013. These form part of your implied terms. The site owner(s) must therefore take these matters into account in the calculation of either (C) or (D). Paragraphs 18 and 19 of that Chapter also set out certain matters which must not be taken into account in the calculation of (C) and (D). Further information can be found in the notes at the end of this form.

Section 5: What to do if You disagree with the proposed new pitch fee

If You do not agree to the proposed pitch fee, You do not have to pay the proposed new amount from the effective date, but You must continue to pay the current pitch fee. You will not incur arrears. I/We may, however, apply to a residential property tribunal (the tribunal) for it to decide what the new pitch fee should be. You also have the right to apply to the tribunal. If the tribunal decides that a new pitch fee is payable, it is to be payable as from the effective date. (The notes accompanying this form contain further information)

Section 6: Signature(s) of site owner(s)

Signed.....

Date

Name and address of the site owner(s) (for the purpose of serving notices)

.....
.....

Section 7: Notes: Please read these notes carefully as they contain important information about the pitch fee review. These notes are for guidance only and are not a definitive statement of the law.

General

- This form should be used if the site owner is proposing to change the pitch fee.
- The site owner must serve this form on the occupier(s), with the pitch fee review notice, at least 28 days before the date on which it is proposed to change the pitch fee.
- This form sets out the proposed new pitch fee, the date from which it is proposed the new pitch fee will take effect and how it has been calculated.
- The new proposed pitch fee cannot be imposed on the occupier(s). It must be either agreed, or determined by a tribunal.

Review and late reviews

- A change in pitch fee is normally proposed to be effective from the review date. A minimum notice period of 28 days prior to the review date must be given.
- The review date is the date specified in the written statement⁽¹⁾ as the date on which the pitch fee will be reviewed in each year. If no date is specified, it is likely to be each anniversary of the date the agreement commenced.
- If the site owner misses the review date, a proposed change to the pitch fee can be made to take effect at a later time. Provided that the site owner gives a minimum notice period of 28 days, a late review can be proposed to take effect at any time after the review date.
- The “next review date” is the date 12 months from the review date. This applies whether or not the current review is late. It means, for example, if the review date is 1 April 2015, but the review is late and doesn’t take effect until 1 July, the next review date will be on 1 April 2016, rather than 12 months from the effective date of the current review.

The effect of the pitch fee review notice and making an application to the tribunal

- If the occupier accepts the new pitch fee, they can let the site owner know or simply pay the proposed amount from the effective date.
- The occupier is not obliged to accept the proposal or pay the proposed amount. Failure to pay the new pitch fee will not result in the occupier being in arrears.
- If the occupier does not accept the proposed pitch fee they can let the site owner know, but the occupier does not have to do so. Provided the current pitch fee continues to be paid, that is the maximum amount payable unless the tribunal decides a different figure.
- If there is no agreement as to the new pitch fee, the site owner or the occupier may make an application to a tribunal for it to make a determination.
- Where the pitch fee review notice was served at least 28 clear days before the review date, an application to the tribunal may be made after the end of the period of 28 days beginning

(1) Before making an agreement to which Part 4 of the Mobile Homes (Wales) Act 2013 applies, the owner of the protected site must give to the proposed occupier under the agreement a written statement which complies with section 49 of that Act.

with the review date but not later than 3 months after the review date.

- Where the pitch fee review notice was served later, an application to the tribunal may be made after the end of the period of 56 days beginning with the date on which the site owner serves the notice but not later than 4 months after that date.
- In either case, a late application to the tribunal is permitted only if there are good reasons for the failure to apply within the time limit and for any delay since then in applying for permission to apply out of time.
- Before deciding a case, the tribunal will invite representations from the parties and may hold a hearing and inspect the site.
- If a party acts unreasonably in connection with an application, the tribunal can impose a costs order against that party.
- If the tribunal makes a determination, its decision will apply from the effective date. This means any proposed increase could be backdated by several months. However, the occupier is not be treated as being in arrears until 28 days after the date of the order made by the tribunal determining the new pitch fee.
- If no agreement as to the pitch fee is reached and the tribunal does not make a determination (i.e. because the site owner has not made an application or because an application is refused or withdrawn) the occupier must continue to pay the existing pitch fee, but the proposed pitch fee cannot be charged.
- If, on the application of the occupier, a tribunal is satisfied that a notice of pitch fee review is of no effect due to the failure to serve this form with the notice of pitch fee review, but the occupier has nevertheless paid the pitch fee proposed in the notice, the tribunal may order the site owner to pay back the difference between the amount which the occupier was required to pay for the period in question and the amount which they have actually paid.

Matters that can and cannot be taken into account on a proposed review

- The law says⁽¹⁾ there is a presumption that the pitch fee cannot be changed by more than the annual change in Consumer Price Index (CPI), unless this would be unreasonable having regard to the matters set out in paragraph 18(1) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.
- This part of the notes explains how the CPI adjustment is worked out and what other matters can be taken into account as part of the review.

CPI adjustment

- How the CPI adjustment has been worked out is in section 4(B) of the form.
- The maximum CPI adjustment is limited to the published annual percentage CPI change in the previous year, even if the pitch fee has not changed for a number of years. (See above in the reviews and late reviews section for further details.)
- When applying the CPI adjustment to a pitch fee review which is proposed to take effect on the review date, the figure that must be used in the calculation is the latest published 12 month CPI figure available before the notice of review is served. The notice must be served at least 28 clear days before the review date.

(1) Paragraph 20 of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013. For matters that can be taken into account on a review more generally *see* paragraph 18.

- When applying the CPI adjustment to a pitch fee review which is proposed to take effect at a date later than the review date (a late review), the CPI figure that must be applied is the last 12 month CPI figure that was published before the day by which the site owner(s) should have served the review notice had the review taken place on time – i.e. last 12 month CPI figure published change prior to the day which was 28 clear days before the review date. So, if the review date is the 1 April 2015, the CPI figure to be applied would be the last CPI figure published before 4 March 2015.
- No other date or method for calculating the CPI adjustment is permitted.

Other matters that can be included in a review

- Costs incurred by the site owner, which are proposed to be recovered from the occupier, are shown in section 4(C) of the form.

- Matters to which such costs relate that are recoverable through the pitch fee include:

- A change in the law since the last review date, other than one which is specifically prohibited from being included, which has directly affected the cost of the management or maintenance of the site.
- The costs of certain “improvements” to the site (see below for details on improvements).
- A deduction from the pitch fee should be made and shown in section 4(D) of the form if it relates to a matter set out below:
 - The deduction of any charges included in previous reviews relating to the cost of improvements which have already been recovered through the pitch fee.
 - A reduction in costs as a result of the change in the law since the last review date, which has directly affected the cost of the management or maintenance of the site.
 - A deduction to reflect any deterioration in the condition or decrease in the amenity of the site or any adjoining land occupied or controlled by the site owner which has occurred since 1 October 2014 and which has not been taken into account in a previous pitch fee review.
 - A deduction to reflect any reduction in the services that the owner supplies to the site, pitch or mobile home, or any deterioration in the quality of those services which has occurred since 1 October 2014 and which has not been taken into account in a previous review.

Improvements

The cost of an improvement can only be recovered in a pitch fee review if:

- the improvement is for the benefit of the occupiers of the site;
- there has been consultation with the occupiers and any qualifying residents’ association; and
- the majority of occupiers have not disagreed in writing to the improvements being carried out, or where the majority have disagreed, a tribunal has ordered that the costs can be included in the pitch fee⁽¹⁾.

Matters that cannot be included in a pitch fee review

(1) Paragraph 18(1)(a) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.

Any costs relating to the following matters cannot be included in a pitch fee review:

- costs in complying with provisions contained in Part 4 of the Mobile Homes (Wales) Act 2013 which were not contained in the Mobile Homes Act 1983 in its application to Wales before the coming into force of Part 4, including any costs relating to the preparation and serving of this form(1);
- costs incurred as a result of any action taken by the local authority in licensing enforcement under sections 15 to 25 of the Mobile Homes (Wales) Act 2013 and being convicted for an offence under section 18(2);
- fees paid by the site owner to the local authority for a site licence application or for the alteration of any site licence conditions(3);
- any costs incurred by the site owner in connection with expanding the protected site(4); or
- any costs incurred by the site owner in relation to the conduct of proceedings under Part 4 of the Mobile Homes (Wales) Act 2013 or under agreements made between the site owner and occupiers under Part 4 of that Act(5).

Site owner's consultation obligations

- The site owner is required to consult the occupiers on any improvements to the site in general and in particular those where the owner proposes to recover the cost of the works through the pitch fee(6) (see improvements above).
- In addition, the site owner must consult with any qualifying residents' association(7) of the site on matters relating to the operation and management of the site and any improvements to the site that might affect the occupiers of the site directly or indirectly(8).
- In consulting, the site owner must give at least 28 days notice of the improvement in writing. The consultation document must describe the proposed improvement and explain how it will benefit the occupiers in both the short and long term. The document must provide details about how the pitch fee will be affected by the proposed improvement at the next review date and it must state when and where representations can be made about the proposal(9).
- Before undertaking any improvements to the site, the site owner must take account of any representations received from the occupiers(10). But the site owner cannot undertake any works, the cost of which is proposed to be recovered through the pitch fee, if the majority of occupiers have disagreed with the works, by notification in writing, unless a tribunal has authorised in default that the costs be recovered in the pitch fee(11).

Site Owner's Repairing and maintenance liabilities

- Paragraph 22(1)(c) and (d) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013 sets out the site owner's repairing liabilities. These are that the site owner:
 - is responsible for repairing the base on which the mobile home is stationed and for

(1) Paragraph 18(2) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.
(2) Paragraph 19(2)(c) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.
(3) Paragraph 19(2)(b) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.
(4) Paragraph 19(1) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.
(5) Paragraph 19(2)(a) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.
(6) Paragraph 22(1)(e) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.
(7) For the definition of a Qualifying Residents' Association see section 61 of the Mobile Homes (Wales) Act 2013.
(8) Paragraph 22(1)(f) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.
(9) Paragraph 22(2)(a) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.
(10) Paragraph 22(2)(b) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.
(11) Paragraph 18(1)(a) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013. For the definition of "majority" see paragraph 18(3).

maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home;

- maintains in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site.

- Examples of such repairs and maintenance, that fall within paragraph 22, may include repair and maintenance of pipes, conduits, wires, structures, tanks or other equipment provided by the site owner and of the parts of the site that are under the control of the site owner, including access ways, roads, pavements, street furniture and lighting, boundary fences, buildings in common use, drains and the drainage system and any open spaces or facilities in common.

- The site owner is also obliged to provide the occupier, free of charge, on request, documentary evidence in support and explanation of:
 - any new pitch fee;
 - any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement; and
 - any other charges, costs or expenses payable by the occupier to the owner under the agreement⁽¹⁾.

Occupier's Repairing Liabilities

The occupier is required to:

- keep the home in a sound state of repair; and
- maintain the outside of the home and the pitch, including all fences and outbuildings belonging to, or enjoyed with, the pitch and the mobile home and ensure the same are kept in a clean and tidy condition⁽²⁾.

Where the occupier is seeking reimbursement of any costs or expenses from the site owner, if requested the occupier must supply to the owner documentary evidence in support of the claim⁽³⁾.

Further information

Further information on pitch fee reviews and other charges is available from the Welsh Government website at:

<http://wales.gov.uk/topics/housingandcommunity/housing/private/mobile-homes-act/?lang=en>

(1) Paragraph 22(1)(b) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.

(2) Paragraph 21(1)(c) and (d) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.

(3) Paragraph 21(e) of Chapter 2 of Part 1 of Schedule 2 to the Mobile Homes (Wales) Act 2013.