

## **EXPLANATORY MEMORANDUM TO THE MOBILE HOMES (SELLING AND GIFTING) (WALES) REGULATIONS 2014**

This explanatory memorandum has been prepared by the Department for Housing and Regeneration and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with standing order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Mobile Homes (Selling and Gifting) (Wales) Regulations 2014.

*Carl Sargeant*  
*Minister for Housing and Regeneration*  
*2 July 2014*

## **1. Description**

1.1 The Mobile Homes (Selling and Gifting) (Wales) Regulations 2014 (“the 2014 Regulations”) introduce new procedures for the selling and gifting of mobile homes and assignment of agreements under the Mobile Homes (Wales) Act 2013 (“the 2013 Act”). These procedures are designed to make it easier for mobile home owners to sell or gift (give away) their homes without the interference of the site owner, and also to help potential purchasers of a mobile home have all the information they need to make an informed decision about the purchase.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

2.1 None

## **3. Legislative background**

3.1 Paragraphs 9-13 of Schedule 2 of the Mobile Homes (Wales) Act 2013, set out the regulation making powers in respect of selling and gifting of mobile homes. The Assembly procedure for making these Regulations is the negative procedure, apart from the procedure for making regulations under paragraph 11 of Schedule 2 which is that only the first regulations are made under the negative procedure. The regulations make detailed provision in relation to selling and gifting of mobile homes.

## **4. Purpose & intended effect of the legislation**

4.1 There are around 3,500 mobile homes on approximately 105 sites in Wales. The 2013 Act consolidates all existing mobile homes legislation into one Welsh Act and includes a number of additional provisions. One of the core provisions of the 2013 Act is to remove the consent requirement upon the sale of a mobile home to enable the mobile home owner to sell or gift their home without the site owner’s consent.

4.2 Prior to the commencement of the 2013 Act, under the Mobile Homes Act 1983 an occupier of a mobile home is entitled to sell the mobile home, and assign the agreement to a person approved of by the owner, whose approval shall not be unreasonably withheld. Where the site owner receives a request, he must within 28 days approve the person unless it is reasonable for him not to do so, and serve on the occupier notice of his decision whether or not to approve the person. The site owner may not give his approval subject to conditions. If approval is withheld, reasons for withholding it must be specified. The site owner might withhold consent if he considers it is reasonable for him to do so provided he serves notice on the occupier of his decision (ie he may ‘veto’ the sale if the owner does not approve of the prospective buyer provided they serve notice on the occupier to that effect and give reasons).

4.3 There is evidence of widespread abuse of the approval process by some site owners who exploit the process to prevent occupiers from selling their homes, so they can buy the home for a fraction of its true value. They then sell it themselves at the full market value or in the case of older homes with less value, replace it with a new home and sell that on the open market.

4.4 The 2013 Act addresses this problem by removing the site owner's right to approve a person, or of a person to whom a mobile home is to be gifted. In addition, the site owner will no longer be involved in the assignment of the pitch agreement, where a mobile home is sold or gifted under an agreement.

4.5 Regulation 3 sets out the information and documents that an occupier must provide to a prospective purchaser of a mobile home and Schedule 1 prescribes the form in which the information is to be provided. This ensures that a prospective purchaser has all the information they need to make an informed purchase. The buyers information form is designed to make this process easier for both the buyer and seller by setting out information about the sale, the pitch agreement, the site owner and the site rules.

4.6 Regulation 4 prescribes the information that must be provided to the site owner in relation to sales and regulation 5 in relation to gifts. In respect of new agreements (as defined in paragraph 9(2) of the 2013 Act), the occupier is entitled to sell the mobile home and assign the agreement without the site owner's approval. The new occupier must as soon as reasonably practicable, notify the owner of the completion of sale and assignment of the agreement. The new occupier is required to pay the owner a commission on sale of the mobile home at a prescribed rate. The 'veto' will therefore be removed in respect of new agreements made or assigned on or after the commencement of paragraph 9 (scheduled for 1 October 2014) or an agreement made before but which has been assigned after that commencement date.

4.6 Where the agreement is not a new agreement (ie an existing agreement), the occupier is entitled to sell the mobile home and assign the agreement without the owner's approval if the occupier serves on the owner a notice of proposed sale naming the person to whom the occupier proposes to sell to and either one of two conditions are satisfied. Either that, within 21 days the occupier does not receive notice from the owner that he has applied to a Residential Property Tribunal (RPT) for an order preventing the sale (a refusal order). Or that within 21 days the owner applies to the RPT for a refusal order and the occupier received notice of the application from the owner and the tribunal rejects the application.

4.7 Regulation 7 sets out the grounds on which a site owner may apply to the tribunal for an order preventing an occupier from selling or gifting their mobile home and assigning the agreement. The right to apply for a 'refusal order' only applies in respect of existing agreements. In such cases, the owner may appeal to the RPT for a refusal order within 21 days of being notified of the proposed sale. Where agreements already exist therefore, site owners will still be able to apply to the RPT for a refusal order if they have legitimate grounds for appeal against a sale or gift. This will provide a safeguard to existing contractual rights of site owners, allowing them to retain a role in ensuring that the people who move onto their sites are able to comply with the site rules.

4.8 As sales can proceed without being approved by the site owner, it is necessary for mobile home owners, potential purchasers, new occupiers and site owners to be aware of their obligations, in order for the rights of the parties to be protected and sale transactions run smoothly. It is particularly important given that most mobile homes are sold without the parties obtaining legal advice<sup>i</sup>. The 2014 Regulations will help ensure that these objectives are met. The 2014 Regulations set out the information that must be included in a notice of a proposed sale and notice of proposed gift to a site owner. Supplementary forms are provided to help the parties ensure they provide all the necessary information.

4.9 Should the 2014 Regulations not be made then a key provision of the Mobile Homes (Wales) Act 2013 will not be implemented and will potentially allow some site owners to continue exploiting the existing legislation and block sales or gifts of mobile homes for their own benefit. The 2014 Regulations removes the site owners veto on sales and gifts, providing additional safeguards for site residents, some of whom may be elderly and vulnerable.

## **5. Consultation**

5.1 A 12 week consultation on the content of the Mobile Homes (Selling and Gifting) (Wales) Regulations 2014 was held between the 10<sup>th</sup> February and the 6<sup>th</sup> May 2014. The purpose of the consultation was to seek views on the clarity of the regulations and the prescribed forms. The consultation was published on the Welsh Government website and key stakeholders were contacted directly and invited to take part in the consultation. These included local authorities, mobile home site owners, mobile home occupiers and industry representatives. A number of consultation events were also held where views were gathered.

5.2 In total, 28 formal written responses to the consultation were received to the consultation. Overall, the majority of respondents welcomed the 2014 Regulations and agreed that they made clear the required process for future sales and gifts of mobile homes. Some simple and easy to read guidance is being prepared for publication after the 2014 Regulations come into force.

5.3 The summary of consultation responses report and the Welsh Government response to the consultation was published on the Welsh

Government website on 18 June 2014. A copy of this document can be requested by mailing:

Mobile Homes (Wales) Bill Team  
Housing Policy  
Welsh Government  
Rhydycar Business Park  
Merthyr Tydfil  
CF48 1UZ

## **6. Regulatory Impact Assessment (RIA)**

6.1 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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<sup>i</sup> Consumer Focus Wales Report - Park Life: Residential mobile home living in Wales – October 2012