

Darren Millar AM / AC

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9th July 2014

Christine Chapman AM
Chair
Communities, Equality and Local Government Committee
National Assembly for Wales
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Dear Christine

Holiday Caravan Sites (Wales) Bill

I am writing following my appearance before the Committee on 25 June.

As I outlined during the meeting, there is general support for the need to update the licensing regime for holiday caravan sites and for many provisions in the Bill including:

- Requirements for written agreements between site and caravan owners;
- Powers for local authorities to charge fees for site licences;
- The requirement to consult with flood-risk management agencies when issuing a site licence;
- The removal of a duty requiring local authorities to automatically issue a site licence where planning permissions exist.

However, some other issues have been the subject of much discussion. During the meeting I outlined a number of changes that I proposed to make to the Bill to should it progress to Stage 2 to address these issues. The changes I outlined will ensure that the Bill is a proportionate response to the need to modernise legislation in this area.

To assist the Committee's consideration of the Bill, I thought it would be helpful to summarise the main changes I intend to bring forward.

Fit and Proper Person Test

The Test set out in the Bill is based on the similar one in the Mobile Homes Act 2013, with some additional protection on trading standards issues.

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I remain of the view that an appropriate *Fit and Proper Person Test* is needed to protect vulnerable consumers and ensure that sites are safe and well managed.

However, a number of witnesses and Members have made the point that the inclusion of breaches of housing law in the test is overly prescriptive and is not appropriate given that holiday caravans are not permanent dwellings. I think there is considerable merit to that argument.

Therefore, if the Bill proceeds to Stage 2, *I intend to bring forward an amendment to Section 34 to remove references to housing law as a factor in the Fit and Proper Person Test.*

I will also consider bringing forward other amendments to ensure that the test is focused on the key issues of fraud, dishonesty, and equality, which I think are the essential protections appropriate to this sector.

Frequency of Inspections

Frequency of Inspections is another issue that has been raised by witnesses and Members. The Bill currently sets a maximum period between inspections of 3 years. I continue to believe that it is important that there should be a statutory maximum period of time between inspections.

However, there are concerns that local authorities may have difficulty in carrying out inspections every three years – particularly if they also carry out more frequent, risk-based, inspections of some sites - and that it could be an excessive intrusion on well-run caravan sites.

Again, I have been persuaded by these arguments. Therefore, to address these concerns should the Bill proceed to Stage 2, *I intend to bring forward an amendment to Section 16 to increase the maximum period between inspections from 3 years to 5 years.*

The provisions already in the Bill [S16(2)], which require the Welsh Government to consult industry bodies and others before commencing the duty to inspect, will also help to ensure that the new inspection regime will be introduced sensitively and over an appropriate timescale.

Residence Test

I have noted the scepticism from some quarters regarding the evidence in relation to the residential misuse of holiday caravans. I continue to maintain that there is evidence that points to people using holiday caravans as their main home and note Professor Forthergill's evidence to the Committee, which supports this view. I also believe that this is a problem that has the potential to damage the holiday caravan industry and, consequently, the wider tourism economy in the longer term.

The provisions in Part 4 of the Bill regarding requirements for written agreements between holiday caravan owners and site owners will help to deter and redress the problem of residential misuse to some extent, but I remain convinced that there also needs to be a robust mechanism for addressing the issue of permanent residency, when it is identified.

I have considered whether this can be addressed through updating the model standards, which were last updated in 1989, or through issuing Ministerial guidance. The legal advice I have received, which I outlined at the meeting, is that the model standards cannot make any

provision in relation to residency; nor can they require written agreements between site owners and caravan owners.

I have also been advised that there does not seem to be any obvious and clear Ministerial power that would allow Ministers to direct local authorities to enforce the law more rigorously in this area.

Whilst Welsh Ministers may issue guidance to local authorities on any matter, that guidance cannot address the need for additional resources via the introduction of a fee regime for site inspections, nor can it be used to place duties on local authorities regarding inspection or enforcement.

Nevertheless, I have listened carefully to what witnesses have said, and I have reconsidered how the Bill can best achieve the right balance in this area. Therefore, should the Bill proceed, *I intend to bring forward amendments to Part 3 of the Bill to remove the compulsory residence test and replace it with a discretionary power for local authorities to conduct residence tests* where they have a suspicion that residential misuse is a factor on a site.

This will be in keeping with the risk-based approach to inspection elsewhere in the Bill and ensure that particular local and regional problems can be dealt with effectively, while not requiring an intrusive approach in areas where permanent occupation has not been identified as a problem.

These changes to the frequency of inspections and the application of a residence test will reduce costs of licensing fees over 5 years by approximately 24%. As a result, an estimated annual licence fee of £122 per site is expected, just £2.61 per pitch per annum. The overall estimated costs of the Bill over 5 years would be reduced by 28%. I attach further details about the basis for these figures, which I hope you will find helpful.

Written Statements

In addition to the above changes, Jocelyn Davies asked me during the meeting about the application of Section 55 of the Bill. In particular the requirement that site owners must provide occupiers with a written statement of the particulars of a holiday caravan agreement no later than 28 days before the date on which the agreement is made. There was a concern that this would put the industry in Wales at a competitive disadvantage compared to other parts of the UK where no such time constraint existed. As I indicated during the evidence session, this was the first time that concerns regarding these provisions had been raised with me.

As I explained in response to Jocelyn Davies, the 28 day period can be shortened to any shorter period with the consent of the proposed occupier. This should ensure that agreements could be entered into quickly if both sides agreed. However, under Section 55(3), this would not apply where the holiday caravan is being sold by the site owner to the proposed occupier.

I believe that the requirement for a written statement of particulars, provided in advance, remains an important safeguard for caravan occupiers. However, it was not part of my intention that this should become a way of frustrating site owners and occupiers from reaching earlier agreement where they wished. Therefore, should the Bill proceed to Stage 2, *I intend to bring forward an amendment to delete the final part of S55(3) so that the 28 day period can be reduced by agreement in all circumstances.*

I am very grateful to the Committee for helping me to identify this issue and I trust that the solution I propose will address the concerns expressed.

Exemptions

Finally, in your letter of 9 May you sought clarification on the exemptions in the Bill for certain sites and organisations. I'm afraid through an oversight I did not respond to this point in my letter to you of 29 May. Please accept my apologies for this.

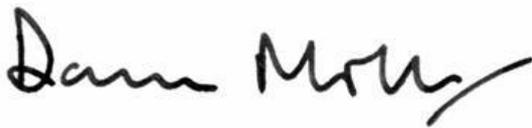
The exemptions in question are set out in Schedule 1 of the Bill. This maintains all of the exemptions previously contained in the Caravan Sites and Control of Development Act 1960, without substantive changes.

I have noted a concern raised by the Caravan Club that paragraph 4 of Schedule 1 refers to holiday caravan sites 'owned' by an organisation which holds a certificate of exemption. They have pointed out that the equivalent part of the 1960 Act refers instead to sites 'occupied' by organisations with exemption certificates.

The use of 'owner' does not make any substantive change to the position as set out in the 1960 Act. This is because the Bill (Section 5) defines the meaning of 'owner' in the same substantive way that 'occupier' is defined in the 1960 Act. The change in terminology is simply for consistency with that used in the Mobile Homes (Wales) Act 2013 and to reflect modern legislative drafting conventions.

I trust that this letter is of assistance to the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Darren Millar", with a long horizontal stroke extending to the right.

Darren Millar AM