Communities and Local Government

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Welsh Assembly Government

Park homes site licensing reform:

The way forward and next steps

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March 2010
Department for Communities and Local Government

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Executive summary

This paper[1] sets out the Government's position following from its consultation, *Park Home Site licensing – Improving the Management of Park Home Sites*, issued jointly by Communities and Local Government and the Welsh Assembly Government in May 2009. The paper sets out the Government's views about the proposals in light of the responses received by consultees and also sets out our conclusions on how to take the proposals forward. Part four contains a summary of the responses to the individual questions in the consultation paper.

The Government wants to secure a thriving and well run park homes sector that provides sites where people want to live and invest. We believe a licensing system that raises and maintains the standards on sites and ensures sites are safe, well planned and well managed with appropriate facilities and services, will help achieve these objectives. Such a scheme must operate fairly, be proportionate, cost effective and enforceable. An effective scheme must deliver improvements in the management of park home sites, where improvements are necessary, whilst continuing to secure a vibrant, healthy sector.

Consultation proposals

The consultation paper sought to elicit views on a revised licensing scheme from that contained in the Caravan Sites and Control of Development Act 1960. The proposals build upon that regime by giving licensing authorities wider discretion on the grant of licences and powers to revoke them, whilst ensuring the interests of owners and residents continue to be protected when a licence is not granted (or is revoked).

We proposed that certain standards would need to be met in order to hold a licence and it would include conditions, such as in regard to the management of the site. We proposed that licensing authorities would be given powers to charge a fee to persons applying for licences and the authorities would be expected to use the revenue generated to monitor and enforce licence conditions.

Responses to consultation

The proposals in the consultation were generally welcomed by local authorities, park home residents and the trade. The need to reform the site licensing system was recognised as necessary and the overall approach, particularly the introduction of the "fit and proper" requirement was supported by a majority of consultees.

Government's intentions

The Government is committed to a comprehensive licensing regime, which ensures that only "fit and proper" persons are engaged in the management of park home sites, and which is backed by effective enforcement tools. This section summarises how the Government intends to take forward the licensing proposals in the consultation paper, which are explained in more detail in parts two and three.

[1] It has been prepared jointly by Communities and Local Government (CLG) and the Welsh Assembly Government. Accordingly the reference to "Government" means CLG and Welsh Ministers.

- We propose to set up a **task force** of representatives of Government and key stakeholders from trade bodies, national residents' groups, local authority representative organisations and local authority practitioners. The task force's terms of reference will be to consider further, in light of the consultation responses and the Government's comments, key aspects of licensing reform and to report back with recommendations on how these might best be achieved to help inform the Government how to proceed. An overarching role of the task force will be to ensure the licensing proposals are effective and practical and do not create undue burdens.
- The task force will consider and recommend whether to adopt a **single or two-tier licence structure** and shall advise the Government how the recommended option might be best implemented.
- The Government has decided to introduce a **"fit and proper" person** requirement as part of the new licensing requirements. The task force will consider, in light of the licensing structure options, how best to ensure that licence holders and those engaged in the management of park home sites are "fit and proper" persons and whether, and if so to what extent, measures need to be in place to ensure management arrangements are satisfactory and to advise the Government on these issues with recommendations.
- The Government has decided to give the relevant authority the **power to refuse applications for licences** and the **power to revoke existing licenses**, where appropriate. The Government has also decided to introduce **management order** provisions to ensure that suitable management arrangements are in place when an application for a licence is refused or an existing licence is revoked. The task force will consider, having regard to the licensing structure options, the nature and scheme of alternative management arrangements to be put in place where a site is unlicensed and to advise the Government on these issues with recommendations.
- The Government intends that park home sites will be licensed for a specified number of homes, and local authorities will be given enforcement tools, such as **removal orders**, to ensure this is complied with. We will ask the task force to review the proposed scheme so as to ensure it operates effectively and fairly.
- The Government has decided to give local authorities powers to serve **enforcement notices** on licence holders to require them to carry out repairs and maintenance to sites and ensure they are properly managed and to recover their expenses in doing so and to do works in default, the cost of which is to be paid by the licence holder.
- The Government intends to give local authorities powers to enter sites and carry out **Emergency Remedial Action** in emergencies, where it is not possible to serve an Enforcement Notice, and to recover their expenses and costs in doing so from the licence holder.
- The Government has decided that all **appeals** on licensing decisions will be to the Residential Property Tribunal.

- The Government intends to introduce a range of new **offences** relating to licensing which on conviction will attract robust financial penalties to deter those in the management of sites from non compliance. We will ask the task force to consider, in light of the options for the licence structure, to advise how offences are to be reported, and which licensing body in relation to which offence should be the prosecuting authority.
- The Government has decided to introduce **licence fees**. The task force will consider, in light of the licensing structure options, what (if any) guidance is required to be given to licensing authorities in connection with licence fees and to advise the Government on this and on connected matters with recommendations.
- The Government intends to introduce a **transitional scheme** to bring within the scope of the new legislation existing sites and their owners and managers. We will ask the task force to assist in the development of a practical cost-effective scheme to do so.

Next steps

We shall now be inviting trade representative organisations, national resident groups and local authority bodies and practitioners to join a task force to consider the issues we have identified in this paper to help the Government in exploring the options and deciding on which ones to take forward.

We shall publish our findings once the task force has concluded its programme of work.

Changes to the current site licensing regime will require primary legislation. We will be working up a comprehensive scheme of reform for sites in England and Wales to present to Parliament and the Welsh Assembly at the earliest possible opportunity.

Part two: One licence or two?

The consultation envisaged that there would be a single licence for every licensable site granted by the local authority to a person who it considered to be "fit and proper" and suitable to hold the licence. The licence itself would be concerned with such matters as the site's suitability for a specified number of units, its layout, services, amenities and management. The local authority would be responsible for administering and monitoring the licence and ensuring it was complied with and for taking enforcement action when it was not, or there has been a change of circumstance in the status of the licence holder to render him no longer suitable to hold the licence. (This is called a "single-tier" licence or structure in this paper.)

A key suggestion from the trade and the two national residents' associations, but not local authorities, was that the whole licensing process should not be administered by local authorities.

It was considered there should be a national licensing authority whose role would be to decide if an applicant was "fit and proper" and suitable to manage park homes. If so, the national authority would issue a "personal licence". If the applicant was refused a licence, he would not be able to manage any park home site. The local authority would be responsible for issuing the "site licence" and monitoring it, which would cover such matters as the site's suitability, amenities and services. (This is called a "two-tier" licence or structure in this paper.)

The main reasons the consultees gave as to why they favoured this approach were (in summary):

- the single-tier licence would not remove criminal and incompetent park owners or discourage rogues from entering the industry, i.e. they would continue to flourish in areas where they were deemed "fit and proper";
- the loophole would enable unscrupulous and criminal site owners to take calculated risks in their conduct in some areas;
- this would result in a post code lottery as to the level of protection enjoyed by residents;
- local authority environmental health officers do not have the expertise in parks' legal and financial matters, nor are they best placed to assess someone's fitness to manage a site;
- that requiring individual local authorities to make decisions on fitness would create duplication and increase costs;
- local authorities would not be able to take account of earlier decisions in other areas, concerning a person's fitness;
- it would distort competition across the industry with different criteria being applied in different local authority areas;

- no consideration in the single-tier licence structure is given to those owners of multiple parks spanning many local authorities to have to make multiple applications to those authorities, or for the licence holders to be deemed "fit and proper" by different authorities;
- a national system of licensing would be a proper cost-effective system to ensure that those engaged in the management of park home sites are "fit and proper";
- a national system would prevent rogues being able to operate in one local authority area whilst they are barred in other areas i.e. it ensures consistency;
- a national register of "fit and proper" persons (as well as a list of persons barred from being site owners) is essential.

The Government has identified a number of potential impacts arising from such an approach (a two-tier licence structure), some of which include:

- A personal licence would enable the licence holder to manage any number of park home sites, and thus would be transferable.
- Conversely, a person who has been refused a personal licence could not manage any park home sites.
- The personal licence holder would need to be the holder of the site licence.
- A criminal conviction for breach of the site licence would necessarily be indicative of a person's unsuitability to hold a personal licence, as would any behaviour which renders the licence holder no longer "fit and proper".
- The decision to revoke a personal licence would be a matter for the national licensing authority (in consultation with the relevant local authorities and others).
- If a personal licence is revoked, alternative management arrangements would need to be put in place by the local authorities for every site the previous licensee managed.

The two-tier structure perhaps impacts most, either positively or negatively, where multiple parks are within the same ownership. Indeed, it could be argued that it has little impact (and is debatably overly bureaucratic) where a licence holder only manages one park.

The Government is not committed to either a single (as envisaged in the consultation) or two-tier structure. We see a number of potential merits and pitfalls with both approaches.

We accept, for example, that a national licensing scheme should ensure consistency across England and Wales as to the fitness of a person to manage a park home site, and that would be welcomed. However, a national authority will not have first hand knowledge of the applicant or how he conducts his affairs at a local level. It is important to bear in mind that the national authority's decision will either prohibit or permit an owner from holding a licence to manage his parks, regardless of how effectively or ineffectively he has managed them as individual sites. Perhaps there may

not be much sympathy for an owner who is refused a licence because he is unfit and is, thus, barred from managing any of his sites. However, the reverse is also potentially possible, where the owner's management of a particular site has been deemed to be so poor that the local authority would not have granted him a licence, but the national authority nevertheless grants him a personal licence which enables him to continue to manage that particular one. This is a result which no one would want (except the site owner), but that is a possibility with a national licensing scheme.

Perhaps, in anticipation of this potential anomaly, some of the consultees have suggested that the "fit and proper" requirement be objectively defined. Such an approach would lead to only exclude those persons who have been convicted of a relevant criminal offence, since other findings of a non-criminal nature are bound to be in some degree subjective.

In our view, the criminals must be barred from the market, but there are other persons operating in this industry in a thoroughly unscrupulous manner, which falls short of criminality, who also should be excluded from it. There are others still who may have committed minor misdemeanours or committed errors of judgement for whom such a sanction would not be appropriate. It is for these reasons that we believe the decision maker, whether it be a local authority or a national authority, requires some discretion, and may have regard to conduct and action that might indicate unfitness, but does not constitute criminal activity.

The problem with that approach is that if a national licensing authority exercises that discretion it has a wider implication for site owners, residents and local authorities because it involves multiple sites across different local authority areas - rather than if decisions were taken at a local level concerning individual sites.

Another example of the wider application of a national licensing authority's decision that a person is not "fit and proper" is that every local authority in whose area that person owns a site must make arrangements for alternative management to be put in place, given that the national authority can only decide whether a particular person is "fit and proper", and not more generally whether suitable alternative arrangements are available. This could have significant implications on local authority resources and its costs in administering the new licensing regime.

We have mentioned these examples because they illustrate just two of the potential problems that could arise with two different authorities administering a licensing scheme which involves ownership of multiple parks and which effectively imposes certain decisions and obligations on local authorities for which they may not have planned.

On the other hand, we certainly see attractions with a national scheme. We agree that it would be ideal to have a central register of those who could manage park home sites. We also believe that there should be measures in place to prohibit persons who have committed criminal offences of a serious nature to hold, or continue to hold, licences. We agree wholeheartedly that such decisions must be consistent across England and Wales and there need to be systems in place to require that. We also agree that licensing must minimise burdens and costs and not involve duplication in process, for local authorities or site owners.

We neither rule out nor rule in a single or two-tier licensing scheme, as the pros and cons of each has to be carefully considered. We want to explore the options in greater detail to determine which overall is the most practical and cost-effective in delivering a robust licensing regime which is not burdensome or overly bureaucratic and will deliver the necessary improvements to the industry and benefits to residents. The Government, therefore, intends to set up a task force including officials from Communities and Local Government and the Welsh Assembly Government, local authority representative groups, local authority practitioners, trade representatives and the national residents' associations, to consider these options and their impacts in greater detail. This task force will help inform the Government in its decision of which option to adopt.

Part three: Principle components of licensing

Interim licences and certificates

The Government's view is that if a two-tier licence structure is adopted an interim licence will not be necessary because the site licence will automatically be granted to the person holding a personal licence once he becomes the manager of the site.

If a single-tier licence structure is adopted the Government considers that an interim licence should automatically come into force where a site has planning permission, no licence is in force and an application for a licence has been submitted but not yet determined.

A certificate specifying the applicant will be granted a licence on the conditions specified will be useful in respect of a single-tier licence structure, if the site has planning permission for use as a caravan site. It will enable a potential purchaser to ascertain in advance whether a licence would be granted to him and on what terms.

In a two-tier licence structure the value of a certificate is much diminished. This is because a potential purchaser would need to obtain a personal licence from the national licensing authority before he could manage the park home site. Consequently, a certificate would only relate to the site licensing elements and that would, in any case, be available for inspection in relation to existing sites. The local authority could, in any case, advise of proposed changes. Although its most significant use may be in the development of new sites, we do not consider the procedure's use would be significant. We, therefore, will not introduce certification if a two-tier structure is adopted.

Circumstances in which a licence must be granted

Paragraph 11 of the consultation sets out the four matters that must be satisfied before a licence could be granted.

The aim was to establish the principle that if those matters were satisfied a licence must be granted. (It was not concerned with what should constitute the criteria of those matters.) The Government agrees, in principle, that those four matters need to be satisfied. Obviously, the question of who needs to be satisfied and the extent to which the matters can be tested, will depend on whether a single or two-tier licensing structure is adopted and whether all decisions will be made by one or two bodies.

Fit and Proper Person

The Government is committed to introducing a robust and effective definition of a "fit and proper" person, which is not too strictly defined, so as to impede access to licensing for the majority, but which is strict enough to keep the minority of bad site owners out of the regime and to prevent them from being engaged in the management of sites.

We will be asking the task force to consider what would be the most appropriate criteria to be included in determining a person's "fit and proper" status, in light of the approach it would recommend for the type of licensing i.e. a single or a two-tier structure.

Suitability of management arrangements

To some extent the relevance of ensuring management arrangements are suitable will depend on the type of licensing regime that is adopted. Under a two-tier licence structure any requirements relating to management suitability will be part of the personal licence granted by the national licensing authority. It cannot relate to suitability to manage a particular park home site, since the personal licence is a generic authorisation to manage any park home site. Thus the question of suitability to manage must be looked at, if at all, in the round.

On the other hand, if a single-tier licence structure is adopted, the suitability of management arrangements, if relevant at all, will relate to the arrangements in place (or to be put in place) to manage the particular licensed site.

In light of the diversity of opinion on this issue and its relevant impact to any adopted licensing system we will ask the task force to consider further these proposals.

Licence conditions

The Government has decided to adopt the range of conditions specified in the consultation, including management conditions. We will keep under review whether there is a need to introduce a code of practice or model standards relating to management conditions, although we remain to be convinced that such guidance is necessary.

The licence holder

The principles on which we consulted were that the holder of the licence is responsible for the management of the site and there is a presumption that the site owner ought to hold the licence unless there are exceptional reasons why he should not do so.

The first principle would not be affected should we adopt a two-tier licence structure. This is because the personal licence holder would be responsible for and hold the local authority site licence, which means he would be responsible for the management of the site. However, the second principle cannot apply where a two-tier structure is in operation because any person holding a personal licence can hold and be responsible for the local authority site licence. This has certain potential ramifications if, for example, a site owner decided not to apply for a personal licence himself, but continued to be involved in the management of his sites. In order not to create a potential loophole here we shall ask the task force to consider this issue, as part of its review of which site licensing regime should be adopted.

Refusal to grant a licence

The arrangements as set in the consultation would apply to single-tier licence applications processed by local authorities.

If a two-tier licence structure is adopted then these arrangements would necessarily be different. The consultation requirements would, for example, be different on the grant of a personal licence because a personal licence is a generic authority to manage any park home site. So consultation would be with relevant local authorities (in which the applicant owns or manages sites) and other agencies. In relation to the site licence, the only circumstance in which it could be refused would be in respect of a new site, or an existing site, where it was clearly unsuitable to station homes upon it. The local authority should be required to consult relevant persons before refusing to grant a licence in such circumstances.

We want the task force to consider these matters further.

Variation of licences, including power to reduce the number of homes on a site

We have concluded that a site licence should be capable of being varied, including in order to reduce the number of homes permitted on a site where necessary. We have concluded that the local authority should tolerate a continuing breach in numbers (unless there is a specific danger to the health and safety of the residents, or the offending home, or of the site more generally) but must ensure that the licence is complied with when one of the events mentioned in the consultation paper happens e.g. when the resident vacates the home or the agreement to occupy it is terminated.

Revocation of licence for misbehaviour

The Government believes there must be in place a comprehensive scheme to revoke licences where a licence holder has ceased to be a "fit and proper" person or has committed or permitted serious breaches of licence conditions. The form that scheme will take will depend on whether a single or a two-tier licence structure is introduced.

As we have already suggested there could be significant implications for local authorities and site owners depending on which type of licensing scheme is adopted. For example, under a two-tier structure if a multiple park owner breaches a condition in one site licence who will decide whether the licence is revoked, the local authority in whose area the site is located, or the national licensing authority, given that there is an implication on the licences he holds for his other parks? Furthermore, what does this mean for the local authorities in whose areas the other parks are located, if those licences are revoked on account of misbehaviour in a different area?

There are no easy answers to those questions and so we will be asking the task force to consider what the implications are of adopting either a single or a two-tier licence structure on the operation of an effective scheme for revoking licences.

Revocation on transfer

We believe that under a single-tier licence it is necessary for the local authority to be satisfied, before it grants the licence, that the owner purchaser is a "fit and proper" person and is suitable to manage the site by requiring that person to make an application for a licence. Provided an application is made an interim licence would come into force whilst the local authority carries out the necessary checks. An application can be made before the purchase of the site is completed, but no offence

of failing to have a licence can be committed until the site has changed hands and still no licence application has been made. In either case, once an application has been received an interim licence comes into force and consequently the outgoing seller's licence is revoked.

A different system would apply under a two-tier licence structure. This is because normally the purchaser would have obtained a personal licence in advance and would then become responsible for the site licence on completion of the purchase. There are, however, issues about that. For example, what happens if the new owner has not obtained a personal licence? Obviously he will be committing an offence, but who would prosecute, the local authority or the national licensing body? Moreover, should the personal licence holder have a right to ask the local authority to review the site licence and should he be able to appeal against conditions he does not agree with?

We shall ask the task force to consider this aspect of revocation of licence further as part of their programme.

Revocation on the death of a licence holder

Whether a single or two-tier licence structure is adopted the Government believes it is important that sites which were licensed to a deceased person remain managed and licensed after his death.

We shall ask the task force to consider how this is best practically achieved.

Duty to monitor and power of entry

We believe that no matter which type of licensing regime is adopted those bodies that administer it must have a duty to check that licence conditions are being complied with and that the licence holder remains "fit and proper" and suitable to manage the park home site. We also believe that licensing authorities should have a power of entry onto a site to monitor compliance and for certain other purposes.

We think it is important that industry and residents are familiar with the licensing regime as operated in their local area, so we intend to make it a duty that licensing is promoted.

Enforcement Notices

An Enforcement Notice (EN) will be an important tool available to local authorities to ensure that disrepair on sites is dealt with promptly and effectively and to ensure they are maintained and managed at an acceptable level.

The Government sees much force in local authorities' concerns about consultation and notification requirements in respect of ENs. We have, therefore, decided that there should not be a requirement to consult before a formal notice is served. However, local authorities must work with licence holders to help them solve the problems without the need for formal action. We are still of the view that interested persons and residents need to be informed that an EN has been served. In that regard it will be sufficient to require the licence holder to display a copy of the EN in a prominent place on the site, but the local authority itself will be required to serve a copy of the notice on other interested parties (other than residents) as mentioned in paragraph 72 of the consultation.

The Government has decided that it would be fair and appropriate for local authorities to recover their expenses in connection with an EN from the licence holder. Those expenses may be registered as a local land charge until they are paid, which is one of the reasons why it is important that an owner of the land (and not just the licence holder) is notified of the EN.

We intend to adopt the proposals in paragraph 73 of the consultation, which includes a right of appeal against unreasonable expenses and a prohibition on passing on any expenses to residents.

The Government has also decided that local authorities should be given a power to enter upon a site and do the works in default of the site owner doing so to its satisfaction. We, therefore, intend to adopt a scheme similar to that envisaged in paragraph 76 of the consultation. Safeguards would be put in place to ensure that the power would usually be exercised having given a reasonable period of notice (to be decided) to the site owner and occupier but in certain situations, such as in emergencies, the power could be exercised without notice.

The Government believes an EN should be capable of being suspended pending a certain event taking place, such as a resident vacating or taking up occupation, or until a specified time, or until certain other actions either start, do not start or stop or there is a material change in the terms of the licence.

Emergency Remedial Action

We accept there is a need for a local authority to have a power to step in and carry out works where there is an emergency which poses a serious risk to the health and safety of residents or to the safety etc of their homes, if timely remedy of the problem cannot be achieved through the service of an EN.

As the whole purpose of Emergency Remedial Action is to deal with a serious problem quickly, there is no requirement to consult before taking action. Notice of the entry and works must be served on the licence holder and other interested persons within 24 hours of entering onto the site.

An appeal to either stop the works or to modify them must be made within 7 days of the notice being served on the licence holder. There will also be a right of appeal, in certain circumstances, against the reasonableness of any charges claimed by the local authority subsequent to having carried out the works.

Maximum number of homes and Removal Orders

The Government considers it is an essential plank of site licensing that the local authority is able to specify the number of homes (and by that on mixed sites we include holiday homes) on a site, since there must be adequate amenities, services and facilities to accommodate the number of units in a safe and adequately spacious environment. The number of homes permitted cannot exceed the number for which the site has planning permission, but could be a lesser number if, in all the circumstances, that was appropriate. The licence can also specify the number of units by their types, provided it does not permit greater numbers of a type than are permitted under the planning permission.

We, therefore, firmly believe there needs to be in place an adequate penalty to deter persons from deliberately permitting a site to become occupied by more homes than for which it is licensed or for failing to take appropriate action to reduce the number of units to comply with the licence, when required to do so. This offence can be committed by a site owner engaged in the management of the site, but who is not the licence holder because he may be involved in the sale of existing and new homes.

The Government also believes that a local authority will need to have the necessary tools to ensure that a fundamental breach of a licence is remedied by requiring unauthorised homes to be removed from the site.

We recognise this is a significant interference with a person's home and should, therefore, only be used sparingly where the offending home's presence has a significant adverse impact upon the occupiers or other residents on the site. This is why it is important that the appropriateness of any order must be considered by an independent tribunal, which may authorise or not authorise the removal. It is important that a resident whose home is subject to a removal order receives an appropriate level of compensation and receives appropriate costs for disturbance and home loss – see paragraph 96 of the consultation.

Our view is that a local authority should not be able to seek authorisation for the order unless it has also secured a conviction for breach of the licence term relating to the number of units on the site.

As we see it the provision will not affect significant numbers of, or long standing, residents. It will normally only apply where a new home is brought onto the site in breach of a licence, or an existing home is used to accommodate a new resident in breach of a requirement to remove the home when it became vacant.

The effect of a removal order once authorised is to remove from the resident any protection afforded under the Mobile Homes Act 1983, unless the tribunal suspends the operation of an order it has authorised. The resident, site owner and licence holder (if different) and other interested parties will have a right to make representations to the tribunal against the making of the order etc, and any person aggrieved by the decision of the tribunal to authorise or not to authorise the order (including a suspended order) will have a right of appeal.

Removal orders are neither unique to the caravan world, nor to the world of housing more generally, as local planning authorities may take enforcement action to remove or demolish structures which do not have the requisite planning consent. However, we accept that our proposals need to be worked up in further detail to ensure orders operate fairly and effectively. We will be asking the task force to help us with this.

Interim Management Orders

Although the majority of consultees seemed to support the principle of Interim Management Orders (IMOs) and the circumstances in which they can be made, there was a good deal of concern about their use in the reasoned responses to the relevant questions.

The bottom line is that if a site cannot be licensed, or a licence is revoked, it still needs to be managed. It simply is not an option to revoke a licence and leave the site unmanaged (or under the continued management "unlicensed" by the very person whose licence has been revoked). Nor is it an option to shut the site, potentially creating homelessness, as that would entail greater cost and resources to a local authority than managing the site itself, and obviously such a move may breach residents' human rights as it would involve depriving them of their homes through no fault of theirs. It is also totally impractical to say that if a licence is revoked, residents should be left to make their own arrangements. Nor is it appropriate for Central Government to directly manage sites.

We are disappointed that although a number of consultees expressed strong reservations about IMOs and FMOs, none of them suggested any realistic viable alternatives, perhaps because there simply are none.

We are not wedded to the notion that when a local authority makes an IMO it must manage the site itself; it may or may not be appropriate for it to do so. It could appoint an agent to manage the site on its behalf. The point is the management must be under the auspices of the local authority so it can ensure the site is being managed properly by a suitable person.

Clearly, there is a nexus between the management of sites and the suitability of the licence holder to do so. In the system that involves a single-tier licence the decision is made at a local level - namely if the applicant is unsuitable to hold a licence, or the licence holder ceases to be a suitable person to hold the licence, the local authority must make alternative management arrangements.

But how does that extend to multiple sites in single ownership, when a two-tier licence structure is in force?

Those who advocate such an approach to licensing do so on the basis that if a site owner is unable to hold a personal licence he cannot hold a licence in respect of any park home site. As one trade consultee said in advocating a two-tier structure:

> "It cannot be the case that legislation is framed so that an individual is judged unfit to hold a site licence in one local authority area, yet is able to continue with unscrupulous or criminal conduct on another park a few miles away across a county line."
>
> "…the consequence in terms of revocation of the site licence should be applied across all parks within the individual's control…".

It seems to the Government, therefore, that those who supported a two-tier structure were advocating that if his personal licence was revoked, the former holder could not continue to hold a licence for any of his sites.

However, in answer to question 29, the same consultee suggested that if an IMO is made in respect of a site belonging to a multiple site owner, then there should be a duty on other local authorities:

> "…to identify other parks in that ownership to allow for their proper monitoring and action by their host authority."

There is no mention here of the personal licence being revoked or measures to be taken to prevent the multiple owner from continuing to manage other sites. On the contrary, this seems to be suggesting that a person who is unfit to manage a park home site in one area may nevertheless be fit to continue to manage sites in other areas, subject to monitoring and appropriate action by those authorities (which may or may not include making IMOs).

We mention this because it does show that the implications of a two-tier licensing structure on those owners of multiple parks need to be considered very carefully. Clearly, the issues of management orders are intrinsically tied up with the approach to licensing which is to be adopted. There are no easy answers.

Indeed, judging by the reasoned responses to questions on IMOs, any management structure will need to be carefully devised so as not to create undue burdens, but also to ensure that the health, safety and welfare of residents and the rights of site owners (subject to the IMO) continue to be protected.

The Government will, therefore, ask the task force to consider how we take forward alternative management arrangements under the auspices of local authorities in considering the most appropriate form of licensing to be adopted.

Final Management Orders

A Final Management Order (FMO) would only come into force at the end of an IMO and if a licence cannot be granted. An FMO provides for stable long -term management of the site in accordance with the management plan.

The Government is committed to ensuring that where a licence cannot be granted on a residential site, long-term arrangements are put in place for its management, under the auspices of the local authority.

As we have said in relation to IMOs the form that management is to be delivered needs to be worked out carefully and so we shall be asking the task force to consider this as part of their programme.

Appeals

The Government intends that licensing decision appeals (whether a single or two-tier licence structure is introduced) will be to the residential property tribunal (RPT). The RPT has a wealth of experience in determining appeals from other "housing" licensing schemes and, therefore, is eminently suitable to hear appeals in this jurisdiction, including as to the suitability and "fit and proper" status of an applicant to hold a licence. In addition, the RPT will shortly be determining applications in relation to the Mobile Homes Act 1983.

Licensing fees

The fee structure which will eventually emerge will be determined by whether the Government adopts a single or two-tier licence structure. However, we do not intend initially to set nationally any fee structure. Licensing authorities are best able to determine fee levels within their jurisdictions which must be consistent, measurable, reasonable and transparent.

There are competing arguments as to whether annual fees should be payable or whether fixed term licences should be granted. There is also a finely balanced issue over whether licence fees should be recoverable though pitch fees, or whether they should be treated as business costs and not so recoverable. These issues are tied to the question of the form of site licensing which is adopted and, therefore, we will be asking the task force to give further consideration to them as part of their programme.

Other matters

There was some concern that the proposed offences were intended to be "absolute" because the defence of "reasonable excuse" has not been included in relation to any of them in the consultation. We should make it clear that there is no intention that all offences will be absolute. However, the more fundamental the offence, the more absolute it becomes. So, for example, a failure to apply for a licence cannot attract a "reasonable excuse" defence because the local authority would in many cases offer an opportunity to apply for a licence before launching a prosecution and, in any case, a person running a park home site ought to have made reasonable enquiries as to whether he was liable to be licensed.

We intend to introduce transitional measures to bring existing sites and their managers and owners within the scope of the new regime. We will be asking the task force to consider the terms of such a transitional scheme in light of the options for a single-tier or two-tier licence structure.

We remain unconvinced that licensing should apply to family occupied sites.

We see that there is a case for stating that the Primary Authority Scheme (under which companies have the right to form a statutory partnership with a single local authority, which then provide advice for other authorities to take into account when carrying out inspections or dealing with non-compliance) may be suitable to apply to the legislation. We shall ask the task force to consider this further.

One trade consultee said that "… in making proposals and evaluating their impact, government has failed to consider all possible routes to achieve their objective;" and that " … equally the costs of their proposal has been grossly underestimated".

The Government has concluded that a robust licensing scheme is necessary for the park home sector, since it is evident that without it the problems in the sector would continue. The industry has not suggested any alternative means of protecting the health, safety or welfare of the residents and, besides which, licensing is not a new concept. This sector has been regulated though licensing since 1960, albeit not entirely effectively, and our proposals are intended to build upon the existing framework to ensure a more robust and effective scheme is put in place.

The Impact Assessment was a consultative document and obviously we wish to work with the task force to ensure that any final impact assessment reflects the financial impact – whether it be a single-tier or two-tier structure – will have on stakeholders, and we look forward to working closely with the trade bodies and local authorities in that connection.

Part four – Consultation responses by question

The consultation process

A 12 week public consultation was held between 12 May and 4 August 2009.

Numbers of responses

In total the Government received 98 responses. Not every question was answered by every consultee, so the total number of responses to individual questions does not add up to 98.

A breakdown of respondents is summarised in the table below.

- **local authorities** - includes the joint response from the Local Authority Co-ordinator of Regulatory Services and the Local Government Association, as well as individual local authorities
- **residents' associations** – includes the responses from two national groups, The Independent Park Home Advisory Service and the National Association of Park Home Residents, as well as local residents' groups
- **other** – includes the Association of Chief Police Officers, the Chartered Institute of Environmental Health Officers and other interested parties
- **trade** – includes responses received from their two trade bodies, the British Holiday & Home Parks Association and the National Park Homes Council

	No. of responses
Local Authorities	40
Residents	26
Residents' Associations	12
Other	7
Trade	13
Total	98

Interim licences and certificates

Q1. Do you agree that an interim licence needs to be provided for?		
	Yes	**No**
Local Authorities	26	4
Residents	2	1
Residents' Associations	8	1
Other	21	0
Trade	1	2
Total	58	8

This question sought views on whether consultees thought there should be an interim licence pending determination of an applicant's licence application.

It was suggested this would provide a smooth transition for existing and new licence holders. Another consultee thought it filled a "void" and ensured legality. Another suggested interim licences should only be granted in respect of existing sites. One consultee thought this was fine provided planning permission was in place. Another considered there should be specific enforcement arrangements in place. Whilst another wondered if it involved issuing a physical document with conditions.

Some consultees thought it was unnecessary to put such measures in place on settled sites. Another was concerned that the interim licence might imply permission where the development was unauthorised.

Q2. Do you agree that a certification procedure would be useful?		
	Yes	**No**
Local Authorities	19	9
Residents	3	1
Residents' Associations	7	1
Other	20	0
Trade	4	1
Total	53	12

This question sought views on whether consultees thought it would be useful to permit a person to seek certification from the local authority that he would be granted a licence on the terms of that certificate.

Some consultees thought this would be useful in promoting local enterprise and providing an access to the industry. It was thought it would encourage prospective site owners.

It was thought any certificate procedure needed to be flexible in case changes were needed to the final licence.

One consultee thought that it would be difficult to specify conditions if planning permission for use of the land as a caravan site had not yet been granted.

A consultee said that it was important that an applicant paid a fee for a certificate at the same rate as licence application fee.

It was pointed out by a local authority consultee that if it was an existing site then existing conditions would be likely to apply and so the only relevant difference is the "fit and proper" person question.

Those who did not support the proposal thought it involved duplication with licensing and it was pointed out that local authorities would normally offer guidance anyway. It was also thought that the process would be unduly burdensome on local authorities.

Circumstances in which a licence must be granted

Q3. Do you agree that a local authority must grant a licence in the circumstances described? Should other circumstances be included?

	Yes	No
Local Authorities	30	0
Residents	19	0
Residents' Associations	9	0
Other	3	0
Trade	3	1
Total	64	1

The circumstances were supported (although there seemed to be some confusion about what constituted circumstances). These were that:

- the site has planning permission as a park home site
- the site is suitable, or may be made suitable by conditions attached to the licence, for such number of park homes as may be specified in the licence
- the proposed licence holder is a "fit and proper" person
- the proposed management arrangements are suitable for the management of the site or can be rendered suitable by conditions attached to the licence.

One consultee said this should be subject to the fee being paid and another said the site owner must demonstrate they have finances to run the site. Another said the requirements should apply to commercial sites. On family sites planning conditions should be adequate and the "fit and proper" test overridden.

Fit and Proper Person

Q4. Do you agree with the above criteria for determining whether an applicant is a fit and proper person?		
	Yes	**No**
Local Authorities	29	1
Residents	3	0
Residents' Associations	9	0
Other	20	0
Trade	3	1
Total	64	2

There was almost universal support for the principle that site owners need to be "fit and proper" persons. In fact, out of a total of 66 responses to question 4 of the consultation, only two consultees disagreed.

Some consultees thought the listed indicators for fitness were prescriptive and there were too many criteria. Another thought the criteria was not extensive enough[2].

Many consultees thought the proposals did not go far enough. It was suggested that spent convictions of a serious nature should be taken into consideration, as should breaches of public health, housing or nuisance legislation, in determining a person's fitness. Consideration should also take account of any practice of age discrimination.

It was also suggested there needed to be annual enhanced police checks. The proposed fine of £5,000 for failure to provide relevant information etc was considered too low. One consultee suggested the scope of harassment should not be limited to business activities.

Others thought that a failure to recognise a qualified residents' association should be part of the criteria. Another thought that breach of certain contractual terms and other matters, for example, quiet enjoyment and malicious communications should also form part of the criteria.

[2] The suggested criteria was the local authority may have regard to any relevant evidence as to whether the proposed licence holder has:

- any unspent convictions for violence, arson, sex offences, fraud, deception, other dishonesty or drugs
- been determined by a court or tribunal to have unlawfully discriminated against any person on grounds of sex, colour, race, ethnic or national origins, disability or sexuality in, or in connection, with carrying out any business activities
- been convicted of an offence under section 3 of the Caravan Sites Act 1968 or has been determined by a court or tribunal to have harassed any person in connection with any business activity
- not complied with any obligation or requirement under the Mobile Homes Act 1983 as determined by a court or tribunal
- not complied with any requirement imposed upon him under any Health and Safety or Fire Safety legislation as determined by the relevant body
- not complied with any obligation or requirement imposed on him under the 1960 Act or the new site licensing provisions; or
- been disqualified as a company director.

In addition, a local authority may also have regard to any other relevant information, as to the suitability of the person to be a licence holder, for example, association with persons who are themselves unfit.

Video evidence should be taken into consideration when deciding whether a person was unfit.

One consultee thought that the requirement to be "fit and proper" was a must for owning or running a mobile home site, but there be no role for local authorities in the process as they would not be able to conduct the essential searches required across local authority areas. This was a role for a national licensing authority. The role for the national authority was supported by a number of other consultees.

One other consultee expressed disappointment that there was no requirement to hold a formal qualification in the fitness test. Another asked what qualifications a "fit and proper" person must hold.

There was concern that the paper had not addressed the issue of when companies (as opposed to individuals) fall into bankruptcy or administration. Another thought it was unrealistic to require the "fit and proper" test to apply to company directors.

Some consultees welcomed the criteria for "fit and proper" as being consistent with that in the Housing Act 2004, whilst one thought it was wrong to apply the "HMO" principle to park homes.

It was suggested that there needed to be a transparent and objective test in determining a person's fitness, which would exclude any local discretion. Some consultees believed there should be an assumption that a person was "fit and proper" unless and until there is evidence to the contrary. Another added that it should be sufficient for an applicant to certify himself as "fit and proper".

One consultee thought that where the site owner / manager was registered with the Financial Services Authority, or held a consumer credit licence, or a premises and personal licence for the sale of alcohol, such a person should be exempt from the "fit and proper" requirement altogether, since otherwise there would be costly duplications with other regimes.

Some consultees thought that the proposed rules concerning associates were unacceptable and impractical.

Suitability of management arrangements

Q5. Do you agree with the above criteria for determining whether the management arrangements are suitable?

	Yes	No
Local Authorities	20	7
Residents	3	1
Residents' Associations	8	1
Other	20	0
Trade	0	6
Total	51	15

In question 5 we asked if consultees agreed with the criteria for determining whether the arrangements are suitable. The criteria included:

- the applicant's management arrangements, including previous relevant experience;
- the organisational structure that is in place (or which will be put in place) and
- the financial situation of the applicant.

There were 66 responses to this question, 51 of which supported the criteria, including most local authorities and residents' associations. All members of the trade and their representative bodies opposed it.

It was suggested by local authority consultees that local authorities should have a power to examine company documents and that there would need to be checks on such matters as records on risk assessments and gas / electrical safety equipment. It was also suggested that management plans should be submitted to the local authority with the application. One consultee wondered what powers authorities would have to ensure information supplied was accurate, whilst another thought there needed to be a specific power to require information to be supplied.

There was a suggestion that employees should also be "fit and proper" persons.

Some consultees thought the Government should provide guidance on what constituted "management competence". One resident association consultee thought the terminology used in paragraph 17 of the consultation was wrong; essentially the question was whether an applicant had the skills and qualities to manage a park home site.

One of the consultees who opposed this requirement was concerned that no details had been provided as to how management competence, organisational structures and finances should be judged, adding that no case has been made out for including this criteria in a licensing scheme.

It did not think management competence could be easily assessed and, in any case, had no place in a personal licence on a person's fitness. This consultee did not advocate that training was necessary. It wondered how management competence was to be assessed and pointed out that many professional people from other backgrounds, and some inheriting parks with no experience, end up managing parks well. Its view was that the minority of bad site owners have "attitude or lack morality", rather than lack competence. In the consultee's view there is, therefore, no case for including competence in criteria.

This consultee did not agree that organisational structure was something which was suitable to be included in a licence. Experience had shown inconsistency in local authority decisions, some insisting that there should be a resident manager and others not requiring this.

On financial arrangements essentially this consultee was concerned that the financial situation of an applicant was not relevant to whether a licence should be granted and there were issues of privacy. In particular, there seemed to be concerns about businesses with two or more operations e.g. park homes and farming. It was also concerned that privacy protection had not been covered in the consultation. It

wondered whether a site owner's financial affairs would be subject to disclosure under the Freedom of Information Act. It also said the consultation was unclear about what aspects of accounts would be vetted and against which criteria. Overall, its view was that there is no need to include financial arrangements as part of the test because "the financial situation of a park is not a factor that can be meaningfully assessed against an objective benchmark".

Other trade consultees supported these views, in one way or another.

Some local authority consultees also agreed that it was not relevant or appropriate to look into the financial circumstances of the applicant. Another consultee pointed out that local authorities are not "management consultants" and were not able to assess the criteria.

One consultee was more concerned, however, that the criteria had not been proposed, and it had not been explained who would be the decision maker. It was concerned that consistent and uniformed decisions must be made. This consultee also raised an issue about the lack of provision in the proposals for a corporate licence or group licence where a company owned a number of park home sites managed by nominated individuals.

The licence holder

Q6. Do you agree that the licence holder should be the person with overall responsibility for the site?

	Yes	No
Local Authorities	29	2
Residents	3	0
Residents' Associations	7	0
Other	20	1
Trade	3	0
Total	62	3

The majority of consultees agreed with the proposition that the licence holder should have overall responsibility for the site.

Some consultees thought that the licence holder should always be the site owner.

Others thought that if the licence holder was not the site owner there should be joint culpability, unless the site owner could prove he has nothing to do with the management of the site. Another thought the licence holder should be required to maintain a register of family members and staff engaged in the business for inspection by the local authority. It suggested that the licence holder should be required to log incidents of misbehaviour in the register, so authorities could prosecute. It was suggested that the licence holder must have a fixed address. For companies owning sites, it should be the managing director who is "fit and proper". One consultee thought the meaning of "sufficient independence" needed to be clarified.

Licence conditions

Q7. Do you agree with the range of conditions that must be attached to a licence?		
	Yes	**No**
Local Authorities	28	0
Residents	3	0
Residents' Associations	7	0
Other	20	1
Trade	2	2
Total	60	3

These proposals were generally welcomed by the consultees.

Most consultees agreed with the range of conditions. Some thought there would still be a need for model standards. Others thought they should include fire safety requirements.

Some consultees thought it was important that a condition should require a site owner to recognise a qualifying residents' association. More generally, it was thought conditions should be attached requiring site owners to comply with their obligations under the Mobile Homes Act 1983. A significant number of resident consultees thought residents should be consulted on proposed licence conditions and have a right of appeal against them.

Other consultees were concerned that consultation would be time consuming and burdensome, so there should be timescales and the process should be proportionate. Some consultees thought that if management conditions were to be imposed there needed to be some central guidance in the form of model standards.

One consultee thought it was difficult to see how conditions can be laid down for effective management, whilst another said that as there was no requirement in the model standards to protect neighbours this proposal should be removed. Also, any attempt to limit the number of homes on a site would defy natural justice and constrain development, so should not be included in a licence.

Appeals

Q8. Do you agree that jurisdiction in relation to site licensing appeals and approvals should fall to the RPT?		
	Yes	**No**
Local authorities	29	2
Residents	4	0
Residents' Associations	8	1
Other	19	2
Trade	0	4
Total	60	9

This question asked whether consultees agreed with the Government's proposal that site licensing decision appeals should be to the Residential Property Tribunal. Most consultees agreed.

A consultee in favour said the RPT would provide an "independent and competent" service to deal with disputes. One thought this would be in line with the jurisdiction under the Housing, Health and Safety Rating System and thought the work would sit well with the jurisdiction to be conferred under the Mobile Homes Act and the other licensing functions under the Housing Act 2004.

Consultees' comments included that there should be a charge to prevent frivolous appeals being made and that the RPT's powers should be extended so that they can also call local authorities to account when they are not properly enforcing licence conditions.

One consultee said appeals should not be by way of rehearing (and so presumably by way of review only).

A number of consultees thought appeals should be to the courts and not the RPT.

One consultee said tribunals had no "teeth". Tribunals did not have a rudimentary knowledge of and understanding of the "mobile homes ethos". In particular, a consultee said that as a refusal of a licence represents a serious interference with the site owners' right to use his land and such a decision would be more akin to seeking a judicial review of a local authority decision which would take place in the High Court. Another said that appeals under a two-tier licence structure should be to the magistrates' courts - as the RPT has no experience of the park home sector. However, the RPT might be best to approve management orders, since they have experience in the private rented sector of doing so.

Refusal to grant a licence

Q9. Do you agree with the proposed arrangements for dealing with refusals?		
	Yes	**No**
Local authorities	31	1
Residents	3	1
Residents' Associations	9	0
Other	21	0
Trade	3	1
Total	67	3

67 of the 70 consultees who responded to this question supported the arrangements proposed by the Government.

One local authority consultee said that it is a serious anomaly in the current legislation that licences cannot be refused. The proposal was welcomed, although it was thought refusal would be rare.

Local authority consultees who supported the principle raised concern about administrative burdens being imposed on local authorities. For example, it was not thought it should be necessary to inform residents individually at each stage of the procedure. It should be sufficient to post a notice at a prominent place upon the site. It was also thought unnecessary and burdensome to consult with persons about the proposed decision. The relevant persons should not need to be informed twice (i.e. also when the decision is made). It was also thought that timescales should apply to refusals, and how this worked in relation to IMOs needed to be clarified.

A consultee thought there should be no right of appeal if there was no planning permission. One consultee complained that residents were not permitted to appeal as "relevant persons". A consultee said it was happy with the proposals, subject to a two-tier licence structure being introduced.

Another commented that there was no objection to refusing the licence, but objected to having to make an IMO following the refusal.

One other consultee thought that the proposal involved local authorities acting as judges in their own cases, and there should be a right of appeal to a court against a decision to refuse to grant a licence.

Q10. Do you agree with the points at which a licence holder must reduce the numbers of park homes in order to comply with the licence variation?		
	Yes	**No**
Local authorities	25	3
Residents	3	0
Residents' Associations	8	0
Other	19	0
Trade	2	0
Total	57	3

There were 60 responses to question 10, of which 57 supported the proposals.

One local authority consultee thought there ought to be an additional requirement to require a home to be removed if there was imminent danger caused by it.

Other consultees thought it was important that there was not a conflict with planning enforcement.

Some consultees queried how local authorities were to be made aware of the changes so as to render a home removable. One suggested that site owners need to be required to notify the local authority of the relevant occurrence. Another consultee thought that local authorities should have discretion in the matter, and the breach could be capable of being tolerated until the resident terminates the agreement, or the home is removed from the site.

Another consultee thought it was important that the licence conditions should specify the types of unit – as well as the numbers permitted on the site.

Concern was expressed that there was no mention of a fee for considering a variation to a licence.

A trade consultee made the point that many sites have the benefit of planning permission which does not specify the number of caravans, that the current licensing regime cannot restrict the number of caravans on a site (this would be straying into planning territory) and that the model standards do not address this issue. Whilst a local authority consultee made the point that when the site has planning permission for a specified number of caravans, then that will be the maximum number that may be permitted under the licence.

Resident consultees were concerned this provision could be open to abuse by unscrupulous site owners who may use it to harass residents of older homes to leave. It was also thought that residents should have a right of appeal.

It was suggested that CLG would need to decide how existing sites with an excess number of park homes are to be dealt with under the transitional arrangements when the new legislation is enacted.

One consultee was concerned that the "exclusions" given may lead to site owners deliberately increasing numbers.

It was (wrongly) pointed out that residents of park homes can never have an assured or Rent Act protected tenancy.

Revocation of licence for misbehaviour

Q11. Do you think the proposed circumstances in which a licence can be revoked are appropriate?		
	Yes	**No**
Local authorities	28	2
Residents	2	1
Residents' Associations	8	0
Other	20	0
Trade	3	1
Total	61	4

A significant majority of respondents thought the circumstances proposed in which a licence could be revoked for misbehaviour were appropriate.

One consultee thought that a licensee threatened with revocation of his licence should have the opportunity to transfer it to someone else. Another was unclear as to what would constitute an 'unlawful transfer or assignment' of the licence. It also thought 'serious breach' of the licence condition needed to be defined. In its view, the authority should consult with the site owner and other interested parties prior to any "application" to revoke a licence, and be satisfied that the reasons for revocation are not capable of rectification, or as a consequence of an authority failing to follow its procedures in transfer arrangements (when defined).

Some consultees thought residents' views must be taken into account and that it is unfair that it is proposed to deny them a right of appeal.

A consultee agreed with the proposal, but added there should be a defence of "due diligence".

Another said the scheme needed to be well advertised, and revocation should not apply to freehold (which we assume to be a reference to family occupied) sites.

One consultee wondered why if a person had to be "fit and proper" to hold a licence there was not any specific ground for revocation when he is not a "fit and proper" person. (There will be – see paragraph 51 b of the consultation).

Another wondered why there was no "health and safety" ground for revoking a licence.

Grounds e and f (in paragraph 51 of the consultation) elicited particular comments. One consultee thought the need to carry out work in default, or emergency remedial action would be sufficient to show inadequate management. Another thought the proposals were unworkable without further detailed statutory guidance. For example, what steps would the local authority be required to take and how long would they be expected to wait before concluding they had been unsuccessful in recovering the cost? How would a land charge be considered in this respect? It thought that it was wrong that a licence could be determined on the grounds of recovery of costs. This view was shared by another consultee who questioned whether it was appropriate to revoke a licence in such circumstances, as there were other means of recovering costs.

One consultee thought the grounds were too vague and asked what "serious" meant. In its opinion, ground (a) (termination on unlawful transfer) cannot apply in any case. The consultee added that it agreed with revocation if the matter was serious and there had been a "warning", an adequate opportunity to remedy the breach and a failure to do so without reasonable excuse. It thought there should be no "widespread" consultation.

Another consultee said it did not understand what in practice might cause a local authority to decide a person was no longer "fit and proper" and management arrangements no longer suitable (ground b) as the "proposals lack precision on management arrangements".

Q12. Do you agree that the local authority should be able to revoke the licence and make an Interim Management Order or do you think those matters should be decided by an RPT on the application of the authority?

	Yes	No
Local Authorities	21	8
Residents	19	1
Residents' Associations	6	2
Other	2	1
Trade	1	1
Total	49	13

There was a divergence of views in response to this question, although a majority of consultees agreed local authorities should be able to revoke with a right of appeal to the RPT or court.

One consultee said County Councils, rather than District Councils, should be responsible for enforcement as they have more resources and experience. In this consultee's opinion, residents have found District Councils very reluctant to take any enforcement action against site owners.

Some consultees thought the decisions should be made by the RPT. One said this would deter the view that the local authority was acting as judge and jury. Another supported this view by saying it would be more consistent and practical for site owners operating in different areas.

As for Interim Management Orders, a number of consultees expressed concern that there was an intention to impose a statutory duty in local authorities to make them. One said IMOs were "last resort" measures and, although good on paper, will not be used much in practice.

One consultee said that requiring IMOs to be made by the RPT was unhelpful, since that could lead to further delays. The tribunal's role should be to review them once made. Another consultee said that the revocation of a licence and the making of an IMO is a serious matter "potentially removing a licensee's livelihood" and so should be decided by the RPT.

A consultee thought the RPT should have the pre-emptive power to appoint a manager on the application of a qualifying residents' association, in a way akin to that open to qualifying occupiers under the Landlord and Tenant Act 1987.

One consultee said the decisions should be made by the courts, not the RPT. Another queried what experience the RPT had of the park home industry. Landlord and tenant issues are completely different to park home issues. This consultee added if a licence was revoked, the unscrupulous site owner might hassle and interfere with the appointed manager. It asked what powers exist to prevent that. It thought the whole process could lead to unscrupulous owners intimidating vulnerable and elderly residents to leave as "LA (local authority) has revoked my site licence and it is no longer a residential park". It was thought this may cause much distress to elderly residents.

Q13. Do you think it is right that the local authority should be able to dispense with the requirement to consult on a revocation if it considers there is an imminent threat to the health, safety and welfare of residents?

	Yes	No
Local authorities	33	0
Residents	3	0
Residents' Associations	7	0
Other	18	0
Trade	1	2
Total	62	2

There was generally unanimous support for the proposed dispensation in those circumstances. It was considered that if there was an imminent problem then a quick response is necessary. A consultee thought dispensation was important to prevent intimidation and victimisation of residents by an unscrupulous site owner.

Some consultees thought the meaning of "health, safety & welfare" of residents needed to be clarified.

The two consultees who opposed it were from the trade. One advised that it resisted the dispensation "most strongly" considering that if the threat was imminent this should be dealt with through Emergency Remedial Action. Under no circumstances should the revocation process be short circuited. There is a need to consult in the interest of fairness and transparency. Also, the proposal does not take account of multiple park ownership. The other said that a vigilant local authority should have contacted the site owner before the circumstances arose.

Q14. Do you agree that it is right that the local authority does not have to consult in cases of unlawful transfer?

	Yes	No
Local authorities	28	3
Residents	3	0
Residents' Associations	8	0
Other	18	0
Trade	0	1
Total	57	4

Almost all consultees responding to this question agreed that there should not be a requirement to consult where the licence had been transferred unlawfully.

One consultee said the provision would be unnecessary as there can be no such thing as an "unlawful transfer" because the licence is personal. We agree. However, the question applied (strictly speaking) if a licensee **purported to** transfer the licence to another person. In those circumstances the question is necessary.

One consultee said that it was a "matter of fact" whether the transfer had taken place and so there should be no need to consult. Another said that otherwise the arrangements would become toothless and unenforceable. One other said the matter needed to be "challenged and investigated" before revocation.

A consultee suggested that an interim licence should come into force whilst the matter was investigated. Another said an unlawful transfer should not be treated any differently from other aspects which might lead to revocation. One other said that natural justice required the facts to be properly established though proper consultation.

Revocation on transfer

Q15. Do you agree with the proposed arrangements that deal with change of licence holder?		
	Yes	**No**
Local Authorities	27	5
Residents	3	0
Residents' Associations	8	0
Other	18	0
Trade	3	0
Total	59	5

Most of the consultees thought the proposed arrangements were acceptable.

There was some concern that there was no cross over time at all. One consultee suggested that the incoming purchaser should be required to apply for the licence 14 days before completion. Another thought the LA should be given at least 28 days notice of the proposed sale. One other consultee thought that the purchaser should be given a specific period after the purchase to apply for the licence, between 14 and 21 days. It was also suggested there needed to be precise time frames for processing applications.

One of the consultees thought that if the purchaser could demonstrate that he met the necessary criteria, there was no reason why a licence could not be transferred, rather than a fresh application be made.

A consultee thought there should be a duty on the local authority to advise the buyer of any licence or model standards issues. One other thought if the new owner carried out substantial works, this could lead to considerable increases in the pitch fee.

Another suggestion was that the seller should be required to inform the local authority of his intention to sell in advance.

There seemed to be some concern about how this provision tied in with the certificates. Basically, it was felt that new owners should not be required to apply for certificates (which they will not be).

One consultee thought local authorities were not the correct body for deciding suitability of transferees.

Revocation on the death of a licence holder

Q16. Do you agree a licence should vest in the personal representatives of a deceased licence holder? If not what other effective arrangements do you think should be put in place?

	Yes	No
Local Authorities	24	3
Residents	3	0
Residents' Associations	5	3
Other	2	17
Trade	4	0
Total	38	23

Just under two-thirds of consultees thought that the licence should vest in the personal representatives of the deceased.

One consultee thought the arrangements should be time limited to between 6 to 12 months, and that the executors should be required to apply for a variation or a new licence to nominate a "fit and proper" person before the end of the period, otherwise the licence would be revoked.

Another consultee pointed out that the deceased's representatives would not necessarily know how to run a park. The executors of the estate must be required to make appropriate arrangements for the running of the park by contracting a manager or management organisation to run the park until his estate is disposed of.

Some consultees thought there needed to be a provision to check that the personal representatives were "fit and proper".

One asked what if the family members fail to tell the local authority of the death.

A number of consultees objected because it could lead to people who were not "fit and proper" running parks. It was suggested that the local authority should put in a management team until a "fit and proper" person could be found. Other consultees thought the local authority should make an IMO on the death of a licence holder. Many resident consultees, and some others, thought an interim licence should be granted to a "fit and proper" person, who could be the representative of the deceased.

One consultee thought the problems associated with the proposals could be overcome if a personal licence was in force.

Another suggested that on the death of a licence holder, the licence should cease, and the requirement to hold a licence suspended for 3 months and, after that, a licence must be granted, or an IMO made.

Duty to monitor and power of entry

Q17. Do you agree that the authority should have the duties in relation to licensing as proposed?		
	Yes	**No**
Local Authorities	29	2
Residents	2	0
Residents' Associations	10	0
Other	20	0
Trade	4	1
Total	65	3

A significant majority of consultees agreed that the local authority should have a number of powers and duties in relation to licensing, including a duty to monitor the licence and a power to enter sites.

One local authority was concerned that the existing law relating to power of entry was insufficient, and asked if it could be strengthened. Another thought that the duty to monitor management was problematic as it was not clear what that would involve, e.g. would local authorities be required to investigate residents' complaints?

One consultee wondered how a local authority would go about promoting licensing. Two consultees specifically commented that the duty should not extend to promoting licensing.

Another consultee thought the policy decided by a local authority should be a document in the public domain to enable interested persons to monitor accountability. It was also thought that local authority licensing officers should be made aware of the law.

The powers and duties should be different for family sites.

Some consultees thought that local authorities should have a duty to enforce, not just a power. Others added the requirements should be proactively addressed and risk based.

Other consultees thought there was a resource implication for local authorities and licence fees should be payable.

One consultee thought that local authorities should have no powers or duties because they have insufficient know-how of park management.

Another agreed that licences should be kept under review, but not duties to monitor compliance with conditions "which in itself is a time wasting exercise". It did not think local authorities should deal with complaints as that seemed to be an estate management function.

Enforcement Notices

Q18. Do you agree with the consultation and notification arrangements in making an EN?		
	Yes	**No**
Local Authorities	19	14
Residents	2	1
Residents' Associations	8	0
Other	20	0
Trade	4	0
Total	53	15

The majority of consultees supported the Government's proposals for consultation on and notification of enforcement notices (EN). One welcomed the proposals as bringing the regime into line with "main stream housing" legislation. Another added that it follows well proven procedure in other environmental health and private sector legislation. It was added that this represented a flexible and robust approach (to dealing with disrepair) and that it was of benefit to residents.

Many reasoned responses were concerned about the proposed procedures. One local authority consultee argued that there should not be a legal duty for the local authority to consult individually with all residents and other parties before serving an EN as this would delay enforcement action and add to the costs that would need to be recovered. Others made similar comments.

It was pointed out that the proposal was similar to the old "minded to" notices (for food safety) which were scrapped two years ago because the procedure was over bureaucratic. Another agreed this was an unnecessary burden and would introduce the possibility of procedural technicalities being used against the local authority in the courts.

One consultee thought a compromise might be that the local authority could consult residents by means of placing a copy of the notice in a prominent place on the site and inviting comments. Another consultee thought that it should be sufficient to require the licence holder to display a copy of the EN itself in a prominent place. Another thought consultation should only be with Residents' Associations.

One consultee thought the process to be unduly burdensome and added it had expected something in line with housing or food safety legislation. Another added that the process was "long winded".

One consultee thought it would be useful to be able to serve a "non compliance awareness notice" similar to hazard awareness notices under the Housing Act 2004.

Another comment was that the paper did not address time limits for doing works; these must be included otherwise site owners will prevaricate. It was thought that the legislation needed to be carefully drafted to prevent site owners passing on costs to residents.

A residents' association commented that the Department had not taken up the suggestion to empower residents to enforce site standards themselves, either by way of a complaint to a Court and/or perhaps by incorporating an undertaking to observe relevant conditions in pitch agreements.

Q19. Do you agree that the local authority should be able to recover its expenses in making an EN?

	Yes	No
Local Authorities	29	1
Residents	4	0
Residents' Associations	9	0
Other	19	0
Trade	3	0
Total	64	1

Almost all consultees agreed that a local authority should be able to recover its costs in making an EN.

One consultee thought there should be a right of appeal against reasonableness of costs, including administration charges, and that guidance should be issued about what can be included. Another added there needed to be appropriate checks on receipts and the validity of notices and a right of appeal against the sums claimed.

It was suggested that it should be optional for a local authority to recover its costs. But others thought it unfair that council tax payers should have to foot the bills.

One consultee thought there needed to be guidance on what can be charged and another added that site owners must not be allowed to pass on those charges to residents.

A consultee thought many small sites may not take much income and may choose to close ahead of any enforcement action. Another wondered how an EN may be registered as a local land charge if the licence holder (who is not the site owner) is served with an EN.

One consultee thought recovering expenses was against practice in local authority enforcement areas and in any case, this was likely to be an admin burden for the small sums involved.

Q20. Do you agree that the local authority should be able to enter the site and do the necessary action or works in default of the EN being complied with?		
	Yes	**No**
Local authorities	32	0
Residents	5	0
Residents' Associations	9	0
Other	19	0
Trade	4	0
Total	69	0

Not one consultee raised any objection to the principle that the local authority should be able to enter a site and carry out the works itself under an EN in default of the licence holder doing so. However, consultees raised a number of issues of detail.

One consultee commented that careful thought also needs to be given to the drafting of powers of entry and the authorisation of enforcement officers in any new primary legislation.

Another said that it should not be necessary to give prior notice to all site residents before entering a site to carry out an inspection. This would be unnecessarily bureaucratic, impractical and would detract from the Government's intention to ensure park home sites are subject to regular inspection. One other consultee thought it should only be necessary to give prior notice of inspection to site residents if the inspection requires officers to enter into individual park homes. Another comment was that whilst it may be reasonable to give prior notice to the licence holder, there need to be clear provisions to allow entry at any time to investigate circumstances that may present an immediate and significant risk to a person's health and safety and to carry out ERA or works in default of an EN.

A further comment raised was that whilst it was accepted that all enforcement officers must be authorised to carry out inspections and take enforcement action, such authorisation should be a general authorisation and should not be required on an individual basis in respect of each site visit.

One consultee sought clarification on whether the offence of obstruction is against the right to enter, or against the warrant of entry.

Q21. Do you agree that an EN can be suspended in the types of circumstances illustrated? Do you think there are any other circumstances in which an EN should be suspended?		
	Yes	**No**
Local authorities	26	1
Residents	3	1
Residents' Associations	8	0
Other	19	0
Trade	3	0
Total	59	2

A significant majority of consultees agreed that an EN should be capable of being suspended and in the circumstances mentioned.

There were other circumstances that were thought to be relevant, including applying retrospectively the 3m separation distance between a home and the site boundary, moving homes, removal of non-compliant structures, for example, porches, sheds, conservatories etc. One consultee suggested a circumstance might be that the breach is caused by a resident to give the site owner time to pursue the matter with the resident, through the courts if necessary.

Another thought that in the event that an EN has been issued and becomes the subject of a dispute, or an appeal between the licence holder and the authority, the Notice should be suspended pending resolution between the parties.

A consultee thought it was neither good practice nor in anyone's interest to suspend a notice. Instead, the EN should be varied, extended or revoked whether temporarily or conditionally.

Emergency Remedial Action

Q22. Do you agree with the proposed circumstances in which a local authority can take ERA?		
	Yes	**No**
Local authorities	26	2
Residents	3	1
Residents' Associations	10	0
Other	19	0
Trade	2	0
Total	60	3

A significant number of consultees agreed with the proposals to allow local authorities to enter upon a site to carry out works in an emergency. It was commented that the existing measures for emergency action are inadequate. Another thought the proposal was "vitally important" since other legislation might not be usable.

Another consultee thought it would be very useful, but only under certain circumstances, if there was an immediate and significant risk to a person's health. One other agreed that if there are any circumstances of the site that present an immediate and significant risk, then this option should be available, but argued that it should be available regardless of whether it constitutes breach of a licence condition, and another suggested the power should additionally and specifically be available to protect homes against destruction from flooding or landslides.

One consultee who supported the proposal was concerned that authorities should not be bogged down in consultations as with the proposals for ENs; all that is required is to provide that the time to be allowed for compliance should simply be reasonable. That would enable entry "forthwith" in a genuine emergency, notwithstanding that a longer period should be allowed for an appeal. Another consultee was concerned that the service of the notice should not be personal because it may be difficult to track down an absent site owner.

It was thought there needed to be clear statutory guidance on what "an immediate and significant risk to a person's health and safety" meant. Another consultee suggested that the Housing, Health and Safety Rating System should apply to assess the risks.

A consultee was concerned that if a tribunal could award compensation and order reinstatement, local authorities may be less willing to use these "important powers".

One consultee said that the local authority should not be responsible for carrying out works on a park. This should be 100% the responsibility of the licence holder. The local authority should be able to prosecute if "emergency works" are not done promptly.

Q23. Do you agree that seven days is a reasonable time for appealing against ERA?

	Yes	No
Local authorities	22	6
Residents	5	0
Residents' Associations	8	1
Other	19	0
Trade	1	2
Total	55	9

Most consultees agreed that 7 days was a reasonable period for appealing, although some commented that there may be resource consequences if residential property tribunals have to be convened quickly to deal with such cases.

One consultee thought that 7 days in which to appeal an ERA was too short – after all, someone could be on a two week holiday. Another said 28 days was more reasonable and in line with ERAs under section 45 of the Housing Act 2004. It was pointed out that if the appeal was on the grounds that the costs are unreasonable, the licence holder or site owner is unlikely to appeal until the work has been completed, and an invoice has been issued by the local authority for the cost of the work.

Maximum number of homes and Removal Orders

Q24. Do you agree with the proposed offence and fine?		
	Yes	**No**
Local authorities	31	0
Residents	4	0
Residents' Associations	8	1
Other	19	0
Trade	1	1
Total	63	2

This question concerned the proposed offence of permitting a site to be used to station more park homes than is permitted by the licence. Related to this offence is the proposed power of the local authority to require the removal of park homes from a site. Essentially, we saw two circumstances in which this could be required. The first being that removal was necessary because there had been change of circumstance, which resulted in the site no longer being able to accommodate the number of homes permitted under the licence, with the result that the licence is varied to reduce the permitted number. Views on this were sought in response to Question 10. The other circumstance is where a reduction in the number of homes is necessary in order to comply with the licence (i.e. the number of units specified in it). Views on this were sought through questions 25 and 26.

At first blush these questions appear to cover the same issue, namely the removal of park homes in order to comply with the maximum number permitted under the licence. It is, however, the circumstances in which the issue arises and how compliance with the requirement can be achieved (or punishment for failure to comply), which are different.

Generally, consultees were supportive of the proposed offence and fine, which are intended to only apply where there is a flagrant breach of the site licensing condition.

One trade consultee pointed out that many sites have the benefit of planning permission which does not specify the number of caravans, and sought to persuade us that the current legislation does not permit the local authority to limit the number of caravans through site licensing, as that would stray into their domain of planning, and nor do the model standards suggest an overall limit in the number of caravans.

This consultee pointed out there is a further complexity in connection with the contract or licence for a "holiday" home. The park owner's conviction for a breach of a site licence condition would not bring the contract to an end and the rights of the caravan owner need to be considered. If the number of caravans were to be exceeded and the matter came to the RPT, it would be for it to decide which "holiday" or park homes would need to be removed. This may not be straightforward and could lead to further turmoil and anxiety for home owners and is "likely to offend their human rights". The new regime could lead to local authorities imposing numerical limits with unforeseen outcomes. The consultee thought removal orders have not been satisfactorily addressed in the consultation.

A local authority consultee thought it was essential that the number of homes on a site needs to be regulated, though the type of homes need to be taken into account too; a site suitable for, say, 10 single units may not be suitable for 10 twin units. It was pointed out that the environmental health departments cannot, at present, permit more caravans than permitted by the planning permission.

One consultee queried why the offence referred to a site owner in addition to the licence holder, since it is a breach of the site licence.

A resident association consultee was concerned that the offence should only apply if committed after the commencement of the legislation and the licence holder is in deliberate breach. It was thought that if it applied retrospectively, then many existing homes that have been on sites for years may be affected, and this could be used as a tool by unscrupulous site owners to get rid of residents.

One consultee thought any form of voluntary compliance is unlikely to be successful.

Another wondered what happens to the residents of the illegally parked homes. It is not their fault that the local authority did not have sufficient control to prevent it.

Q25. Do you agree with the circumstances in which a removal order may be sought?

	Yes	No
Local authorities	28	3
Residents	2	2
Residents Associations'	7	1
Other	19	0
Trade	1	2
Total	57	8

This question (and question 26) was concerned with removal orders by which the local authority can require compliance with the licence by requiring homes to be physically removed from the site, if it is in the best interest of the health, safety and welfare of residents of the site to require individual unauthorized homes to be removed. This requirement operates in addition to the offence of permitting the site to be occupied by a greater number of homes for which it is licensed.

The question itself asked if consultees were satisfied as to the circumstances in which a removal order could be made. There was general agreement to those circumstances.

One consultee commented that the consultation paper fails to address several fundamental questions associated with this course of action. For example, who would be responsible for enforcing any court or tribunal decision by physically entering the site with contractors to remove the park home? What would happen to the park home that was removed? Who would be responsible for all costs incurred? Would the site resident be entitled to compensation and from whom? And would the local authority be responsible for rehousing the site residents? It thought there is the potential for serious social unrest if contractors attempted to enter and remove multiple park homes from an established site, and significant police resources could be required.

One trade consultee commented that the rights and commercial interests of the licence holder have been disregarded out of hand.

A resident consultee did not agree with the proposal. It considered that normally it is the site owner who is to blame "for his greed of money". It would be "an appalling situation" if a resident moved in having spent thousands of pounds on their home, to be told by the negligent authority (because it had not policed the licence) that he has to remove his home from the site. The consultee thought the position of residents needs to be looked at more closely. Their conduct is not relevant because they are not at fault for the breach. The age of a resident is a serious consideration as is his disability. A move from home may endanger his health. The length of time the resident lived on the site is also relevant, the longer the time the breach has occurred, the less urgent the breach should be. The site owner must pay the costs involved in moving (not limited to just removal expenses) and the market value of the home in situ. It is unfair that residents lose their security of tenure because they are not responsible for the breach.

Another consultee supported this view, adding that if the local authority was correctly monitoring the site licence conditions, the situation should not arise. Where an additional home has been sited, the local authority should quickly make an order that the home should not be sold or occupied. The home could then be removed without any resident suffering hardship.

One other commented that although it was appreciated that removal orders would be invoked rarely, they are draconian in scope and that the proposal needs further consideration. In particular, where the site licence holder is operating a site where the total number of park homes is in breach of the site licence conditions, it seems invidious, in the consultee's opinion, to ask the local authority and/or the RPT to decide which of the residents' homes should be removed, even against the suggested list of criteria set out in paragraph 96 (of the consultation).

One other thought that there might be legal aid implications for this proposal. Another suggested the ability to pay should be taken into account.

One consultee, who supported the proposal, expressed concern about the role of the courts or residential property tribunals, believing their role should be limited to hearing appeals.

One consultee felt it would be better – and more humane – for the order to specify that as residents move, or homes are otherwise vacated, they should be removed from the site.

Another thought there should be clear penalties so the site owner will be fully responsible for any loss suffered by a resident, in addition to appropriate criminal sanction.

A consultee thought the proposals needed to be linked with the reduction of number of caravans dealt with on pages 45 to 47 of the consultation.

It was also suggested that other circumstances should also be considered, for example, where a replacement park home is brought on site that is too wide to maintain the separation distance between homes.

Q26. Do you think the factors in paragraph 96 are appropriate in deciding whether to suspend a possession order or determine the amount of expenses or compensation payable to the dispossessed resident? Are there others?

	Yes	No
Local authorities	26	3
Residents	2	1
Residents' Associations	6	2
Other	19	0
Trade	1	2
Total	54	8

Although the factors listed were generally supported, a number of specific issues were raised.

One consultee thought there must be a right of appeal for the resident as termination of his agreement is at stake.

One of the consultees identified there is inconsistency in the text. Paragraph 94 describes the RPT making removal orders, which the consultee thinks is intended and would agree with. However, paragraph 96 refers to the RPT confirming a removal order and deciding whether to suspend it. The consultee asks just what is being proposed. Is it that a RPT would have discretion to make a removal order, or must it do so where the local authority "considers it essential", subject to certain criteria being met, with only a power to suspend, and if so, for how long? This uncertainty, the

consultee says, is not helped by confusion of the potential grounds for suspension and considerations for compensation in one list. These difficulties and ambiguities lead the consultee to conclude that these proposals have not been thought through.

Another consultee made the point that the proposals for dealing with termination cases as part of the earlier proposal to transfer dispute resolution under the Mobile Homes Act 1983 to the Residential Property Tribunal Service were still under consideration. Ultimately, a removal order will have the effect of terminating the home owner's agreement under the Mobile Homes Act 1983, and so any application for such an order should be made to the court (as at present) or to the RPT if the jurisdiction should change. The procedure and outcome should be the same regardless of which party seeks the Order. NB: it has now been decided not to transfer all termination cases under the Mobile Homes Act to the tribunal.

A number of consultees raised specific issues on compensation.

One said the costs incurred by the resident moving to the site and subsequently through improvements, may not be reflected in the market value. Another that the scale of compensation to the dispossessed resident should reflect his or her current standard of living. A third thought the phrase "having regard to the actual price paid" leaves a huge loophole to be exploited by the site owner and discriminates against park home residents, as it would never be applied to bricks and mortar homes. Another consultee said that where the resident is at fault, no compensation, costs or financial penalty should be imposed on the site owner.

Interim Management Orders

Q27. Do you agree with the circumstances in which an IMO can be made?		
	Yes	**No**
Local authorities	26	5
Residents	4	1
Residents' Associations	8	0
Other	19	0
Trade	2	0
Total	59	6

This question was concerned about the circumstances in which a local authority would be required to make an Interim Management Order (IMO) over a site.

One consultee said the proposals regarding IMOs and FMOs are welcomed in relation to increasing the local authority's power to ensure site owners licence their sites.

Another agreed with the concept of Interim Management Orders but was concerned about the practicalities of installing temporary management. Guidance for local authorities in this respect will be necessary.

One consultee agreed with the approach to IMOs and FMOs and the fact these will not affect security of tenure of residents. However, it was concerned that the paper had not addressed what happens when the manager appointed by the local authority turns out to be incompetent. This happens on local authority Gypsy and Traveller Sites.

It was thought that if a licence of an existing rented site is refused, an IMO should be made.

A number of consultees were concerned about the mandatory nature of an IMO, believing local authorities should have a power and not a duty to make them. There was also concern about who the local authority could get to manage sites under an IMO on short notice and under a short contract.

One consultee thought it would be better if sites were closed down because requiring a site to be managed by a local authority would be fraught with difficulties. There was concern this authority could be faced with huge bills that it is unable to recover.

Another consultee suggested that the solution was to allow residents to run their own affairs.

Another consultee had grave concerns with the proposals relating to the grant of an IMO in the absence of consistency and transparency, the complex and convoluted nature of the arrangements, and the burden placed upon local authorities without adequate funding to continue to manage the park and its facilities, or a pool of experienced and trained personnel from which it can draw upon to manage the order.

One thought that the Government must issue guidance on IMOs.

Q28. Do you agree with the proposed maximum duration of an IMO?

	Yes	No
Local Authorities	22	7
Residents	3	1
Residents' Associations	6	2
Other	19	0
Trade	2	0
Total	52	10

The majority of consultees supported the 12 months duration proposed. One consultee thought there should be a provision for extending this time, whilst another thought 14 months was appropriate.

Q29. Do you agree that the proposed powers and rights conferred on an authority under an IMO are appropriate?		
	Yes	**No**
Local authorities	27	3
Residents	3	0
Residents' Associations	8	0
Other	19	0
Trade	3	0
Total	60	3

This question sought views on whether the powers and rights conferred on a local authority under an IMO were appropriate. Although only three consultees thought not, there was extensive comment and queries on the proposals from consultees generally.

On the power to sell homes, a consultee thought that local estate agents must be used. Another asked on what grounds would it be reasonable under an IMO for a site owner to refuse his consent to a sale? This consultee pointed out that the long-term development of parks may include the owner seeking to purchase park homes (we assume from residents), perhaps letting them out privately until he was in a position to carry out the redevelopment. It was asked if the owner could negotiate to purchase and offer a price that the business (subject to the IMO) would pay for the park home.

It was pointed out that more than half of residential parks are mortgaged, and failure to pay the mortgage interest would result in the park going into administration etc. An IMO would, therefore, force the owner to sell. The consultee wondered if this conflicts with human rights.

This trade consultee thought if an IMO was made there should be a duty on a local authority to identify other parks in the ownership of the site owner in other authority areas, so that the authority can monitor and action them. This could be best achieved through a national licensing body.

It also thought other interested parties such as holiday caravan owners and franchises, such as shops should be excluded from the IMO.

Some consultees were concerned about the position of resident site owners under an IMO. A number asked how it would be possible to stop a resident owner from entering his site. One added that it is common place for owners to live on the park, an order to restrict his right to enter it may be difficult to achieve and human rights issues would surely apply if enforcement resulted in homelessness.

One consultee thought there should be some provision for intervening without the need to make a formal IMO on specific failings, e.g. non-payment of utilities bills by site owner. In rented property, local authorities can intervene under the Local Government (miscellaneous provisions) Act, but it does not apply to the unique circumstances of park home sites.

A local authority consultee reiterated that it strongly objected to the proposal that local authorities should be placed under a duty to implement interim and final management orders in respect of unlicensed park home sites. This requirement would place a significant additional burden on local authorities and it is unlikely that the majority of local authorities would have any in-house expertise to take on this type of work. It was pointed out that similar management order arrangements for individual unlicensed HMOs under the Housing Act 2004 have proved problematic. Many local authorities have found they do not have the expertise or resources available in-house to take on this type of work. They have also found very limited interest from RSLs or private sector providers when trying to procure external contractors to implement management orders.

One consultee commented that it was important to note that the arrangements for management orders on park homes sites as laid out in the consultation paper are far more involved than those already used under the Housing Act 2004. Under the Housing Act 2004, a management order relates to just one property, whereas figures provided within the consultation paper suggest an average of forty-two park homes on all 2,000 park home sites in England.

Another consultee added that it was unreasonable to expect local authorities to have the resources required to manage such sites at short notice – sites which have suffered from a history of poor management practice and are potentially overcrowded – would be a huge undertaking. In addition, it was pointed out, the difficulty in finding specialist staff or contractors to take on this role, and various practical issues would need to be overcome. For example, how would the local authority know the identity and status of all site residents, whether temporary or permanent? How would they know what rent was to be paid by each resident and whether their account was in credit or debit? How would the local authority let, licence, or sell pitches on the site without access to any pitch/lease agreements and full knowledge of whom owned what on the site? It is unlikely the site owner would be compliant in this respect. Placing the local authority as the legal body responsible for the site in any subsequent criminal prosecutions or compensation claims would also be entirely inappropriate.

One consultee thought there was an implication that the local authority would be responsible for any mortgage or loans secured as a charge on the site. It would be inappropriate for local council tax payers to take on responsibility for such costs.

Another asked what penalties would there be if a site owner unreasonably withheld consent for the sale of a home? What arrangements would the new site owner have to comply with if the site was sold whilst an IMO was in force? One consultee said that in its experience with Empty Dwelling Management Orders, insurance for a property not owned by the local authority has been very difficult to achieve.

A consultee asked whether CLG had carried out any research to find out whether any companies have the resources necessary to parachute in management teams at very short notice. The implication that the task simply involves appointing 'an interim site manager' completely underestimates the nature and complexity of the task involved. If the Government believes that management orders could be a useful tool to deal with unlicensed park home sites, this consultee suggests that Government procure suitable management arrangements on a national basis and take on responsibility for such sites when management orders need to be implemented. Otherwise, this aspect of the proposed park homes licensing regime should either be changed to a discretionary power, or it should be dropped completely.

Final Management Orders

Q30. Do you agree with the proposed maximum duration of an IMO?		
	Yes	**No**
Local authorities	25	3
Residents	3	0
Residents' Associations	8	0
Other	19	0
Trade	3	0
Total	58	3

This question and the next one concerned final management orders (FMOs) that must be made following the end of an IMO if no licence is granted.

The question specifically asked about the proposed financial arrangements when an IMO is in force. Although the majority of consultees supported the proposal, those who provided a reasoned response were less so.

On management of FMO generally, consultees commented that if professional managers need to be engaged, the cost will fall on residents, but in any case, it was not believed that professional managing agents will be readily available. It was thought that existing members of trade bodies "may do", but residents need to be consulted. It was also thought that estate managers/land agents might be more appropriate, but they may not be available or willing to manage caravan sites.

It was pointed out that the Government had not proposed a code of management practice.

One consultee comments that most local authority officers who presently license caravan sites do not have the necessary financial background, and support will be necessary from other services within the local authority.

Another specific point raised by a consultee was why local authorities should not be able to recover unforeseen expenses, provided they are reasonable.

It was also commented that demanding payment of any deficit before the grant of a new licence could be counter-productive.

Q31. Do you agree that the proposals for FMOs, including the management plan, are appropriate?		
	Yes	**No**
Local authorities	25	2
Residents	2	1
Residents' Associations	8	0
Other	19	0
Trade	3	0
Total	57	3

This question asked for views on the proposals for FMOs, including their management plans. A number of consultees raised issues.

One consultee thought that local authorities should be subject to the same conditions as site owner, if responsible for running a site under an FMO. Residents need to know that whoever is responsible for managing their site is held accountable, whether a private owner, or a local authority.

It was thought that residents should be consulted on the FMO and management plan, and that they must be able to appeal against the management plan.

One consultee thought appeals should be to a court and not to a tribunal. Another consultee thought a site owner should be able to appeal as well as a site manager.

A consultee thought FMOs engage human rights issues to the extent that such orders may amount to either an interference with the park owner's business and/or land, and/or occupiers' rights in respect of their homes. The consultee thought the Government should consider seeking advice on these points from specialist Counsel.

One consultee had serious concerns about the circumstances in which orders can be made and the resource available to a local authority to manage what may be a complex holiday park site. It was thought that the making of an FMO could invalidate many consents and licences which underpin the successful trading of a holiday park business, e.g. FSA approval, Consumer Credit Act Licences or Gambling Commission licences. Any bank or other lender to a business would certainly be concerned about a management order and indeed the possibility of such an order being imposed. It was thought further consideration should be given to the impact that the proposals could have on lenders and their willingness to lend to the sector.

A consultee did not think an FMO should be of fixed duration. It said the proposals for management plans also omit any statement of plans for future fees and charges (which is not the same as an estimate of income).

Another consultee thought any day-to-day work which is not included in the management plan should still be allowed to be carried out without the need to amend the management plan.

Licensing fees

Q32. Do you agree with the proposed licensing fee structures?		
	Yes	**No**
Local authorities	30	2
Residents	2	0
Residents' Associations	6	2
Other	19	0
Trade	0	5
Total	57	9

The last three questions dealt with the issue of fees for making applications for licences and licence fees. This particular question asked whether consultees agreed with the proposed structure for fees.

A number of consultees thought that the provision of annual fees was unjustified or would be subject to abuse. One consultee thought the licence should be for 5 years like HMO licensing, and the fee paid up front. This consultee also thought nominal fees should be charged for family sites.

One consultee thought annual fees would be a bureaucratic nightmare, and in any event, such fees will eventually be appropriated to general taxation. Another consultee thought it was unclear how an annual licensing fee would impact on the validity of the licence. If, for example, the annual fee is not paid by the licence holder, would the licence be revoked, or how would the fee be recovered by the local authority?

Another one thought it might be better for the licence to operate for a fixed period of time for a set fee that is paid at the outset. If the licence is to be extended, the licence holder could reapply and pay a renewal fee.

One consultee advised that it had no objection to a fee in connection with the administrative cost of the grant of a new licence, but was less convinced of the case for subsequent "subsistence" fees which it would be less easy to justify by reference to any particular benefit or for ring-fencing fee income to this function (which necessarily gives rise to the argument that it should not be subsidised from general funds either).

A consultee said that it could not accept that self-financing was right, as fees in certain areas would vary due to park sizes, and therefore create imbalance of payments. In any case, fees should not be payable annually because these will be used by unscrupulous site owners in unlawful ways to intimidate the residents into believing the licence is annual and so is the contract to pitch the home.

Another consultee objected "most strongly" to local authorities charging different fees. It was concerned that some authorities may attempt to remedy "shortfalls" at the expense of park operators and their residents. It thought any fees payable should be determined nationally and geared to the park home site size and thus the likely work involved.

One consultee urged the Government to give further consideration to a system of scalable fees, taking account of the size of the park; and the introduction of a sliding scale of fees for park groups that own multiple parks, across a number of local authority areas, and in some cases within the same administrative area. This consultee thought it was disproportionate for one park group to be expected to pay for multiple annual licences to one local authority, and effectively subsidising other parks without some financial discount. It also questioned whether licences need to be renewed annually at the fee proposed and whether an appropriate adjustment should be made to the business rates payable by the park and the level of council tax levied on the home owner.

Another consultee thought the costing in the Impact Assessment was not robust. It thought it was difficult to conceive that the licence could be administered out of an initial fee of £1,500 and £750 per annum thereafter. On the other hand, it also found it difficult to see the justification for £375 to monitor a "settled" park. It said that as parks vary in size, the annual fee should be charged fairly. It thought it would be appropriate for the Government to set the fees and charges and, in any case, the system should be designed "to achieve the greatest economies and least cost" and the fees should be scalable.

One consultee thought there should be an option to charge a basic fee for interim licences.

Q33. Do you agree, as a matter of principle, that the licence holder should be able to recover a licence fee through the pitch fee?

	Yes	No
Local authorities	21	5
Residents	3	1
Residents' Associations	1	10
Other	0	19
Trade	5	0
Total	30	35

The consultees were split on this issue, with a small majority rejecting the principle that the licence fee should be recoverable though the pitch fee payable by the resident.

A number of resident consultees thought the fee should fall to the site owner. There was concern that residents on smaller sites will pay exorbitant amounts, if added to pitch fees and be subjected to RPI increases - compounded over the years. It was pointed out that most residents are retired and on fixed incomes, whilst site owners

are running profitable businesses. Another consultee added that the licence is a contract between the site owner and the local authority. It has nothing to do with the residents, so they should not be required to pay for it.

One consultee remarked that the licence does not and never will, provide luxury (services) for residents. It sets out nothing more than minimum standards expected and should thus be funded from normal pitch fee plus RPI annual increases. This consultee thought it would set a dangerous precedent for this most basic of requirements to be funded by special payment from residents. The consultee pointed out that special payments or increases in pitch fee should be reserved strictly for special improvements.

Other consultees thought that it was appropriate to pass on the fees providing they were reasonable. One consultee said it was fair to do so since it was the residents who benefited from improvements brought about because of the licence. Another consultee said that fees should be kept to a minimum and as residents will receive the benefit of improved protections, they should be passed on. It added that on the majority of well-run parks, payments for an excessively bureaucratic system will cause resentment.

Q34. Do you think the Secretary of State should have a reserve power to regulate fees payable and/or the manner of their recovery?

	Yes	No
Local authorities	27	2
Residents	4	0
Residents' Associations	7	5
Other	20	15
Trade	4	2
Total	62	24

This question sought views on whether there should be a reserve power to regulate fees and their recovery.

Some consultees commented that the Government should regulate fees payable. One said there should be scalable fees and the Secretary of State should carry out proper research into and regulate for maximum fees.

Others thought that if the licensing regime is to be self-financing, it is important that local authorities retain sufficient flexibility to charge the fees necessary to recover all their costs associated from operating the licensing regime.

Another added that it would be appropriate for authorities to determine the fees, due to their existing powers under licensing legislation to set their own fees. It was pointed out that local authorities would then have to justify fee levels within the scope of a future licensing programme.

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