Communities and Local Government

Consultation on Implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller Sites

Summary of responses

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Introduction

The Housing and Regeneration Act 2008

Section 318 of the Housing and Regeneration Act 2008 will amend the definition of a protected site in the Mobile Homes Act 1983 to remove the exclusion of land occupied by a local authority as a caravan site providing accommodation for Gypsies and Travellers – referred to throughout this document as a 'local authority Gypsy and Traveller site'.

This will mean that the Mobile Homes Act 1983 will apply to these sites and rights and responsibilities of residents living on them will be brought into line with those of residents living in similar caravan site accommodation, such as private Gypsy and Traveller sites and park home sites. This is in response to the ruling by the European Court of Human Rights in the case of *Connors v United Kingdom* (2004) that the lack of procedural safeguards to eviction on local authority Gypsy and Traveller sites breached article 8 of the European Convention for Human Rights, which provides a right to respect for private, family and home life.

The consultation

During the passage of the Housing and Regeneration Act 2008 through Parliament, Communities and Local Government held a number of events across the country with both local authorities and Gypsies and Travellers to explain the provisions of the Mobile Homes Act 1983, and to seek feedback on applying them to local authority Gypsy and Traveller sites. The feedback from these events helped inform the consultation paper *Implementing the Mobile Homes Act on local authority Gypsy and Traveller sites*. The consultation closed on 19 December 2008.

The consultation paper sought views on:

- whether some of the provisions of the Mobile Homes Act 1983 needed to be amended for local authority Gypsy and Traveller sites

- how we move from a position where existing residents have licences under the Caravan Sites Act 1968 to one where they have agreements under the Mobile Homes Act 1983

- other transitional provisions that we may need in applying some of the provisions of the Mobile Homes Act 1983 to existing site residents.

There were 52 responses to the consultation, these came from:

- 30 local authorities
- four county councils
- two groupings of local authorities
- one regional grouping of local authorities and a Registered Social Landlord
- one Arms Length Management Organisation
- seven organisations representing Gypsies and Travellers (including one that responded jointly with other organisations)
- one academic
- one professional organisation
- one group representing park home residents
- four responses from legal service and advice organisations or individual lawyers.

Respondents were generally supportive of the proposals put forward in the consultation. In addition, many raised points or commented on issues that were relevant to the implementation of the Mobile Homes Act on local authority Gypsy and Traveller sites, but went beyond the confines of the consultation questions.

The Government's response

This response is divided into five parts. The first three parts summarise the consultation questions and responses to them, and set out the Government's response. These follow the order in the consultation paper:

Part 1: Applying the Mobiles Homes Act 1983 provisions to local authority Gypsy and Traveller sites

Part 2: Moving from licences to agreements

Part 3: Other transitional provisions

Part 4 summarises and responds to additional comments or concerns raised by respondents and Part 5 addresses the issue of transit sites under the Mobile Homes Act 1983.

Jurisdiction for determining disputes

In July 2010 the Government announced that (subject to approval of Parliament) it will transfer jurisdiction for dispute resolution and other

proceedings arising out of the provisions of the Mobile Homes Act 1983 from the county court to Residential Property Tribunals.[1]

This response therefore refers to the Residential Property Tribunal where appropriate.

County council Gypsy and Traveller sites

Since January 2005 the Mobile Homes Act 1983 has applied to agreements to station a caravan on a county council Gypsy and Traveller site.

The Mobile Homes Act 1983 applies to an agreement to station a mobile home on a 'protected site' where it is to be occupied as the person's only or main residence (section 1 of the 1983 Act). In section 5 of the 1983 Act, the definition of 'protected site' excludes land occupied by 'local authorities' (borough and district councils) as a caravan site providing accommodation for Gypsies and Travellers. Until 2005 county council sites in England were not 'protected sites'; the definition of 'protected site' was amended by section 209 of the Housing Act 2004 to include county council sites, with effect from January 2005.

The Government is aware that there has been some debate about whether or not county councils in England are currently excluded from the Mobile Homes Act 1983 – as other 'local authorities', district and borough councils in England certainly are. That the definition of a 'local authority' in the Act does not include county councils in England is certain, however, what is less clear is the Parliamentary intention in not including county councils in the definition of 'local authority'. In considering the implementation of section 318 it has been necessary for the Government to decide what the current legislative position is and to consider the powers it has in relation to the implementation of section 318.

Following detailed consideration of the issue, the Government has concluded that it does not have the power to apply the modified form of the Mobile Homes Act 1983 proposed in our consultation to existing occupiers of county council Gypsy and Traveller sites in England.

When issued, the consultation was understood by the Department to include county councils as well as district and borough councils. County councils were consulted. Therefore, applying the amendments to the Mobile Homes Act 1983 set out in this summary of responses to new agreements to station a caravan on a county council Gypsy and Traveller site (made after the commencement of section 318 of the Housing and Regeneration Act 2008) would be possible and we will do this. However, the Government cannot implement any transitional

[1] See, *Dispute resolution under the Mobile Homes Act 1983: Summary of responses and further consultation* and, Written Ministerial Statement - 14 July 2010: *Park Homes Reforms*, Hansard column 28WS.

arrangements for existing residents of county council sites in England when it brings section 318 of the Housing and Regeneration Act 2008 into force.

This is the Government's interpretation of the Mobile Homes Act 1983 and the Government cannot impose this view on county councils. County councils should consider seeking their own legal advice as to the best way forward in relation to the agreements they have with existing residents on their Gypsy and Traveller sites.

Part 1

Applying the Mobile Homes Act 1983 to local authority Gypsy and Traveller sites

Questions 1 to 5 asked for views on applying certain provisions in the Mobile Homes Act 1983 to local authority Gypsy and Traveller sites.

Assignment

The implied terms of the Mobile Homes Act 1983 enable a resident that either sells their caravan, or gives it to a family member, to pass on (or assign) the agreement to live in the caravan on the pitch to the person that buys it or it is given to, providing that the site owner approves of that person. Where the caravan is sold, the site owner can claim a commission up to a maximum rate fixed by law (currently 10 per cent of the sale price).

At the engagement events held during the passage of the Housing and Regeneration Act 2008 concerns were expressed about the right to assign. These views were set out in the consultation document and are as follows:

- a market in local authority pitches could be created, with pitches being occupied by those most able to pay, rather than those most in need of a pitch
- assignment could undermine or cut across local authority allocation policies
- that the decision by a site owner to refuse approval for someone to occupy a pitch might result in court proceedings
- that it would not be appropriate for a local authority (as the site owner) to charge commission on the sale of a caravan.

In response, the consultation paper offered two options for dealing with assignment:

- **Option 1:** to not apply the implied terms of the Mobile Homes Act 1983 dealing with assignment to local authority Gypsy and Traveller sites; or

- **Option 2:** to amend the implied terms of the Mobile Homes Act 1983 to require that, in considering whether to approve a person to whom a resident on one of their Gypsy and Traveller sites proposed to assign their agreement, the local authority would be required to consider the needs of other Gypsies and Travellers in their area, as well as those of the proposed assignee.

Question 1: Which of these two options do you think the Government should pursue to deal with the issues raised by assignment?

Of the 42 respondents that answered this question, 26 preferred Option 1 (15 local authorities, four county councils, four organisations representing Gypsies and Travellers, one academic, one professional organisation, one legal advice organisation) while a smaller but not insignificant minority of 16 (all local authorities and county councils) preferred Option 2.

Most respondents to the consultation agreed with the assessment of the issues that could arise if assignment was allowed on local authority Gypsy and Traveller sites. Respondents also made a number of additional comments in opposition to assignment in general:

- assignment could result in conflict with sites becoming dominated by one family or group, with pressure possibly being brought to bear on other residents to assign their agreements

- there are already problems with people attempting to buy pitches from current residents and assignment could exacerbate this

- the existing test in the Mobile Homes Act 1983, which provides that approval for an assignment can only be withheld where reasonable, probably does not reflect the need catered for by local authority allocation policies or practical site management concerns

- potential site residents might have to wait longer on the waiting list for a local site

and against the second option in the consultation paper:

- it would be very difficult and impractical for the local authority to weigh up the circumstances of the proposed assignee and those on the waiting list for a pitch and the decision could result in judicial review.

Amongst those that supported Option 2 the main reason given was local discretion with the ability for local authorities to allow assignment but with safeguards. However, respondents called for there to be clear guidance from central government on acceptable grounds for refusing a potential assignee. One local authority said it already operated a similar policy; another that

problems would only arise when people from outside the area appeared to be jumping the queue through assignment. One local authority said that residents on its sites were in favour of the right to assign, another that to take away a right that is available to park home residents could be regarded as discriminatory.

Other options

Six respondents (one local authority, one legal practice, one advice organisation and three organisations representing Gypsies and Travellers) argued that residents on local authority Gypsy and Traveller sites should have options for assigning agreements similar to those available to local authority secure tenants. They referred particularly to the possibility of assigning an agreement to someone who would be entitled to succeed to it. One of these six respondents (a local authority) also argued that residents should also be allowed to assign pitches through exchange (which would be subject to the agreement of the relevant local authorities). This would facilitate movement between sites without the need for anyone to lose their pitch agreement and security of tenure.

A further option suggested by one respondent (from the legal profession) was to leave the implied terms relating to assignment unchanged. This respondent argued that there need to be very good reasons to treat Gypsies and Travellers differently in this respect. They argued that there was no hard evidence to back up some of the claims about the negative effects of assignment and that assignment will be to those in need of a pitch or else the transaction would seem to be an unlikely one.

Government response

The purpose of removing the exclusion for local authority Gypsy and Traveller sites from the Mobile Homes Act 1983 is to bring rights and responsibilities on these sites into line with others living on residential caravan sites. We have only suggested changes to the provisions where we believe they could have an adverse impact on these sites, or to fully reflect circumstances on them. The Government is concerned about the potential for the provisions on assignment as they currently exist having an adverse impact on local authority Gypsy and Travellers sites, and therefore believes that the case for not applying these provisions is justified.

The Government will adopt Option 1 and not apply the provisions in the implied terms of the Mobile Homes Act 1983 on assignment to local authority Gypsy and Travellers sites.

Not including the right to assign in the implied terms is a simple way to protect pitches on local authority sites as a valuable resource for those who are unable to develop their own sites or afford pitches on privately rented sites and who

might otherwise end up on unauthorised sites. Not applying the provisions on assignment will ensure that the implied terms are consistent with local authority allocation policies. Local authorities, site managers and current and potential site residents will know where they stand. The majority of respondents agreed with this approach.

If they wished, local authorities could include, in the express terms of new agreements, provisions on assignment – whether the same rights as in the Mobile Homes Act 1983 or one of the other options proposed by respondents. Where local authorities have already included a similar right in the terms of their licences on their sites, the relevant terms will remain valid (see Part 2).

Succession

The Mobile Homes Act 1983 provides that if a resident dies then their spouse, or another member of their family living with them when they die, will inherit the agreement to live in the caravan on the pitch. If there is no family member living with the resident when they die, the person that inherits the caravan (either through a will, or under the laws of intestacy) can sell the caravan and assign the agreement to live in the caravan on the pitch to the person that buys it, with the approval of the site owner. The person that inherits the caravan does not have the right to live in it on the pitch, or give it to a member of their family, unless the site owner agrees.

The right for a person who inherits a caravan to sell it and assign the agreement raises similar issues to the general right to assign. If the site owner doesn't approve the assignment, or doesn't approve the person that inherited the caravan living on the pitch, it could also mean that pitches are left empty at a time when there is a chronic shortage.

We therefore proposed that the provision relating to succession where no family member is living with the resident when they die should not be applied to local authority Gypsy and Traveller sites. The right for a family member living with the resident when they die to succeed to the agreement would remain.

Question 2: Do you agree with the proposal that the provision in the Mobile Homes Act 1983 relating to succession where no family member is living with a resident when they die should not be applied to local authority Gypsy and Traveller sites whichever option we pursue in respect of assignment generally?

A majority, 44 out of a total of 47 respondents, agreed with this proposal for the reasons given in the consultation.

Two respondents (an organisation representing Gypsies and Travellers and a local authority), did not agree with the Government's particular proposal because they did not think any provision for succession in the Mobile Homes

Act 1983 should apply to local authority Gypsy and Traveller sites. The organisation representing Gypsies and Travellers argued that pitches could be passed on within families in perpetuity, taking them out of circulation as public provision. The local authority argued that succession would reduce the site owner's ability to allocate pitches according to need. One other respondent (a local authority) did not agree with the Government's proposal but did not give a reason.

A small group of respondents thought that the issue of empty pitches could be avoided by removing the bar on the person inheriting the caravan having the right to live on the pitch. However, they still agreed with the consultation proposal as it would stop people who have not been living on the pitch and who may have no pressing need for it being able to succeed to it.

Respondents who supported the consultation proposal (as well as those who disagreed with succession) also highlighted the fact that the Mobile Homes Act 1983 does not limit the number of successions to an agreement. These respondents argued that this could result in an agreement being passed down within a family in perpetuity, regardless of any changes in circumstance or of any need for that pitch amongst the wider Gypsy and Traveller community. Various proposals were offered for limiting succession and suggestions for different limits on the number of times a pitch could be passed on.

Respondents also suggested that a family member (other than a spouse or civil partner) in order to qualify as the successor to the pitch should have lived with the resident before they died for a minimum period of time, as under a local authority secure tenancy. The minimum period suggested varied from 3 to 12 months.

Some respondents raised concerns about whether a 'common-law husband or wife' could succeed to an agreement. Others maintained that step children should be able to succeed to the agreement, while others asked for confirmation that children under 18 years of age could not succeed as they cannot enter into a legal agreement.

There was acknowledgement that better records had to be maintained about who was actually living on a pitch in order to avoid disputes about succession, but also concern that these changes should be properly communicated to residents, through Citizens Advice for example.

Government response

After careful consideration, the Government will not amend the terms of the Mobile Homes Act 1983 (Section 3 (3)(b) and 4) relating to succession, where no family member is living with a resident when they die.

This is because the Government does not believe that Section 318 of the Housing and Regeneration Act 2008 provides the powers necessary to amend

the main body of the Mobile Homes Act 1983 in this way. The other amendments set out in the consultation, such as the amendment to the right to assign an agreement, will be made by an Order under section 2A of the Mobile Homes Act 1983 as they are amendments to the implied terms of the Act. Section 2A allows the implied terms of the Act to be amended by the Secretary of State following a period of consultation.

The Government is aware that respondents supported the proposal in the consultation to amend the terms on succession where no family member is living with the resident when they die and that there were concerns about succession in general. It is unlikely that succession (by its nature) will be a frequent issue on local authority Gypsy and Traveller sites (unlike, potentially, assignment), however, the Government will keep the succession provisions in the Mobile Homes Act 1983 (as it relates to social site provision for Gypsies and Travellers) under review and will consider what further measures it can take if there is evidence that they are proving to be problematic on public Gypsy and Traveller sites.

Response to other comments on succession

While it would be theoretically possible for a family to pass on an agreement in perpetuity, the Government does not propose at this time to limit the number of times an agreement can be passed on through succession or require that a family member must have lived with a resident for a certain period prior to their death in order to succeed to the agreement.

Restricting the number of successions to an agreement, or requiring that the family member must have lived with the resident for a certain period of time prior to their death in order to succeed to the agreement could result in a resident that has been living on a pitch having to move to an unauthorised site. Although this would potentially free up the pitch for allocation to someone from the waiting list for the site, this will not necessarily help reduce levels of unauthorised camping overall.

The Mobile Homes Act 1983 does not include (as the term is not recognised in law) 'common-law husband or wife' in the list of family members in section 5(3) but it does include those who 'live together as husband and wife or as if they were civil partners'. It also includes step children.

In relation to whether a minor can be granted, assigned or succeed to an agreement under the Mobile Homes Act 1983, landowners and occupiers ought to seek their own legal advice. However, the prohibition against a minor only applies to ownership of legal estates; it does not apply to licences.

The Government will ensure that advisory organisations, such as Citizens Advice, are informed of the changes that will take place on local authority Gypsy and Traveller sites, including those with regard to succession.

Re-siting a caravan

We are aware from the bids that we have received for Gypsy and Traveller Sites Grant that the repair and improvement works necessary on some local authority sites can be extensive, in some cases requiring residents to be temporarily relocated whilst repairs are undertaken.

We therefore proposed that as well as being able to require a resident to move their caravan to a pitch on the same site, local authorities should be able to require residents on Gypsy and Traveller sites to move their caravan to a pitch on a different site.

Question 3 – Do you agree with the proposal to amend the implied terms to enable local authorities to require a resident on one of their Gypsy and Traveller sites to move their caravan to a pitch on another site as well as another pitch on the same site, for example when they need to carry out repairs?

A large majority of respondents agreed with this proposal, 42 out of 46.

The four respondents (two organisations representing Gypsies and Travellers and two legal service and advice organisations) who were not wholly in favour of the proposal argued that there seemed little point in changing a provision that had presented no problems before. However, they considered that if this amendment was implemented, safeguards should be in place in the Mobile Homes Act 1983 to protect residents.

Many of those in favour of the proposal, in principle, were also concerned that there should be safeguards in the implied terms of the Mobile Homes Act 1983 to protect the interests of residents on local authority Gypsy and Traveller sites.

The proposed safeguards were:

- a presumption should be that residents will be moved within their own site
- the move should be time-limited
- there should be a guaranteed right to return
- local authorities should maintain responsibility for the residents that are temporarily relocated
- the site to which residents are temporarily relocated should be within reach of schools, hospitals and other services
- local authorities should pay the financial costs of relocation

- home loss and disturbance payments should be made to residents

- residents should be fully consulted.

One respondent suggested that the local authority would need to ensure that people are moved to sites where they will be compatible with existing residents in order to comply with the duty on the local authority under the Crime and Disorder Act 1998 to do all it can to reasonably prevent crime and disorder in its area. If necessary there should be the ability to move residents to sites outside the local authority area.

One respondent was concerned that changing this implied term should not weaken the protections for those living on park homes sites that are already covered by the Mobile Homes Act 1983.

Government response

The Government will amend the implied terms of the Mobile Homes Act 1983 to enable local authorities to require residents on their Gypsy and Traveller sites to move their caravan to a pitch on another site, as well as another pitch on the same site to provide the flexibility necessary to undertake extensive refurbishment works.

Where caravans are already re-sited under the terms of the licence on the date section 318 comes into force, the implied terms in the Mobile Homes Act 1983 relating to re-siting of caravans would not apply to those caravans (see Part 3).

While the desire for safeguards is understandable, the Act already has safeguards in place:

- There is already a form of guaranteed right to return. Paragraph 10(2) of Part 1 of Schedule 1 specifies that if the owner requires a resident to station their caravan on another pitch in order to carry out repairs to the base, if the resident requires, or the court (or in future, the Residential Property Tribunal) on the application of the resident orders this, the caravan must be returned to the original pitch on the completion of the replacement or repairs. However, putting a time limit on a re-location could result in residents being moved back on to a site even if the refurbishment works are not complete, which could endanger their health and safety.

- Paragraph 10(1)(a) and 10(1)(b) of Part 1 of Schedule 1 also specifies that pitches to which residents are moved should be broadly comparable to their original pitch, and that it should be reasonable for the mobile home to be stationed on another pitch for that period.

- Paragraph 10(3) of Part 1 of Schedule 1 also specifies that the owner shall pay all the costs and expenses incurred by the occupier in connection with his mobile home being moved to and from another pitch. Residents would need to take legal advice if they felt they were due other financial compensation as a result of the move.

It will be for the local authority to consider, in consultation with residents, whether it is more practicable for residents to be relocated temporarily to other pitches on the site or to another site based on the extent of the works and the welfare of residents. However, we understand that where residents have been temporarily relocated to another site, residents are usually moved to the same temporary site, rather than being disbursed to any vacant pitches on existing sites in the area.

The Mobile Homes Act 1983 requires residents to be consulted about improvements to sites and the Government expects residents to be fully consulted about improvements to sites, including temporary relocation.
As with all the other amendments we are making to the Mobile Homes Act 1983, this will only apply to Gypsy and Traveller sites; the rights and responsibilities of park home residents will not be affected.

Site owner’s responsibilities for repairs

The Mobile Homes Act 1983 requires the site owner to repair the base (or hardstanding) on which the caravan is stationed. However, on Gypsy and Traveller sites, other facilities, such as amenity blocks, will usually be provided by the local authority on the pitch. We therefore proposed to amend the implied terms to clarify that authorities will be responsible for repairing any amenities provided by them on the pitch, as well as the base.

Question 4: Do you agree with the proposal to amend the implied terms to clarify that local authorities will continue to be responsible for repairing any amenities provided by them on the pitch as well as the base?

Every respondent to the question agreed with this proposal, most without comment. However, some respondents wanted some clarification about who would be held responsible for repairing shared facilities or communal areas, boundary walls and fences, and who should pay for damage caused by residents that was beyond ‘fair wear and tear’.

Government response

The Government will amend the implied terms in the Mobile Homes Act 1983 to clarify that local authorities will continue to be responsible for repairing any amenities provided by them on the pitch, as well as the base.

Paragraph 21(c) and (d) of Part 1 of Schedule 1 specify that the resident is responsible for keeping the mobile home in a sound state of repair and for maintaining the outside of the mobile home, and the pitch, including all fences and outbuildings belonging to, or enjoyed with it and the mobile home, in a clean and tidy condition.

Paragraph 22(c) specifies that the site owner is responsible for repairing the base, maintaining utilities or other services supplied by them to the pitch or caravan.

Paragraph 22(d) specifies that the site owner is responsible for maintaining in a clean and tidy condition those parts of the site, including access ways, site boundary fences and trees, which are not the responsibility of any of the residents. This would normally include any shared facilities or communal areas.

We have also proposed to amend the definition of 'essential repair and emergency works' to specify that these works include repairs to amenities provided by the local authority on the pitch, as well as to the base (see Question 5).

Question 5: Do you agree with the proposal to amend the definition of 'essential repair and emergency work' in the implied terms to specify that these works include repairs to amenities provided by the local authority as well as the base (or hardstanding)?

As with Question 4, all respondents agreed with this proposal while requesting clarity about who would be responsible for paying for repairs that are beyond 'fair wear and tear'. One respondent wanted the definition extended to include works essential to conform to other legislation such as the Disability Discrimination Act.

Government response

The Government will amend the definition of 'essential repair and emergency work' in the implied terms to specify that these works include repairs to amenities provided by the local authority, as well as the base (or hardstanding).

Paragraph 10(4) of Part 1 of Schedule 1 defines ‘essential repair or emergency works’ as works or repairs needed to comply with any relevant legal requirements.

Part 2

Moving from licences to agreements

Gypsies and Travellers currently occupy pitches on local authority sites under licences under the Caravan Sites Act 1968. The terms of these licences are a matter for individual local authorities. Under the Mobile Homes Act 1983 pitches will be occupied under an agreement. This agreement will consist of the implied terms that are in Part 1, Schedule 1 of the Mobile Homes Act 1983 and any express terms already included in the existing licence (eg the location and size of the pitch, the services provided, the pitch fee etc). Where a new agreement is entered into, a written statement of the terms of the agreement must be given to the resident 28 days before the agreement is made, or less if the resident agrees.

Where residents move onto a site after section 318 has been commenced the local authority will need to make an agreement with them, and provide a written statement 28 days before this. However, the provisions of the Mobile Homes Act 1983 also need to be applied to existing residents on sites. The consultation presented two options for moving from licences to agreements:

- **Option 1:** Local authorities would be required to make agreements under the Mobile Homes Act 1983 with existing licence holders by a specific date. If a local authority failed to make an agreement by the specified date residents would be deemed to have an agreement (as in Option 2).

- **Option 2:** All existing licences would be deemed to be agreements to which the Mobile Homes Act 1983 applies from the date section 318 of the Housing and Regeneration Act 2008 is brought into force. They would therefore include all of the implied terms in the Mobile Homes Act 1983, as well as the terms already in the licence.

The consultation paper also referred to a working group the Department proposed to establish to prepare a model agreement for local authority Gypsy and Traveller sites. The model agreement would seek to include some standard express terms on issues that are frequently covered in licences, such as behaviour on site and short term absence from site.

Question 6: Which of the two options do you think is the better option for moving from licenses to agreements? Do you agree with the assessment of the pros and cons of each option? Is there a further option we have not identified?

Out of the 48 respondents who answered this question, 46 preferred Option 1. One respondent (a local authority) preferred Option 2, but gave no reason. One respondent disagreed with both options arguing that licences should be maintained (see Part 4).

There was general agreement with the assessment of the pros and cons of each option.

The model agreement

Many respondents expressed their support for the idea of producing a model agreement and there was a consensus that it should be ready in advance of when residents would have agreements under the Mobile Homes Act 1983.

One respondent was concerned about the costs that could result from the provision in the Act that enables the resident to apply to the court for an order to change the express terms in the agreement during the first six months of an agreement. They proposed that the model agreement working group should therefore agree to any changes to the express terms rather than the court.

Government response

Having considered the responses and practicalities of both Options, upon reflection, the Government plans to proceed with a modified Option 2.

Existing residents on local authority Gypsy and Traveller sites

On the date section 318 of the Housing and Regeneration Act 2008 comes into force all existing licences will automatically become agreements to which the Mobile Homes Act applies. The implied terms of the Mobile Homes Act 1983 will be automatically incorporated into existing licences and the terms of the licence will automatically become the express terms of the agreement.

A requirement to provide a written statement to existing residents

In order to ensure that existing residents on local authority Gypsy and Traveller sites are aware of their rights and responsibilities under the Mobile Homes Act 1983, the Orders will include a requirement that local authorities provide existing residents with a written statement of the agreement within 28 days of section 318 coming into force. **If the written statement is not provided within 28 days of section 318 coming into force, the express terms of the agreement will be unenforceable.** This requirement will not apply to county councils.

A model agreement

A model agreement that would provide a set of standard express terms was suggested by the Department in the consultation as a way to reduce the burden on local authorities if the Government required that new agreements, containing new express terms, were made with existing residents (Option 1 of Q6). There will be no requirement to agree new express terms with existing residents and this takes away the need for a centrally produced model agreement. Instead, local councils will be compensated for fulfilling the requirement to issue a written statement to residents and to amend agreements for new residents on county council sites.

The Government is aware that terms in some existing licences may, as they become express terms, conflict with the implied terms of the Mobile Homes Act 1983. The implied terms strengthen residents' rights and the Government believes that disputes over terms are unlikely. Although there will be no right for existing residents to apply to the Residential Property Tribunal to vary or delete express terms in the agreement (as provided for in section 2(3) of the Act for new residents), in the event of a dispute either party will be able to apply to the Residential Property Tribunal for resolution under section 4 of the Mobile Homes Act 1983.

The local authority will only be able to vary or delete the express terms in the agreements of existing residents if the resident agrees to re-negotiation of the terms.

New residents on local authority and county council sites

Residents who move onto a pitch and make a new agreement on a local authority or county council site after section 318 comes into force will have an agreement that consists of the implied terms of the Act and any express terms agreed between the local authority and the resident.

Local authorities and county councils have an opportunity between now and the commencement of Section 318 to consider whether the terms used in their licences would still be appropriate as express terms in agreements with new residents.

If potential new residents agree, the written statement can be given to them on a date that is less than 28 days before the agreement is made. We suggested in the consultation paper that local authorities could provide the written statement to Gypsies and Travellers on their waiting lists to help meet this requirement.

Part 3

Other transitional provisions

The consultation outlined a number of additional transitional provisions that it was envisaged would be required when the implied terms in the Mobile Homes Act were applied to existing residents of local authority Gypsy and Traveller sites.

However, as set out in Part 2, as the implied terms of the Mobile Homes Act 1983 will be incorporated into existing licences, actions being undertaken under these licences when section 318 comes into force remain valid. Transitional provisions will also be required for actions under the licence that are ongoing when section 318 comes into force. Other transitional provisions will deal with those situations where the site owner or occupier cannot comply with certain obligations in the Mobile Homes Act 1983 on ‘day 1’.

The transitional provisions are as follows:

- The implied terms in the Mobile Homes Act 1983 relating to termination will not apply to existing occupiers or to site owners where termination proceedings started before the commencement date.

- The terms relating to re-siting of a mobile home will not apply to a mobile home that is re-sited on the commencement date or where the process of re-siting it has already begun.

- Terms relating to pitch free reviews will not apply where the pitch fee review date in the licence falls within 28 days of the commencement date.

- Matters to be considered when determining the new pitch fee will not include works relating to improvements to the site carried out before the commencement date.

- Obligations on the occupier to keep the mobile home in a sound state of repair and to maintain the outside of the mobile home and the pitch in a clean and tidy condition will only apply 3 months after the commencement date – although any terms relating to this in the licence (that will become the express terms in the agreement) may still apply.

- The requirement on the occupier to provide documentary evidence of any costs or expenses for which the occupier seeks reimbursement will not apply in relation to costs or expenses incurred before the commencement date.

- The requirement on the site owner to consult residents on improvements to the site or to consult a residents' association on matter relating to the site will not apply to improvements or matters that took place within the first 28 days following commencement.

Below is a summary of responses to the questions in the consultation that related to transitional provisions. The Government's response to each highlights any actions local authorities should take before or around the time when section 318 comes into force.

Breaches of licence relevant to the agreement

In order to ask the court to terminate the agreement, the local authority would be required, under the implied terms of the Mobile Homes Act 1983, to write to the resident asking them to remedy the breach. We proposed that where a local authority had written to a resident asking them to remedy a breach of a licence before the commencement date, that the local authority could begin proceedings, if necessary, to terminate an agreement without having to write to the resident again after that date.

Question 7: Do you agree with this approach to breaches of a licence relevant to the agreement?

Respondents agreed with this proposal mostly without comment. However, some respondents were concerned that the process of making an agreement only to terminate it would be a difficult concept to explain to those affected.

A few respondents thought the resident should still be written to again. One respondent (a group of local authorities) maintained that it would be more reasonable to write to the resident again.

Three local authorities raised the question of determining whether the term that was breached in the licence was also in the agreement but as the terms in the licence will automatically become the express terms in the agreement this will not be an issue.

Government response

Where a term of the licence has been breached and the local authority has written to the resident, but has not begun termination proceedings when section 318 is commenced the local authority would have to write to the resident again. This is because the implied terms of the Mobile Homes Act 1983, which require that the resident is written to, would apply once section 318 comes into force.

In order to avoid the confusion that could be caused by a resident receiving a written statement about the Mobile Homes Act 1983 agreement and then receiving a notice seeking to terminate it, we would recommend that the local authority accompany the written statement on the agreement with a letter. This should remind the resident that their licence had been breached and that while the local authority was obliged to provide them with a written statement they would still be pursuing the breach.

Overpayments

We proposed that any overpayments made under a licence which might cover the period after an agreement was terminated could be recovered under the implied terms of the Mobile Homes Act 1983 when the agreement was terminated.

Question 8: Do you agree with the proposal that residents should also be able to use the implied terms to recover any payments made under a licence that might cover the period after an agreement is terminated?

All those who responded to this question agreed with the proposal mostly without comment.

One respondent wanted assurance (to ensure that all rent and other payments were paid) that the termination date of the agreement is the date when the resident actually leaves the pitch.

Some respondents agreed to the proposal on the condition that any payments owed by the resident to the local authority, or money to pay for repairs to damage beyond ‘fair wear and tear’ could be deducted from any overpayments due to be paid back to the resident.

Government response

As the licence will automatically become an agreement, paragraph 7 of Part 1 of Schedule 1 of the Mobile Homes Act 1983 will provide for recovery of overpayments. Residents will be able to use the implied terms to recover any payments made under the licence that might cover the period after an agreement is terminated.

The termination date of the agreement is the date the agreement ends. Under the Mobile Homes Act 1983 residents are required to give notice of not less than four weeks to terminate the licence or agreement. It may therefore be unlikely that there will be an overpayment where a resident moves on after giving notice. If a resident moves on before the end of the notice period any payments made covering the period until the notice expires would not be an overpayment unless the site owner waives the notice requirement.

Where the agreement has been terminated by the court, the site owner is likely to have sought a possession order at the same time, and so the date the agreement ends is likely to be the date the court decides the resident is no longer entitled to remain on the pitch.

Pitch fees – review dates

The implied terms of the Mobile Homes Act 1983 require the pitch fee to be reviewed annually, on the review date, and include a presumption that the pitch fee will not change by more than any percentage increase or decrease in the retail price index (RPI) since the last review date.

We proposed that where a licence included a pitch fee review date this would continue to be the review date in the agreement, to ensure that there would not be more than one pitch fee review in a year. If the licence did not include a review date then for the purposes of calculating the change in RPI, we proposed that the last pitch fee review date should be a year prior to whatever review date is included in the agreement.

Question 9: Do you agree with the proposal that if a licence includes a review date for the pitch fee, this date should continue to be the review date in the agreement?

Do you also agree that if no review date is included in a licence then the last review date for the purposes of calculating the change in RPI should be a year prior to whatever review date is included in the agreement?

All except one response to this question agreed with both proposals. One respondent disagreed with the second part of the proposal, but gave no reason. Of those who commented many said they had a review date in their licences and would continue to use the same date in the agreement.

Respondents took the opportunity to set out their own policies on pitch fee reviews, for example, carrying out reviews on 1 April, or at the same time as social housing rent reviews. One respondent thought that changes in pitch fees should be allowed at other times of the year, with appropriate notice, if required in an emergency.

One respondent was concerned about the need for the agreement of residents to any proposed change to the pitch fee and expected that any proposed increase would attract objections.

Two respondents were concerned about an increase being in line with RPI, one respondent said they currently fixed their increases to the Housing Revenue Account increase which is usually higher than RPI. Another thought that the increase would need to be higher than RPI to pay for any damage caused by residents.

Government response

Licences will automatically become agreements. This means that where the licence includes a review date that date will continue to be the pitch fee review date in the agreement.

The implied terms of the Mobile Homes Act 1983 require the site owner to serve on the occupier a written notice setting out the proposals in respect of the new pitch fee. Where the licence included a pitch fee review date this will be in the express terms of the agreement. If the review date in the express terms falls within the first 28 days following commencement of section 318 the requirement to serve notice will not apply.

The pitch fee review date must be included in the written statement. Where the licence does not include a written review date**:**

- If the licence is verbal or the pitch fee review date has been agreed verbally that will be the review date in the agreement.

- If there is no review date in the licence but the local authority has previously reviewed the pitch fee, the date that review took place should be taken as the pitch fee review date and included in the written statement.

- If there has never been a pitch fee review, the local authority should use a date that is reasonable, for example the anniversary of the date when the pitch was first occupied.

The Mobile Homes Act 1983 protects residents from having their pitch fee reviewed more than once a year; it would be difficult to define what emergency situation would justify the local authority increasing the pitch fee more frequently and to justify putting the burden of this emergency on to residents.

There is scope for the site owner to increase the pitch fee above RPI if this increase is to cover expenditure on site improvements which were for the benefit of the residents (site improvements must have been consulted upon and a majority of residents must not have disagreed with them in writing). If residents do not agree to the pitch fee increase then the local authority can refer the matter to the Residential Property Tribunal for a decision. It would be unlikely that there would be any justification for disputing a proposed increase which was limited to the RPI, unless the resident identified (and the tribunal agreed) that there had been a decrease in the amenity of the site.

The implied terms which allow the site owner to take into account expenditure on site improvements when considering the pitch fee review will not apply to improvements made before section 318 comes into force.

Pitch fees – housing benefit

Question 10: Do you agree with the proposal to delay applying the implied term in the Mobile Homes Act 1983 that makes the presumption about pitch fee changes and the RPI to county council Gypsy and Traveller sites until after the Department for Work and Pensions has made the changes necessary to resolve the anomaly in the way housing benefit is paid for these sites?

Government response

The Housing Benefit and Council Tax Benefit (Amendment) (No. 2) Regulations 2008 were laid in Parliament by the Department for Work and Pensions on 6 November 2008 and came into force on 6 April 2009. Rents on county council sites will now only be referred to the rent officer for determination if the local housing authority considers them to be excessive. In the event, these regulations have come into force before section 318 is commenced.

Improvements proposed before agreement

The Mobile Homes Act 1983 requires the site owner to consult residents about improvements to the site in general and, in particular, about those which the owner wishes to take into account when determining the amount of any new pitch fee. We proposed that improvement works already proposed prior to the Mobile Homes Act 1983 being implemented on local authority sites and which residents had been consulted on could be continued without the further consultation that would be required under the Act.

Question 11: Do you agree that where a local authority has already consulted residents on proposed improvements to a site prior to an agreement being made they should not have to consult them again, as the implied terms would require?

All respondents to this question agreed to the proposal. Those who did comment thought that further consultation could delay planned site improvements.

Government response

A transitional provision will provide that further consultation will not be required for improvement works that start before or within 28 days of the commencement of section 318.

In some circumstances local authorities may be required to consult again under the terms of the Mobile Homes Act 1983 on improvements that were proposed, but not started, before the commencement of section 318.

The implied terms of the Act state that the site owner must give 28 days notice in writing of the proposed improvements which:

- describes the proposed improvements and how they will benefit the occupier in the long and short term
- details how the pitch fee may be affected when it is next reviewed; and
- states when and where the occupier can make representations about the proposed improvements and takes into account any representations made by the occupier about the proposed improvements.

Local authorities should already be consulting residents about site improvements as a matter of good practice. Consultation with residents in advance of improvements proposed to start between now and when section 318 comes into force should ensure that any delays can be kept to a minimum.

Other transitional provisions

Question 12: Do you think there are any other implied terms under the Mobile Homes Act 1983 which may require transitional provisions?

Respondents suggested five additional transitional provisions. These proposals are set out in italics below along with the Government's response.

Where a local authority has already commenced legal action for eviction against a current licensee and the legal action has not been concluded at the date the new agreement is due to take effect, there should be a provision that enables the legal action to continue in its present form notwithstanding the changes which are about to or have come into effect.

Government response

Where the local authority has terminated the licence before the commencement date the person would not therefore have a licence on the date that section 318 is commenced and would not have an agreement when section 318 comes into force. Without an agreement the person will not be covered by the terms of the Mobile Homes Act 1983. **As already indicated, where termination, rather than eviction or possession, proceedings are underway when section 318 comes into force, these proceedings can continue.**

The 14 days notice, referred to in paragraph 14 of the implied terms, needs to be suspended as in the lead up to implementation local authorities may need to enter at shorter notice to, for example, bring non-essential repairs up to scratch.

Government response

Although paragraph 14 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 requires the site owner to give the resident 14 days notice of entry to their pitch for any reason other than delivering written communication, reading utility or service meters or carrying out essential or emergency works, where the occupier agrees, less notice can be given. We do not therefore think that such a transitional provision will be required.

Paragraph 21 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 may need a ‘lead in’ time for occupiers to bring the outsides of mobile homes and pitches up to standard.

Government response

Paragraph 21 of part 1 of Schedule 1 to the Mobile Homes Act 1983 requires residents to maintain the outside of the mobile home, and the pitch in a clean and tidy condition.

As already indicated, the Government will put in place transitional provision that will provide that this requirement will not be enforceable for 3 months after section 318 comes into force – this will ensure that occupiers do not find themselves immediately in breach of the agreement.

Arrangements will have to be put in place to address those licence-holders who will not/do not sign the new agreements. The licence should be negated and the new agreement should not come into effect until it is signed. If licensees do not sign or cannot be found, then their licences should be automatically revoked by the new legislation and they become illegal occupants.

Government response

When section 318 comes into force, licences will automatically become agreements with the implied terms of the Mobile Homes Act 1983 incorporated into them.

There may be scope for transitional arrangements on the introduction of approval of pitch fees by the occupier. The requirement for the occupier to agree to the rent increase may cause local authorities some issues. Firstly there would be a requirement for the residents to understand the process they need to go through. Also for local authorities who run a number of sites there is a risk of an increased administrative burden in dealing with residents who do not agree to the increase in charges and therefore managing the collection of different amounts of rent or notifying housing benefit of rent changes.

Government response

A transitional provision will provide that the requirement on the site owner to consult the occupier will not apply to consultation on any improvements that start before or within 28 days of the commencement of section 318. A transitional provision will also provide that the requirement on the site owner to consult a recognised residents’ association about matters relating to the running of the site will not apply to consultation on any matters before the commencement date, or within 28 days of the commencement date.

As explained in the Government response to Question 9 the date set in current licences for the pitch fee review will remain after section 318 comes into force. Local authorities should therefore use the time available before their next pitch fee review to explain to residents the processes that they have to go through in relation to pitch fees.

The costs of implementation are addressed in the final section of this summary of responses.

Part 4

Additional comments

A number of respondents had additional comments that went beyond the confines of the consultation questions. This section summarises these comments under a series of headings, followed by the Government's response.

The suitability of the Mobile Homes Act 1983 for local authority Gypsy and Traveller sites

Two respondents disagreed with the Government's decision to remove the exclusion for local authority Gypsy and Traveller sites from the Mobile Homes Act 1983. Both felt the Act was inappropriate but offered different alternatives. Some of the issues raised by these two respondents have already been included in Parts 1-3, and will be covered later in this section, but their general views are set out below.

One respondent argued that the Mobile Homes Act 1983 will make it very difficult for site owners to evict residents who may be causing problems on sites, who may drive other residents away and cause sites to close, and that the changes brought in as part of the Housing Act 2004 (which allowed the courts to suspend a possession order) should not have been implemented.

The other argued that the better option would have been to have brought local authority sites into line with local authority housing, as this would better meet the needs of Gypsies and Travellers living on these sites.

Other respondents, while supportive of the changes, contributed some further general comments. One thought that it would have been better to have had a 'Gypsy and Traveller Accommodation Act' rather than using existing legislation. Others wanted to see further implied terms added to the Mobile Homes Act 1983 to, for example, allow commercial vehicles to be parked on pitches or to allow space on sites for visitors, extra space for growing families.

Government response

The legislative changes in the Housing Act 2004, allowing the courts to suspend possession orders on local authority caravan sites, and the removal of the exclusion in the Mobile Homes Act 1983 for local authority Gypsy and Traveller sites are in response to the European Court of Human Rights judgement in *Connors v UK*. This ruled that the current lack of procedural

safeguards on these sites breached article 8 of the Convention (right to respect for private, family and home life).

These measures have and will increase the protection available to residents on local authority Gypsy and Traveller sites, but local authorities will still be able to terminate an agreement and obtain a possession order in the event of a breach of agreement and do this with less risk of legal challenge. Gypsies and Travellers are now gaining the right to defend themselves against eviction in the same way as those living on other residential caravan sites, and socially rented bricks and mortar housing.

Local authority Gypsy and Traveller sites share characteristics with other types of residential caravan sites, and with local authority bricks and mortar housing. The amendments proposed in this consultation were designed to ensure that the Mobile Homes Act 1983 will work on local authority Gypsy and Traveller sites and that the changes do not exacerbate some of the problems currently experienced due to a lack of authorised sites. The proposed amendments (although we will not adopt all of them) were generally supported in this consultation, alongside our response to the issue of transit sites, which is dealt with in Part 5, should ensure that the needs of those Gypsies and Travellers who are living on or travelling between local authority sites are met.

Costs

Some respondents were concerned that the Mobile Homes Act 1983 could impose additional financial burdens on local authorities and on Legal Aid. Concerns included:

- proving to a court that a resident has breached the terms of his or her agreement would be difficult and therefore costly
- the opportunities available for redress through the courts under the Mobile Homes Act 1983, coupled with the likelihood that Gypsies and Travellers will qualify for Legal Aid will lead to lengthy and expensive litigation for local authorities
- it would be difficult to recover court costs or rent arrears from nomadic Gypsies and Travellers
- if residents leave their pitches permanently without terminating the agreement there will be an additional cost of going to the court to do this and income would be lost from an empty pitch in the meantime
- the ability for a resident to challenge any proposed change to the pitch fee could lead to additional burdens in collecting different pitch fees for different sites and notifying housing benefit administrators of rent changes

- the costs of moving from licences to agreements had been underestimated (although no alternative estimate, or suggestion for calculating such an estimate was offered)
- pitch fee increases being pegged to RPI rather than decided by the local authority could cause problems covering running costs.

Government response

The impact assessment included in the consultation paper recognised and sought to quantify the additional costs that may arise from the need to terminate agreements through the courts; as a result of the other matters that could be considered by the courts (which will in future be considered by the Residential Property Tribunal); and the cost of the transition from licences to agreements. The impact assessment will be reviewed and finalised before the Orders making the amendments to the Mobile Homes Act 1983 are laid before Parliament and it will be kept under review.

The impact assessment took into account that there may be more work, and therefore additional cost, involved in proving breach of an agreement under the Mobile Homes Act 1983, compared to terminating a licence under the Caravan Sites Act 1968. However, this needs to be balanced against both the fact that fewer possession actions should end up in the higher courts (as a result of challenge under Convention rights, as currently happens) and the fact that fewer such actions may arise as a result of the need to prove grounds and reasonableness.

As already indicated in the introduction to this summary, the Government has decided that the jurisdiction for certain matters dealt with by the courts under the Mobile Homes Act should be transferred to low cost residential property tribunals. Where cases are heard in tribunals, legal help is available to provide advice and assistance (though not advocacy) for those who qualify; Legal Aid for legal advocacy can be granted but only in exceptional circumstances. This has been raised as in issue in itself by some stakeholders (see below).

Any difficulties experienced by local authorities in recovering court costs or rent arrears from nomadic Gypsies and Travellers are likely to exist irrespective of the implementation of the Mobile Homes Act 1983 on local authority sites. The Residential Property Tribunal does not routinely award costs against a losing party.

Under the Mobile Homes Act 1983 it is possible that different sites owned and managed by the same local authority could have different pitch fees if residents disagree with proposals for changes. However, we are aware that where local authorities run a number of sites they may already charge different pitch fees depending on the facilities available on the site. Pitch fees may also differ on the same site, for example between single and double pitches.

There is a presumption that the pitch fee will increase or decrease by no more than any retail price index since the last review date. However, the pitch fee can be increased by a higher rate if this restriction is unreasonable; that is, if the money spent by the owner on improvements which were not dissented to by a majority of the residents, were the subject of consultation and were for the benefit of the residents.

Consultation with residents

One respondent thought additional consultation with residents and residents' associations on improvements, as required under the Mobile Homes Act 1983, would not work as there would be no agreement about improvements and this will only make more work for local authorities. At worst residents' associations could, this respondent argued, lead to sites being broken up through disagreements over the way the site is run.

Another respondent however wanted to see the Government doing more to encourage the setting up of residents' associations.

Government response

The Mobile Homes Act requires site owners to take account of representations made in respect of proposals for improvements, but consultation with residents should not be an additional task for many (if not all) local authorities who would consult residents as a matter of good practice. It would be unusual in any consultation for every respondent to agree with what is proposed.

Jurisdiction

Changes planned to the way disputes are resolved under the Mobile Homes Act 1983 were set out in the Communities and Local Government consultation: *A new approach for resolving disputes and to proceedings relating to Park Homes under the Mobile Homes Act 1983 (as amended)*. This consultation proposed that jurisdiction for dealing with the majority of disputes under the Act should be transferred from the county court to the Residential Property Tribunal.

The Government has decided to transfer dispute resolution and other proceedings arising out of the provisions of the Act to Residential Property Tribunals.

A number of groups representing Gypsies and Travellers commented on these plans in response to this consultation, in particular on the fact that Legal Aid may not be available for all cases in the Residential Property Tribunal.

These comments are addressed in the summary of responses to the consultation *Dispute resolution under the Mobile Homes Act 1983 - a summary of responses* which includes an Equality Impact Assessment and an action plan for ensuring that any differential impact on Gypsies and Travellers as a result of these proposals is mitigated.

Sites run by Registered Social Landlords and privately-rented Gypsy and Traveller pitches

Some respondents were concerned that residents on Gypsy and Traveller sites, both public and private, were not aware of the agreement or licence they should have in order to live on their site or pitch. Respondents particularly wanted clarification about whether or not Gypsy and Traveller sites owned privately or by Registered Social Landlords (RSLs) are covered by the Mobile Homes Act 1983.

Government response

The Government wants to ensure that residents on all types of caravan site are aware of their rights and responsibilities. The Mobile Homes Act 1983 already applies to private Gypsy and Travellers sites (although it will not normally be applicable to family owned and occupied sites) and RSL sites, however, we believe that awareness of this is low, and we will consider the best way of increasing awareness.

Part 5

Transit sites

A number of local authority respondents pointed out that the consultation did not address transit sites and they asked for clarification about how this type of site would be affected by the implementation of the proposed amendments to the Mobile Homes Act 1983.

One respondent argued that the Mobile Homes Act 1983 does not facilitate ‘nomadism’ and therefore undermines equalities duties. They argued that the Act assumes the mobile home will be a static caravan, does not allow for exchanges and says nothing about transit, or short term, provision.

One local authority said it maintained a transit site in order to temporarily accommodate people who pass through the area, particularly in the summer, picking up temporary work on the way. These sites are not usually designed for permanent settlement (and planning permission may state that the site cannot be used as a permanent settlement) and local authorities do not want them to become unavailable to other people who want to use them as temporary accommodation. If these sites do become unavailable there is a risk that unauthorised camping could increase.

Government response

The Government agrees that applying the full implied terms of the Act to transit sites would undermine the purpose of such sites. We have considered how this issue should be reflected in the Order and made further enquiries with the National Association of Gypsy and Traveller Liaison Officers and with local authorities that have told us, through their caravan count return, that they have transit sites and/or pitches.

Six local authorities and the National Association of Gypsy and Traveller Liaison Officers responded to the Government’s enquiries on transit sites.

The Act will apply to transit pitches but we plan to dis-apply certain implied terms in the Act in relation to these pitches to help ensure that they are able to continue to fulfil their important role. **Transit pitches will have different implied terms to residential pitches and as a consequence, a different written statement.**

Definition of ‘transit accommodation’

In order to provide regulations specifically for transit pitches it is necessary to define them. We asked those we contacted to indicate their preferred definition of ‘transit accommodation’ from two options:

Option 1
"’transit accommodation’ means accommodation provided for a fixed period of up to 3 months, renewable for further periods of up to 3 months, up to a maximum total duration of [6 months/12 months]"

Option 2
“’transit accommodation’ means accommodation provided for a fixed period of up to 3 months, renewable for further periods of up to 3 months, and under which there is no intention for the person to station the mobile home for an indefinite period on the site."

Of those that responded directly to this question, two respondents opted for Option 1 arguing that it provided more certainty and two opted for Option 2 as it provided more flexibility. A fourth respondent disagreed with both options but argued that the time limit for this accommodation should be 3 months.

Respondents confirmed that where there was a time limit for staying on their transit pitches the limit set locally was anything up to 3 months. One respondent told us that their licence was open-ended.

One respondent wanted the renewal period to be ‘in exceptional circumstances’ only. Three respondents wanted the regulations to include a time frame during which there could be no return to the pitch which ranged from 6 to 18 months.

Three respondents specifically mentioned that their transit sites had planning permission restricting the use of the site to non-permanent accommodation.

The majority of respondents were concerned that there should be a limit on the length of stay. One respondent argued that the reliance on ‘intention’ in Option 2 was not robust enough. One respondent did think that it would be possible for local authorities to show they had no intention of allowing indefinite stays.

Government response

The Government plans to define transit accommodation as a ‘transit pitch’ rather than ‘transit accommodation’ as this is a term that is likely to be more widely understood.

After considering the responses received, we plan to define a ‘transit pitch’ in the regulations as a pitch where the agreement relating to the occupation of the pitch is for a fixed period of up to 3 months.

Local authorities have told us that licences on transit pitches are sometimes open-ended – allowing the resident to stay as long as they like until another person wants to move on to the site. It is likely that under the Mobile Homes Act 1983 these agreements would be regarded as agreements for permanent accommodation. Therefore, local authorities who offer open-ended licences on their transit pitches may wish to consider renegotiating these licences before section 318 comes into force.

The Government plans also to include an implied term providing that where there is a planning permission which restricts occupation of the site any agreement granted may not extend beyond that restriction.

If local authorities consider that it is necessary to include a timeframe for return to the site, this is a policy that should be set by the individual local authority rather than in the implied terms of the Act.

This means that for transit pitches:

- there would be an agreement to station the mobile home on the site
- the owner would have to provide a written statement of the terms of the agreement
- the terms of the agreement would include certain implied terms
- the agreement would be binding on any person that succeeds the site owner
- if the resident named on the agreement died during the period of the agreement, those entitled to, could succeed to the agreement but only for the remainder of its fixed term.

As on permanent pitches, licences held by residents living on transit pitches on the day section 318 comes into force, will have the implied terms for transit pitches incorporated into them and the terms of the licence will become the express terms of the agreement.

Implied terms for transit pitches

We also plan to dis-apply certain implied terms in Part 1 of Schedule 1 to the Mobile Homes Act 1983 to transit pitches. We originally proposed leaving, as a minimum, the three implied terms set out below. This would have essentially mirrored the provisions on licences in the Caravan Sites Act 1968.

Duration of agreement
1. The right to station the mobile home on land forming part of the protected site shall subsist until the agreement expires, or is determined under paragraph 2 or 3 below.

Termination by occupier
2. The occupier shall be entitled to terminate the agreement by giving not less than four weeks' notice to the owner.

Termination by owner
3. The owner shall be entitled to terminate the agreement by notice given not less than four weeks before the date on which it is to take effect.

Respondents did not agree with the proposed implied terms on termination. They argued that the four weeks notice period for the site owner would not work on transit sites as it would constrain local authorities who wanted to terminate agreements more quickly, particularly in the event of anti-social behaviour. They also argued that a four week notice period for termination by the occupier did not reflect the reality on transit sites where residents are currently able to give much shorter notice.

We also asked whether any of the other implied terms in the Mobile Homes Act 1983 could be equally applicable to transit provision – in particular paragraph 7 about overpayments and those terms (paragraphs 11 -15) on quiet enjoyment of the mobile home, and the owner's right of entry to the pitch.

One local authority did not agree with the proposal to apply further implied terms to transit pitches, while two others (of the three who answered this question) were happy for the additional terms mentioned to be included – one suggested additional terms that it felt would be applicable.

One respondent wanted the regulations to state that only touring caravans can be stationed on transit sites, not static caravans.

Government response

After consideration of these responses we plan for the implied terms on termination for transit pitches to be as follows:

Early termination by occupier
The occupier may terminate the agreement before the expiry of the fixed period set out in the agreement by giving written notice.

Termination by owner
The owner may terminate the agreement before expiry of the fixed period set out in the agreement:

(a) without being required to show any reason, by giving written notice not less than four weeks before the date on which that notice is to take effect, or

(b) forthwith where the occupier has breached a term of the agreement and after service of a notice to remedy the breach, has not complied with the notice

within a reasonable time, and the owner considers it reasonable for the agreement to be terminated.

Possession orders, where required, would continue to be granted by the Courts under the provisions of the Caravan Sites Act 1968. Where termination proceedings are already ongoing under the licence when section 318 commences transitional provisions would provide for those proceedings to continue, as on permanent residential pitches.

In addition to the implied terms already highlighted, we plan to apply the following additional implied terms in the Mobile Homes Act 1983 to transit pitches:

- where there is a planning permission which restricts occupation of the site any agreement granted may not extend beyond that restriction
- recovery of overpayments by occupier in the event of early termination of the agreement
- quite enjoyment of the mobile home
- owner's right of entry to the pitch
- owner's name and address.

While in theory static caravans could be stationed on a transit site, the local authority will have the right to deny these caravans entry to a transit site and can indicate in the express terms that transit pitches are not open to static caravans. By definition all caravans must be capable of being moved and it would be difficult to satisfactorily distinguish between static and touring caravans in the regulations.

Part 6

List of respondents

Consultation responses were received from:

Eden District Council
Worcestershire County Council
Dorset County Council
Swindon Borough Council
Community Law Partnership
Gypsy Council Romani Kris (Hughie Smith)
Newark and Sherwood Homes
Bolton Council
UK Association of Gypsy Women
Tonbridge and Malling Borough Council
Pat Niner
Taunton Deane (Somerset Strategic Housing Partnership)
Gateshead Council
Brighton and Hove
Portsmouth City Council
Leeds City Council
Surrey Traveller Community Relations Forum
Barnsley Metropolitan Borough Council
Derbyshire Gypsy Liaison Group in agreement with:
- The National Federation of Gypsy Liaison Groups
- East Midlands Gypsy and Traveller Forum
- West Midlands Gypsy and Traveller Forum
- Northern Network
- Cheshire Voice
- Leeds Gate
- Society for the Promotion & Advancement of Romany Culture
- Southern Network
- Star Hill Association
- South Western Gypsy Liaison Group and Romany Advisory Service
- East Anglia Gypsy Council

North Housing Market Area West Midlands Authorities
Dartford Borough Council
London Borough of Sutton
London Borough of Hammersmith & Fulham
London Borough of Kensington and Chelsea
Wiltshire County Council
Mole Valley District Council
Independent Park Homes Advisory Service
Herefordshire Council
Irish Traveller Movement in Britain
Lancaster City Council
Telford Council

East Cambridgeshire District Council
Law Society
David Watkinson/Marc Willers - Barristers (HLPA)
Equality and Human Rights Commission
Friends Families and Travellers
Redcar and Cleveland Borough Council
Stockton on Tees Borough Council
Northampton Borough Council
London Borough of Tower Hamlets
Cheshire Partnership
Kent County Council
London Gypsy and Traveller Unit
York City Council
Bristol City Council
National Association of Gypsy and Traveller Liaison Officers
Hackney Homes
Harrogate Borough Council
London Borough of Brent
Epsom and Ewell Borough Council
Birmingham City Council
South Norfolk Council

Further responses on the issue of transit sites were received from:

The National Association of Gypsy and Traveller Liaison Officers
Stoke on Trent City Council
Wiltshire County Council
Brighton & Hove City Council
Swindon Borough Council
Fenland District Council
Halton Borough Council