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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under section 2B of the Mobile Homes Act 1983 (“the 1983 Act”), which was inserted by section 170(1) of the Housing (Scotland) Act 2006. It amends Schedule 1 to the 1983 Act (“Schedule 1”), which was also amended by section 169 of the Housing (Scotland) Act 2006. Schedule 1 contains terms which, by virtue of section 2 of the 1983 Act, are implied into agreements to which section 1 of the 1983 Act applies. Section 1 applies to agreements under which a person is entitled to station a mobile home on a protected site and occupy it as his or her only or main residence.

This Order applies in relation to agreements for the stationing of mobile homes in Scotland.

This is the first Order to be made in Scotland under section 2B of the 1983 Act. In accordance with subsection (4) of that section, article 1(3) of this Order provides that the implied terms for which this Order provides are implied into agreements made before the day on which this Order comes into force, as well as to agreements made on or after that day.

In addition to minor and drafting amendments, this Order amends Schedule 1 to the 1983 Act as follows:

Articles 2(2) and (3) clarify that the court, on an application by the owner, is to determine the date at which an agreement may be terminated.

Article 2(3) also amends paragraph 5 of Schedule 1 to require the court, before it makes an order under that paragraph terminating an agreement on the basis that the occupier is not occupying the mobile home as his or her only or main residence, to be satisfied that it is reasonable for the agreement to be terminated.

Article 2(4) enables owners to apply to the court to terminate an agreement at a date to be determined by the court, if the mobile home is having a detrimental effect on the amenity of the site. Again before making an order the court must be satisfied that it is reasonable for the agreement to be terminated.

Article 2(5) substitutes a new paragraph 7 into Schedule 1, which places a duty on the owner to repay to the occupier that part of any payment made to the owner which relates to a period after the date of termination determined by the court.

Article 2(6) applies when an occupier wishes to sell their mobile home. New sub-paragraph (A1) provides that this paragraph applies to all agreements with the exception of any agreement which relates to a pitch on a local authority gypsy and traveller site or a registered social landlord gypsy and traveller site. The occupier is enabled to sell the mobile home and assign the agreement without the consent of the owner. This is subject to the payment of a commission on the sale at a rate not exceeding the rate specified in an order by Scottish Ministers. Until the commission is paid neither the sale nor assignment will have effect. In terms of new sub-paragraph (2B) the owner cannot require any further payment in connection with the sale.

Articles 2(7) and (8) substitute new paragraphs 9 and 10 and insert new paragraphs 11 to 32. Paragraph 9 applies to all agreements with the exception of any agreement which relates to a pitch on a local authority gypsy and traveller site or a registered social landlord gypsy and traveller site. It sets out that the occupier is entitled to gift the mobile home, and to assign the agreement, to a member of the occupier’s family. The occupier must provide the owner with such evidence as the owner, acting reasonably, requires to confirm that the person to whom the occupier proposes to gift the mobile home and to assign the agreement, is a member of the occupier’s family. The new occupier must notify the owner of the gift and assignment as soon as practicable. Until the owner has received that

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evidence and notification neither the gift and assignation will have effect. The owner cannot require a payment in connection with the gift and assignation.

New paragraph 10 concerns the re-siting of a mobile home and provides that an owner can only require a mobile home to be stationed on another pitch if the court is satisfied that the other pitch is broadly comparable and that it is reasonable for the mobile home to be stationed there, or if the mobile home needs to be moved so that the owner can carry out essential repair or emergency works. If the mobile home is moved so that the owner can replace or carry out repairs to the base on which the mobile home is stationed, the occupier can require that the mobile home is returned to the original pitch on completion of the works. The owner is required to pay all the costs and expenses incurred by the occupier in connection with their mobile home being moved to and from the other pitch.

The order inserts new paragraphs 11 to 32. Paragraph 11 provides that an occupier is entitled to undisturbed possession of the mobile home during the continuance of the agreement. New paragraphs 12 to 15 set out the owner's rights to enter the pitch (but not the mobile home). New paragraphs 16 to 23 describe the procedure to be followed when reviewing and determining the new pitch fee. These provide for the review of the pitch fee as at the relevant date and for application to the court in default of agreement as to the new pitch fee. New paragraph 24 describes the occupier's obligations to the owner and new paragraphs 25 to 28 describe the owner's obligations to the occupier. Paragraph 25 includes a requirement to consult the occupier and any qualifying residents' association about improvements to the protected site. Paragraphs 29 and 30 specify the owner's obligation to inform the occupier and any qualifying residents' association of his or her name and address. New paragraph 31 lists the criteria that a residents' association must satisfy if it is to be a qualifying residents' association for the purposes of Schedule 1.

Article 3 amends Part 2 of Schedule 1 to omit material that the order makes unnecessary.

Article 4 contains transitional and saving provision. Article 4(3) states that the terms implied by the Order will only have effect in relation to times falling on or after 1st September 2013. Article 4(4) provides that, if any express term of the agreement or any term implied by virtue of section 2(2) of the 1983 Act is inconsistent with the terms implied by virtue of the amendments made by this Order, the inconsistent term is to cease to have effect to that extent on and after 1st September 2013.

A full regulatory impact assessment as to the costs and benefits of the order has been carried out and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Housing Options and Services Unit, Scottish Government, Victoria Quay, Edinburgh.