

**EXPLANATORY MEMORANDUM TO
THE MOBILE HOMES (SELLING AND GIFTING) (ENGLAND)
REGULATIONS 2013**

2013 No. 981

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations set out the detail of new procedures for the selling and gifting of mobile homes, under provisions inserted into the Mobile Homes Act 1983 (“the 1983 Act”) by the Mobile Homes Act 2013 (“the 2013 Act”). These procedures are designed to make it easier for mobile home owners to sell or gift (give away) their homes without interference from the site owner, and also to help potential purchasers of a mobile home to ensure they have all the information they need in order to make an informed decision regarding the purchase.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The 2013 Act amends the law in relation to mobile homes, by making amendments to the Caravan Sites and Control of Development Act 1960, the Caravan Sites Act 1968 and the 1983 Act. This instrument is the first of a number of implementing statutory instruments. The amendments to the 1983 Act come into force two months after Royal Assent rather than by commencement order following an amendment which was made to the Bill at Commons Report stage. This means that the implementing secondary legislation, in particular the regulations dealing with the selling and gifting of mobile homes, needs to be in place quickly. Further statutory instruments will follow in order to implement the full details of the new provision in relation to site rules and pitch fees.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 There are around 85,000 mobile homes on about 2000 sites in England. Prior to the amendments to the 1983 Act, introduced by the 2013 Act, an owner of a home could sell the home in situ in the open market but any purchaser needed to be approved by the owner of the site. Approval was not to be unreasonably withheld and there was a right of appeal to a tribunal if it was. Under the 1983 Act home owners could also gift (give away) a home to members of their own family, but as with selling a home, the site owner had to approve the person to whom the home was gifted.

7.2 There is evidence of widespread abuse of the approval process by some site owners who exploit it to prevent residents from selling their homes, so that they can acquire the home for a fraction of its true value. They then sell it themselves at the full market value or in the case of older homes with less value, replace it with a new home and sell that in the open market. In its report published on 20 June 2012, following an inquiry into the mobile homes sector, the DCLG select committee recognised that sale blocking was the most common problem in a sector in which “malpractice is widespread”¹.

7.3 The 2013 Act addresses this problem by amending the 1983 Act so that a site owner’s approval of a purchaser, or of a person to whom a mobile home is to be gifted, is no longer required and the site owner is no longer involved in the assignment of the pitch agreement, where a mobile home is sold or gifted under an agreement made or assigned on or after 26 May 2013 (the date the relevant provisions in the 2013 Act come into force). However, where the home is being sold or gifted for the first time under an agreement which was made before 26 May 2013 (referred to as an existing agreement), the site owner must be notified of the proposed sale or gift.

7.4 In such cases, where the site owner has reason to believe that the proposed new occupier will not be able to meet certain site rules the owner can apply to a tribunal for an order prohibiting the sale or gift from going ahead, on the grounds set out in these regulations. This provides a safeguard to the existing contractual rights of site owners, by allowing them to retain a role in ensuring that the people who move onto their sites are able to comply with the site rules. To remove this right retrospectively could be considered disproportionate.

7.5 As these changes mean that sales can proceed without being overseen by the site owner, it is necessary for home owners, potential purchasers, new occupiers and site owners to be aware of their obligations, in order for the rights of the parties to be protected and sale transactions to run smoothly. This

¹ HC177-I 20June 2012 <http://www.parliament.uk/business/committees/committees-a-z/commons-select/communities-and-local-government-committee/inquiries/parliament-2010/park-homes/>

is particularly important given that most mobile homes are sold without the parties obtaining legal advice. The statutory requirements set out in the regulations are designed to ensure these objectives are met.

7.6 The Regulations specify the documents and information that must be provided to a proposed occupier prior to the sale of a mobile home. This is to ensure that purchasers have all the information they need in order to make an informed purchase. The buyer's information form is designed to make this process easier for both the buyer and the seller, by setting out the information that must be included.

7.7 The Regulations also set out the information that must be included in a notice of proposed sale and notice of proposed gift to a site owner, when seeking to sell or gift a home under an existing agreement. Supplementary forms are included to help the parties ensure they provide all the necessary information. The limited grounds upon which a site owner can apply to a tribunal for a refusal order in relation to the sale or gift of a mobile home are also set out.

7.8 Following the sale or gift of a mobile home, the Regulations specify the procedural steps that should be followed by the parties in relation to the assignment of the agreement and where there has been a sale, the payment of commission. Again, forms are provided to assist with this process.

7.9 Finally, the Regulations make certain limited provision in relation to site rules. They specify as 12 months the period during which site rules made by site owners prior to commencement on 26th May will continue to have effect. This ensures that (subject to the provision made in regulation 12 explained below) those rules will continue to have effect until site owners are able to make new site rules in consultation with residents under the provisions inserted into the 1983 Act by section 9 of the 2013 Act. The Regulations that will fully implement those provisions are currently being worked on and the Department intends to publish them shortly. Also in relation to site rules, the regulations (regulation 12) set out that site rules which specify certain requirements in relation to the sale or gift of a mobile home are of no effect. This is in order to prevent site owners from relying on such rules to make it more difficult for occupiers to sell (or gift) their homes.

8. Consultation outcome

8.1 In 2012, the Communities and Local Government Select Committee held an inquiry into the park homes sector, as referred to in paragraph 7. In its report published in June, the Committee commented that the most common problem in the sector was sale blocking. The Government consulted in the spring of 2012 on options to reform the buying and selling process, in particular to combat sale blocking. In the response to the Government's consultation paper, 208 respondents said they were aware of sales being blocked while as opposed to 52 who said they were not aware of the practice. When asked whether the law needed to be reformed to prevent this practice 259 responses, including a majority of site owners who responded to this

question, agreed there was a need to do so. Only five respondents said there was no need.

8.2 The consultation set out three alternative options to prevent sale blocking and sought views on the favoured option. These were:

A - The requirement to obtain the site owner's approval of a purchaser would be abolished.

B - The purchaser would be deemed to be approved unless, on application of the site owner, a tribunal declares him unsuitable.

C - The approval requirement would remain in place, but where there is evidence of abuse, the home owner could apply to a tribunal to request the tribunal to exercise that role instead of the site owner.

8.3 Overall, most respondents supported option A, removing the site owner's role altogether. The majority of home owners and other professionals favoured this option. However, all site owners and a few local authorities opposed it. Many who supported it did so because it would remove the opportunity for site owners to engage with prospective buyers to put them off. Others thought it was the fairest system since home owners should not have to seek permission to sell their own homes. Some also thought this would be the quickest and cheapest of the three options. Option B was supported by most local authorities and a significant number of home owners. It was also supported (subject to modification) by one trade body and a major site operator. It was seen as a compromise option because it retained the role of the site owner (thereby ensuring that the buyer would comply with the site rules) whilst providing an adequate deterrent to those who routinely blocked sales by requiring them to challenge a purchaser's suitability at the tribunal. Option C was favoured in the main by site owners, although a handful of home owners supported it too. It was preferred by site owners because they retained their existing role in the process, and would be able to ensure that prospective purchasers were suitable and understood their rights and obligations.

8.4 The Government decided that option A would be an effective means of eradicating sale blocking. In the long term, there should be no role for site owners in approving sales on the change of ownership of the mobile home. The Regulations therefore implement that option for new agreements entered into by site owners and on the second assignment of an existing agreement, following the coming into force of the 2013 Act.

8.5 However, the Government also considered there needed to be transitional arrangements for residents selling for the first time under agreements entered into prior to the coming into force of the new provisions. In such cases there is a legitimate expectation that the site owner should be informed of a proposed sale. The Government, therefore, decided that under these agreements the site owner must be notified of the proposed sale and in certain limited circumstances relating to the potential buyer's compliance with the site rules, the owner should be able to apply to a tribunal for an order prohibiting the sale from going ahead, as referred to in paragraph 7.4.

8.6 Gifting of a home is more rare than selling, but it was decided to consult on changes to the process along with those relating to selling. The same three options relating to the role of the site as applied to selling were considered and the Government decided to adopt the same new procedure for gifting as for selling.

8.7 The consultation response document can be downloaded from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11086/2238637.pdf .

8.8 There has no formal consultation on these Regulations given the tight timetable and the need to bring them into force at the commencement of the relevant sections of the 2013 Act, following the amendment to the commencement provisions of the Bill which was accepted at Report in the House of Commons. However, there has been informal dialogue with key partners representing the industry and residents which have helped inform the drafting of the Regulations.

9. Guidance

9.1 No formal guidance is planned to be published. However, DCLG will be issuing leaflets targeted at all home owners, explaining the changes introduced by 2013 Act and our fact sheets on the website will be updated accordingly. DCLG also plans to launch a telephone advice line operated by the Leasehold Advisory Service through which site owners and residents will be able to obtain initial advice on their rights and responsibilities.

10. Impact

10.1 No separate Impact Assessment has been prepared for this instrument as the measures in it do not directly impact on business or the public sector. An Impact Assessment has been prepared for the changes introduced by the 2013 Act. This envisages an overall net benefit of £1.87 million per annum and cost to business by measures directly impacting of £0.2 million. A copy of the Impact Assessment can be downloaded from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/15288/121120_4_MHA_83_IA_for_publication_final_3_.pdf .

10.2 Transitional arrangements have been adopted in relation to the first time sale of a home stationed on a pitch under an agreement made before 26 May 2013 (see paragraph 8.5).

11. Regulating small business

The measures in these regulations do not regulate small businesses, although the overall scheme in the 2013 Act does impact upon them as most mobile home site owners are small or micro businesses. Clearance from BIS and HM Treasury was obtained to bring into force certain sections of the Act ahead of

the end of the moratorium on regulation of micro businesses on 31st March 2014.

12. Monitoring & review

A review of all the amendments brought in by 2013 Act will be carried out in 2017, three years after commencement of the licensing provisions in sections one to seven of the Act, which will come into force on 1st April 2014. The Department will keep these Regulations under review to ensure sales and gifts proceed smoothly and without undue interference from site owners. We will measure their success by the number of open market sales that proceed and the number of cases that involve litigation.

13. Contact

Robert Skeoch at the Department for Communities and Local Government
Tel: 0303 444 3701 or email: Robert.skeoch@communities.gsi.gov.uk can answer any queries regarding the instrument.