

National Assembly for Wales
Bill Summary

Holiday Caravan Sites (Wales) Bill

May 2014

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Enquiry no: 14/0977

Paper number: 14/021

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Holiday Caravan Sites (Wales) Bill

1. Introduction

Introduction date: 17 March 2014

Member in charge: Darren Millar AM, Welsh Conservatives

Assembly Committee undertaking Stage 1 scrutiny of the Bill: Communities, Equality and Local Government Committee

Stage 1 reporting deadline: 24 October 2014

On 24 April 2013, Darren Millar AM, Welsh Conservatives, was successful in his ballot to introduce a Proposed Member Bill relating to holiday caravan sites. On 19 June 2013 the National Assembly for Wales agreed¹ that Mr Millar could lay a Bill based on the pre-ballot information he had provided. Following two consultation exercises, the first on the policy objectives of the Bill from July to September 2013² and the second on the draft Bill from December 2013 to January 2014³, Mr Millar introduced the *Holiday Caravan Sites (Wales) Bill*⁴ on 17 March 2014.

The scrutiny of this Bill is remitted to the Communities, Equality and Local Government Committee. The Committee will consider the Bill at stage 1 beginning on 7 May 2014 and should report to the Assembly on Stage 1 by 24 October 2014. Stage 2 proceedings should be completed by 6 February 2015, subject to the general principles of the Bill being agreed by the Assembly.

The Committee has issued a **call for evidence**, which closes on **23 May 2014**.

The aim of the Bill is to prohibit people from using holiday caravans as their permanent residence by requiring them to prove that their main residence is located elsewhere. The Explanatory Memorandum states that as well as often being in breach of planning conditions, site licence conditions and individual

¹ National Assembly for Wales, [RoP](#) 19 June 2013 [accessed 30 April 2014]

² National Assembly for Wales, [Consultation on Holiday Caravan Sites \(Wales\) Bill](#), 29 July 2013 [accessed 31 March 2014]

³ National Assembly for Wales, [Public consultation on Holiday Caravan Sites \(Wales\) Bill](#), 12 December 2013 [accessed 31 March 2014]

⁴ National Assembly for Wales, [Holiday Caravan Sites \(Wales\) Bill](#), 17 March 2014 [accessed 31 March 2014]

licence agreements, the permanent residence of holiday caravans has a negative impact on the tourism industry and local communities, and can result in the underfunding of public services as much of this population is hidden from official statistics.

The Bill gives local authorities new duties and powers to deal with occupiers who fail a residency test and to ensure that holiday caravan sites are safe and well managed according to their licence conditions.

Local authorities are currently required to grant a caravan site licence under the *Caravan Sites and Control of Development Act 1960*. The *Mobile Homes (Wales) Act 2013* is concerned with the regulation of mobile homes. The Explanatory Memorandum to the Bill states:

19. The Caravan Sites and Control of Development Act 1960 will no longer have any application in Wales. The Residential aspect of the 1960 Act has already been removed by the Mobile Homes (Wales) Act 2013 in relation to Wales. This Bill will therefore disapply the remaining aspects of the 1960 Act in relation to Wales.

2. The Bill

The Bill contains 71 Sections, divided into 6 Parts, and three Schedules. Each Part is summarised below.

2.1. Part 1 Introduction

Part 1 provides an overview of the Bill and definitions of key terms, including the meaning of the terms ‘holiday caravan’, ‘holiday caravan site’, ‘owner’ and ‘occupier’.

2.2. Part 2 Licensing

Part 2 relates to the licensing of holiday caravan sites. Regarding **site licences** it:

- Prohibits the use of land as a holiday caravan site without a site licence, sets out the requirements for site licence applications to local authorities and allows local authorities to charge a fee for a site licence;
- Requires that any application must include a declaration that whoever is to be the manager of the site is a ‘fit and proper person’ to do so;
- Provides that licences granted under the Caravan Sites and Control of Development Act 1960 (the 1960 Act) Act will continue to be valid for the purposes of this Bill, but will only remain valid if the local authority is satisfied that the manager is a fit and proper person. Local authorities must also modify existing 1960 Act licences so that the licences satisfy the requirements of this Bill. From the date the relevant section comes into force, local authorities have 12 months to modify existing licences and to assess the manager;
- Sets out the timescales for issuing a site licences and prohibits a local authority from issuing a licence to a person whose site licence has been revoked in the last three years;
- Provides that site licences continue indefinitely unless terminated.

Regarding **conditions of site licences** it:

- Allows a local authority to attach conditions when it issues a site licence, including the requirement to undertake any works on a caravan site as specified by the local authority.
- Requires that copies of the site licence and the certificate of public liability insurance are displayed on site.
- Allows Welsh Ministers to specify model standards with respect to certain aspects of holiday caravan sites. Local authorities must have regard to these model standards when considering attaching conditions to a site licence.
- Requires local authorities, in considering conditions to attach to a site licence, to consult the fire and rescue authority and the relevant public authority with responsibility for flood risk management.
- Introduces a new requirement for local authorities to inspect holiday caravan sites at least once every three years to monitor compliance with site licence conditions. The date of commencement of this duty will be set by Welsh Ministers in regulations, following appropriate consultation.
- Requires local authorities to review site licence conditions at intervals of not more than five years.
- Allows local authorities to vary conditions of a site licence if the holder of a site licence makes an application to do so or if the local authority discovers new information or considers there has been a change of circumstances.
- Sets out an applicant's right of appeal to a magistrate's court against site licence conditions or the variation of licence conditions.

Regarding **breach of conditions** it:

- Allows local authorities to give a fixed penalty notice, or a compliance notice, to the owner of a holiday caravan site if they are failing or have failed to comply with a site licence condition. Where a fixed penalty notice has been issued, but not paid, a local authority may withdraw the fixed penalty notice and issue a compliance notice instead. Fixed penalty notices cannot exceed level 2 on the standard scale for summary offences (currently £500).

Compliance notices will require the site owner to take steps to ensure the licence conditions are complied with. Failure to do so will be an offence and will be subject to an unlimited fine.

- Allows Welsh Ministers to issue guidance to local authorities as to the considerations they should take into account in deciding which type of notice to issue. The Bill requires local authorities to have regard to any such guidance issued.
- Provides that, where the site owner has two or more convictions for failing to comply with compliance notices, the local authority can apply to the court for the site owner's licence to be revoked.
- Allows a local authority to impose a charge on a holiday caravan site owner in order to recover expenses incurred in connection with preparing and serving the compliance notice. Where the notice is not complied with, and the site owner is convicted, the local authority may, after giving reasonable notice to the owner, take action itself to ensure that the licence conditions are met. Local authorities may also undertake emergency action, again after giving reasonable notice to the owner, where a site licence condition has not been complied with and there is imminent risk of serious harm to the health and safety of any person who may be on the land. The Bill provides that in both these instances local authorities can impose a charge on the owner of the land as a means of recovering expenses.
- Sets out the appeal process in relation to the issuing of a compliance notice the local authorities' powers to take emergency action and the power to demand expenses.

Regarding the **transfer of site licences** it:

- Provides for the transfer of site licences, subject to the consent of the local authority, following a change of ownership of the land.
- Sets out the duty of a licence holder to allow a site licence to be altered.

Regarding the **fit and proper person test** it:

- Introduces a new requirement for the manager of a caravan site to be a 'fit and proper person'.
- Sets out that the owner of land may not allow any part of the land to be used as a holiday caravan site unless the local authority is satisfied that the owner (or a person appointed by the owner to manage the site), is a fit and proper person to manage the site. Contravention of this requirement is an offence liable on summary conviction to a fine.
- A manager will include the most senior person with responsibility for management of the site, and any person with responsibility for day-to-day management of the site. 'Managing' also includes giving instructions about the management of the site.
- Provides that where there is not a fit and proper person managing the site a local authority may apply to a magistrate's court for an order revoking the site licence.
- Provides that, when considering whether the fit and proper person test conditions have been met, the local authority must have regard to all matters that it considers appropriate and must also have regard to whether there is any evidence to show that the person has:
 - Committed offences involving fraud, dishonesty, violence, firearms, drugs or sexual offences;
 - Practised discrimination in the course of their business;
 - Contravened housing law (including caravans) or landlord and tenant; or
 - Contravened any provision of the law relating to trading standards.
- Allows Welsh Ministers to make regulations to vary the evidence that a local authority must have regard to when making a decision under this section.
- Requires that where a local authority decides that a person is not a fit and proper person, it must notify the person of the reasons for that decision and

of the person's right of appeal to a magistrates' court within 28 days from the date of its decision.

The remainder of Part 2:

- Gives local authorities the power to appoint an interim manager of a holiday caravan site in certain circumstances, including situations where licence conditions are not being adhered to and there is not a fit and proper person managing the site.
- Gives local authority officers the power of entry to a holiday caravan site, subject to certain conditions.
- Allows the occupier of a holiday caravan to apply to a magistrate's court for a repayment order to recover certain payments made to the owner of a holiday caravan site if the site owner has been convicted of operating a site without a licence.
- Allows local authorities to make an annual charge to site owners for their site licence. Before charging a fee, the local authority must prepare and publish a fees policy. When setting fees the local authority may not take into account any costs incurred in exercising any enforcement powers under sections 20 to 30. Those enforcement costs can be recovered separately and directly from the relevant site owner.
- Requires all local authorities to keep a register of site licences which is available for public inspection.
- Provides that Part 2 of the Bill does not apply to Crown Land.

2.3. Part 3 Residence Test

Part 3 introduces new requirements which seek to ensure that no person occupies a holiday caravan as their permanent or main residence. In doing so it:

- Exempts the site owner, persons employed on the site that need to live there for their work, and the site manager from this restriction.
- Requires local authorities to include a site licence condition requiring to site owner to carry out residence tests to establish whether occupiers are using

holiday caravans as an only or main residence. In this Bill, ‘**occupier**’ includes owners of holiday caravans who enter into a holiday caravan agreement with the site owner for more than six consecutive weeks, and people who are entitled to occupy a holiday caravan for more than six consecutive weeks.

- Requires occupiers to cooperate with a residence test and provide at least two of the following documents as evidence in order to pass the test: their sole or main residence for council tax purposes; address of a school attended by children of the occupier who live with them; the occupiers entry in an electoral role; details of registration with a GP; their address for correspondence with a financial institution, a utility provider or HMRC.
- Requires site owners to notify the local authority of any residence test failure as soon as possible and to keep the evidence provided in relation to the test and to make it available to the local authority at all reasonable times.
- Requires local authorities to inspect that evidence at least once a year.
- Provides for the timing of the first residence test and subsequent tests.
- Requires that if a local authority believes that an occupier has failed the residence test it **must** give a notice to the occupier which sets out the reasons for the failure, the requirement to cease occupying the caravan as an only or main residence, and the right of appeal. The local authority **may** also give the occupier a fixed penalty notice (up to £500).
- Sets out that failure to comply with a residence test failure notice is an offence liable on summary conviction to an unlimited fine.
- Requires local authorities to inform site owners of a residence test failure notice and allows local authorities to give instructions to site owners to take action in respect of the occupier who has failed the residence test. It is an implied condition of the site licence that the site owner complies with those instructions.

2.4. Part 4 Holiday and Caravan Agreements

Part 4 is intended to provide additional protection to occupiers and owners of holiday caravans and site owners by setting out particulars and implied terms of agreements. In doing so it:

- Requires the owner of a holiday caravan site to provide a proposed occupier with a written statement.
- Requires that, before making a holiday caravan agreement, the owner of the site must provide the proposed occupier with a written statement that provides basic information about the proposed agreement. This information will include, amongst other things, details of start and end dates of the agreement, periods during which the caravan may be occupied and details of any commission arrangements which may require a payment to the site owner on sale of the holiday caravan.
- Sets out a range of implied terms to holiday caravan agreements which will apply to all agreements regardless of any express terms. The implied terms include a condition that all requirements in relation to the residence test are complied with.
- These provisions will only apply to holiday caravan agreements that permit a holiday caravan to be stationed on a site for more than six consecutive weeks, or where an occupier will be entitled to occupy a caravan **owned by the site owner** for a period of more than six consecutive weeks.

2.5. Part 5 Protection from Harassment

Part 5 (Protection from Harassment) applies to all occupiers, regardless of how long they station or occupy a holiday caravan on a site and:

- Provides that it is an offence to harass occupiers of holiday caravans. Harassment includes depriving occupiers of occupation of a holiday caravan, interfering with the peace and comfort of occupiers with the intention that they abandon occupation of the holiday caravan (or providing false or misleading information with the same intention).

- States that the Protection from Eviction Act 1977 does not apply to holiday caravans stationed on a holiday caravan site.
- Provides that a person found guilty of harassment under this section is liable to a fine and / or imprisonment.

2.6. Part 6 Supplemental and General

Part 6 of the Bill sets out a number of supplemental and general provisions including:

- It is an offence to make false or misleading declarations and to provide false or misleading information. It is also an offence to fail to provide information or notifications required under the Act.
- Welsh Ministers may issue guidance to local authorities to guide them in the performance of their functions under the Act and local authorities must have regard to this guidance.
- It makes general provision for orders and regulations under the Act. In particular, it provides that any power for Welsh Ministers to make orders or regulations is to be made by statutory instrument except where specified otherwise.

3. Financial implications of the Bill

According to the EM, the preferred option within the Bill will give rise to costs in Year 1 of £1,266,000 and annual costs of £277,000 for the subsequent four years. The total minimum cost over the first five years of the Bill is estimated to be around £2,374,000.

The EM states that these new costs would fall on site owners, local authorities and the Welsh Government.

3.1. Site Owners

The EM details the costs that will fall to site owners as; the site licence fee, the fit and proper person test, administrative costs associated with the licence application and maintenance of the residence test as well as the cost of appeals. The EM suggests that the largest costs fall to site owners in terms of site licence fees, which will be paid to local authorities, £760,000 in the first year and £110,000 per annum in each of the subsequent years. Transitional costs in the first year are estimated to total £1.1 million with the cost over the first five years of the Bill totalling almost £2.1 million for site owners.

3.2. Local Authorities

Costs to local authorities include the cost of licensing and monitoring the sites, court costs and training and publicity costs. These are offset to some extent by income from the site licence fee. Transitional costs in the first year are estimated to total £157,000 with the cost over the first five years of the Bill totalling around £250,000. The EM states that hopefully some of the court costs (£165,000) over the five year period will be recoverable.

3.3. Welsh Government

Transitional costs to the Welsh Government of producing eight orders and regulations, two sets of guidance and undertaking familiarisation training for local authority officers are estimated to cost £29,000. The EM states that these costs are based on the School Organisation section of the EM for the Draft School Standard Bill and it anticipates more detailed estimates will be made available when the regulations are drafted and consulted upon.

The EM states that it is difficult to put a financial value on the benefits of the Bill.⁵ The benefits identified by the Bill include those arising from changes to the complex current legal system making it more cost effective for local authorities to monitor and enforce sites effectively and in turn this is expected to improve standards at sites. The EM also states that there will be less people who do not pay council tax accessing services from their local authority and GP. The EM also explains that increased regulation will result in fewer crimes being committed on holiday caravan sites, although no attempt has been made to quantify this. Finally the EM states that the holiday caravan industry will benefit from the reputation of sites in Wales not being affected by falling standards.

⁵ National Assembly for Wales, *Explanatory Memorandum – Holiday Caravan Sites (Wales) Bill*, para 228, 17 March 2014 [accessed 31 March 2014]

4. Response to the Bill

In the plenary debate on 19 March 2014⁶ Darren Millar AM, Welsh Conservatives, set out the purpose of the Bill and stated that it was developed in co-operation with the British Holiday and Home Parks Association and the National Caravan Council which together represent the majority of site owners in Wales. The National Association of Caravan Owners helped to facilitate the engagement of site owners in the development of the Bill. There had also been two public consultations in the process of developing the Bill – firstly on the principles and policies to be addressed in the Bill⁷, and secondly on a draft Bill⁸.

Darren Millar AM argued that the misuse of holiday caravans as main homes, and the lack of enforcement action to stop it, threatens the holiday caravan industry and legislation is therefore required to address it.

The Minister for Housing and Regeneration, Carl Sargeant AM questioned whether the use of holiday caravans for residential purposes was of a sufficient scale to justify what he described as “the seemingly heavy handed approach of legislation”. He believed that the potential cost of the legislation, which falls to site owners, could increase the costs of caravan holidays in Wales, making the industry less competitive. The Minister stated that there is a need during the scrutiny process for a study of the full economic impact of the proposals and the evidence of the need for a Bill.

Darren Millar AM cited a range of statistics to indicate the scale of the problem but acknowledged that more evidence is needed and said that the Stage 1 scrutiny of the Bill would provide an opportunity to do that. He stated that the costs of implementing the legislation as set out in the Explanatory Memorandum would be around £3.43 per caravan per annum.

⁶ National Assembly for Wales [RoP](#) 19 March 2014 [accessed 29 April 2014]

⁷ National Assembly for Wales, [Consultation on Holiday Caravan Sites \(Wales\) Bill](#), 29 July 2013 [accessed 31 March 2014]

⁸ National Assembly for Wales, [Public consultation on Holiday Caravan Sites \(Wales\) Bill](#), 12 December 2013 [accessed 31 March 2014]

Jocelyn Davies AM, for Plaid Cymru suggested that existing legislation should be able to address the problem if properly enforced and questioned whether caravan site owners should have to enforce what are essentially local authority duties regarding access to public services. She also questioned how non-UK residents would access documentation to prove permanent residence elsewhere.

Darren Millar AM highlighted what he believes are the weaknesses in the current legislation which dates from 1960 and which does not place a duty on local authorities to inspect caravan sites, nor to enforce regulations, and does not provide additional resources to enable this. In addition, he believed the financial penalties for allowing residential use on holiday sites are too low to provide an effective deterrent. He stated that there is a suite of information that could provide proof of permanent residence which would allow people who live abroad to comply with the new legislation.

Peter Black AM, for the Welsh Liberal Democrats who introduced the Bill that became the *Mobile Homes (Wales) Act 2013* suggested that, given the number of people claimed to be permanently resident in caravans, the Bill may have implications for affordable housing and homeless prevention services. He asked what penalties would apply to caravan owners and to site owners where residential occupation was occurring, and about the protection of long term occupiers' rights where changes are made to sites.

Darren Millar stated that research suggested people who misuse their caravans as a main residence tend to be "people of means" who would be unlikely to need affordable housing and that the clarification provided by the Bill about residential use should help prevent homelessness in the future. He said that the maximum penalty introduced by the Bill for failing to comply with a site licence would be £500 and that the Bill would create a new requirement on site owners to consult caravan owners about significant operational changes to sites.

Mark Isherwood AM, for the Welsh Conservatives suggested that, under current legislation, permanent residence in a holiday home breaches planning permission or site licence conditions, with serious legal consequences. Ann Jones AM, for

Welsh Labour expressed concern that duplicating existing legislation risked creating loopholes for unscrupulous site owners to exploit.

Darren Millar AM assured the Assembly that the Bill would introduce a new and modernised licensing process for holiday caravan parks and will not duplicate existing legislation.

Rhun ap Iorwerth AM, for Plaid Cymru expressed concern about the possible impact on sites wishing to cater for touring caravans and about the practicality of local authorities exercising powers of entry with 24 hours' notice where site owners are absent during winter closure.

Darren Millar AM confirmed that the Bill also applies to touring caravans but stated that the residency test would only be applied to people staying on a site for longer than six weeks. The powers of entry are already available under the *Caravan Sites and Control of Development Act 1960* and there is no change to them in the Bill.

Rebecca Evans AM, for Welsh Labour highlighted the *Caravans Act (Northern Ireland) 2011* which makes similar provisions and suggested the experiences there might help inform the development of legislation in Wales.