

Report to Licensing Committee

15th June 2021

By the Head of Environmental Health & Licensing

DECISION REQUIRED



Horsham
District
Council

Not exempt

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020: introduction of the test and amendment to the Fees Policy

Executive Summary

This report details the changes in legislation governing “relevant protected sites”, i.e. permanent residential mobile home sites, following the passing of The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 – ('the Regulations'). These Regulations require that a local authority must be satisfied that the owner of a mobile home site is a fit and proper person to manage the site, or that a person appointed by the owner to manage the site is a fit and proper person to do so. The local authority also has the power to appoint a fit and proper person to manage the site, with the owner's consent.

The Regulations require that should a local authority intend to charge fees, it must prepare and publish a fee policy. Local authorities in England have until 1st July 2021 to prepare to receive applications from site owners/licence holders; to establish the processes for making and issuing decisions; to establish a fit and proper person register for their local area and to publish a Fees Policy.

Recommendations

The Committee is recommended:

- i) To note the new statutory powers local authorities have under the Regulations.
- ii) To approve the proposed amendments to the Mobile Homes Act Fees Policy set out in Appendix 2 to this report
- iii) TO RECOMMEND TO FULL COUNCIL to approve £3,000 of fee income and £3,000 of additional officer costs in the 2021/22 budget.

Reasons for Recommendations

- i) To ensure compliance with legislative requirements,
- ii) To ensure transparency and openness in decision making, and
- iii) To ensure that the budget is approved in line with the constitution.

Background Papers: The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020: A guide to local authorities on setting licensing fees

Consultation: other Sussex local authorities

Wards affected: All

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Background Information

1 Introduction

The purpose of this report

- 1.1 The purpose of this report is to inform the Committee of the introduction of the fit and proper person test for owners/managers of permanent residential caravan sites under the Mobile Homes Act 2013 and to approve the proposed fees.

Background/Actions taken to date

- 1.2 The control of residential caravan sites is an important part of the private sector housing market in the Horsham District. The Council's Environmental Health and Licensing Department is responsible for ensuring good standards in this sector, protecting the health, safety and some rights of the residents. The new Regulations require that all owners or managers of such sites are fit to manage the sites, so the Council needs a procedure for ensuring this and for charging appropriate fees to cover our costs. The Mobile Homes Act 2013 requires that should a local authority intend to charge fees, it must prepare and publish a fee policy. An amendment to the existing Mobile Homes Fees Policy has been drafted by officers and is set out in Appendix 2 to this report

2 Statutory and Policy Background

Statutory background

- 2.1 The Mobile Homes Act 2013
Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020

Relevant Government Policy

- 2.2 MHCLG Guides for Local Authorities to the Fit and Proper Person Test Regulations and Fees Policy

Relevant Council policy

- 2.3 An amendment to the Mobile Homes Act 2013 Fee Policy is set out in Appendix 2 to this report. The Council's existing policies are generally towards charging where appropriate to cover costs so as not to be a burden on the general charge payer. Under the Council's constitution the setting of fees for Licensing activities are delegated to the Licensing Committee.

3 Details

Register and application

- 3.1 A "relevant protected site" is a permanent residential caravan (mobile home) site which requires a licence but which is not exempt on the basis of being solely for

holiday purposes or incapable of being used all year round. The new regulations state that a relevant protected site cannot operate unless the local authority is satisfied that the manager qualifies as a fit and proper person.

- 3.2 A site owner under the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (SI 2020/1034) (“the Regulations”) must apply to their local authority for the relevant person (themselves or their appointed manager) to be added to the register of fit and proper persons managing sites in their area (“the register”).
- 3.3 The site owner may only apply to be added to the register if they hold, or have applied for, a site licence for the site. This provision also applies where the site owner or site manager is a registered company.
- 3.4 The Regulations permit the local authority to determine the fee for an application or registration for someone to be added to the register. The fee must be included with the application and failing to include this may mean that the site owner is in breach of the requirements of the Regulations.
- 3.5 Site owners will be required to submit a completed application between 1 July and October 2021 (3 months) and pay the fee, outlined in the attached Mobile Homes Fees Policy (Appendix 2), to Horsham District Council.

Matters to be considered in the test for a Fit and Proper Person

- 3.6 When considering whether a person is ‘fit and proper’ the local authority must have regard to the suitability of the person concerned (‘the relevant person’). Schedule 3 paragraphs 2 to 4 of the Regulations make reference to those matters that must be considered by the local authority as part of any application. These include:
 - a) Whether the relevant person is able to secure the proper management of the site, including the history of management and financial arrangements;
 - b) criminal convictions relating to fraud, dishonesty, violence or contraventions of the law relating to housing, caravan sites, mobile homes, public health, planning or environmental health or of landlord and tenant law;
 - c) has harassed any person in, or in connection with, the carrying on of any business, been insolvent or disqualified from being a director of a company; and
 - d) whether any other local authority has rejected an application for the responsible person to be included in a register;
 - e) the local authority may also have regard to the conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis) if it appears to the authority that that person’s conduct is relevant to the question of whether the relevant person is a fit and proper person to manage the relevant protected site or proposed relevant protected site (as the case may be).

The authority can also consider any evidence as to any other relevant matters.

Application and Decision

- 3.7 Once an application has been received the local authority may grant the application with or without conditions, or reject it.

As soon as is reasonably practicable after a full and complete application is received (including the relevant fee) the local authority must make a decision on the application and either serve a Final Decision Notice without conditions and include the relevant person on the register for 5 years, or serve a Preliminary Decision Notice on the applicant and accept written representations from the applicant within 28 days. Once written representations have been received the authority may then make a final decision which may include approving an application subject to specific conditions.

Appeals

- 3.8 Where the authority may seek to remove a relevant person from the register or to impose further conditions a Notice of Proposed Action will be issued in accordance with the Regulations. Again, any relevant person may make written representations within 28 days of such a notice being issued.

A person on whom a final decision notice or a notice of action is served may appeal to a First-tier Tribunal (FTT) against the decisions made.

No compensation may be claimed for loss suffered, pending the outcome of the appeal, in consequence of the local authority making a final decision or taking action relevant to Regulation 8(1)(a), (b) or (c).

Register

- 3.9 The Regulations require a local authority to establish and keep up to date a register of persons who they are satisfied are fit and proper persons to manage a relevant protected site in their area and to make the register open to inspection by members of the public at the offices of the local authority during normal office hours.

The authority must also publish the register online and the contents of the register will be in accordance with the Regulations.

A person's inclusion in the register has effect for a maximum period of 5 years.

Fees

- 3.10 Regulation 10 permits the local authority to charge a fee for the processing of applications. A local authority is not permitted to make a profit from the fees and therefore the proposed fees are based on the cost of administering the regime. This does not include the costs of enforcement, for which charges may be separately levied when enforcement action is necessary.

- 3.11 The Regulations state that the same fee must be charged for all FPP tests, regardless of the size of site or reputation of the owner or manager. We have calculated the likely costs of administering these tests and calculate that it will take, on average for these tests, around 6 hours of time from the various officers involved, amounting to a charge of £230 per application. In most cases the person would remain on the register for 5 years and after that time, or when there was a change of management or ownership, a new fee would be payable.
- 3.12 The authority may also decide the amount and frequency of any additional payments required by way of an annual fee. We propose that this is charged only for those relevant persons who have been served with a Decision Notice which includes conditions. A condition will require monitoring to ensure compliance, and an estimate of 2 hours per condition would entail levying an additional fee of £100 per condition for these cases.
- 3.13 The proposed fees will be reviewed each year to determine their accuracy as part of the Council's annual fees and charges setting process.
- 3.14 Where the authority has, with the occupier's consent, appointed a person to manage a site, the authority will recover from the occupier the reasonable costs incurred or to be incurred in making the appointment in accordance with Regulation 10.

Offences

- 3.11 An owner (occupier) of land commits an offence if he causes or permits any part of the land to be used as a "relevant protected site" without the manager of the site being registered with the local authority as a fit and proper person.

An applicant also commits an offence if he withholds information from a registration application or includes false or misleading information in a registration application or fails to comply with a condition imposed under Regulation 6(2)(b) or Regulation 8(1)

An owner (occupier) of land who is guilty of an offence is liable on summary conviction to a level 5 fine (unlimited).

Where an owner (occupier) of land who holds a site licence in respect of that land contravenes the relevant Regulations, the FTT may, on application by the authority, make an order revoking the site licence in question on the day specified in the order. If this owner is convicted of three such offences, the court may revoke the Licence.

4 Next Steps

- 4.1 The Committee are recommended to approve the amendments to the Mobile Homes Act 2013 Fees Policy set out at Appendix 2 to this report to take effect on 1st July 2021.
- 4.2 A report will go to full Council for recommendation to adopt this policy and approve £3,000 of fee income and £3,000 of additional officer costs in the 2021/22 budget.

5 Outcome of Consultations

- 5.1 The proposed regulations and guidance were widely consulted upon prior to their conclusion and have not required further consultation.

6 Other Courses of Action Considered but Rejected

- 6.1 It is at the discretion of the local authority whether they charge for all or any aspects of site licensing. Therefore the Council could decide not to charge any fees. However as the Council's existing policies are generally towards charging where appropriate to cover costs so as not to be a burden on the general charge payer, not to charge a fee was rejected.

7 Staffing Consequences

- 7.1 There will be an increase in officer work required as a result of the administration of these regulations. Additional hours will be undertaken by existing casual staff.

8 Financial Consequences

- 8.1 Should the fee policy be approved, an estimated £3,000 of fee income will be added to the budget for 2021/22. An additional staffing cost of £3,000 will also be added to the 2021/22 budget. There is no net effect on the overall budget.

9 Legal Implications

- 9.1 The legal implications are contained within the body of this report.

10 Other consequences

- 10.1 None of significant impact: these are summarised in Appendix 1

Appendix 1

Consequences of the Proposed Action

What are the risks associated with the proposal?	Not to charge fees to cover the cost of administrating the licensing regime and ensuring compliance would mean the costs being met by the general charge payer
How will the proposal help to reduce Crime and Disorder?	The fees set out in Appendix 2 seek to recover the Council's legitimate costs in ensuring compliance with the licence conditions.
How will the proposal help to promote Human Rights?	The proposal has no specific implications for human rights.
What is the impact of the proposal on Equality and Diversity?	There would be no negative impacts on those groups with protected characteristics under the Equality Act 2010 if the recommendations in this report are approved.
How will the proposal help to promote sustainability?	The fees set out in Appendix 2 seek to recover the Council's legitimate costs in providing these services.



Appendix 2

Fees Policy for Relevant Protected Sites under the Mobile Homes Act 2013

1. Introduction

- 1.1 The Mobile Homes Act 2013 (MHA 2013) altered legislation that governs permanent residential caravan sites. The Act refers to these sites as 'Relevant Protected Sites'. Local Authorities are now able to reclaim costs for administering and monitoring site licences for these sites. Fees may be levied for a new application for a Site Licence; transfer or variation of a Site Licence; Annual Licence Fee and for the Deposit of Site Rules with the Local Authority.
- 1.2 Section 10A (2) of the Caravan Sites and Control of Development Act 1960 as amended by the 2013 Act requires a Local Authority to publish a Fees Policy for the licensing of park home sites. This policy has been developed to enable the Council to charge appropriate fees from 2014.
- 1.3 The policy has been developed with reference to the following documents:
 - Department for Communities and Local Government (DCLG) guidance document on setting fees published in February 2014 and June 2021.
 - LGA Open for business - LGA guidance on locally set fees.
 - DCLG Park Homes: Site Licensing - Definition of relevant protected sites.
- 1.4 The policy has been framed in conjunction with the Sussex Mobile Homes Group which was formed from relevant representatives of most Sussex Local Authorities who have Relevant Protected Sites in their Districts.

2. Definition of Relevant Protected Site

- 2.1 Any licensable caravan site will be deemed to be a Relevant Protected Site unless exempted. The aim of the new licensing provisions is to enable Local Authorities to better protect sites in residential use.
- 2.2 A site is exempted if it has planning permission or a site licence for exclusive holiday use or if it cannot be used all year round as a permanent residential site because there is a limitation imposed by its planning permission. In addition, where a site has consent for holiday use with ancillary residential use, but where that residential use is only by the owner or his employees working on the site, then their permanent occupation does not make the site a Relevant Protected Site.
- 2.3 If any doubt arises as to whether a site falls under the definition of a Relevant Protected Site, then the guidance issued by the Department for Communities and Local

Government (DCLG) entitled ‘Park Homes: Site Licensing - Definition of relevant protected sites’ will be referred to by officers in order to clarify the status of the site.

3. Breakdown of Costs

3.1 The MHA 2013 enables a Local Authority to reclaim costs for administering and monitoring site licences, but prevents a local authority from

- making a profit
- recovering enforcement costs for a breach of condition etc, as this is separately provided for under the MHA 2013
- or recovering costs associated with unlicensed sites.

3.2 Each application type and annual inspection has been broken down into its constituent parts in order to identify clearly each task involved in the process; the average amount of time taken to complete each task; and the job role of the officer completing the task.

3.3 The ‘on-costs’ (salary of post holder + any additional costs incurred by the employer as a result of employing a person in that position) for each job role have then been applied to each template to determine the overall fee associated with each application type and for the annual fee.

4. Site Fees payable

The fees are based on the number of units on each site, which are split into four bandings.

Below is a table stating the exact cost associated with each application type within each banding.

Sites which consist of a single unit or are occupied by a single family (up to and including 5 mobile homes) are exempted from payment of fees in relation to annual fees. All single sites are exempt from New Application fees.

Sites which are **mixed use**, i.e. partly holiday with some residential, will be deemed to fall within the definition of a ‘Relevant Protected Site’ and so fees can be charged in relation to the residential units, unless it is exempted under the 2013 Act.

Fit and Proper Person Test fee (details below in section 7) is payable for each person managing or owning a site and entry on the register normally lasts for 5 years. Any change of applicant would require a new fee. Also a new fee would be payable when the period on the register expires.

Caravan Sites 20-21	Band			
Number of units on site	A (1 - 5)	B (6 - 24)	C (25 - 99)	D (100+)
New Application for Site Licence	£288 (single sites exempt)	£422	£475	£540
Transfer of Site Licence	£64	£150	£150	£150
Variation of Site Licence	£64	£150	£150	£150
Annual Fee	£125 (single sites and family sites exempt)	£158	£158	£277
Deposit of Park Rules with Local Authority	£73	£73	£73	£73
Fit and Proper Person Test from July 2021	£230			

According to the Act the fees may include an element of the costs involved in pursuing improvements in the sites which fall below the required standards. In order to keep the fees low and reduce the burden on business, fees are based on the assumption that the sites in our district are maintained and run to a good standard.

5. Single unit sites and family sites

The following sites are exempt from having to pay an annual site fee:

- Site consisting of 1 unit; and
- Site occupied solely by the owner and their family in not more than 5 units and not run for financial gain.

The above sites have been exempted because these sites are inspected every 3 to 5 years, not annually, so the small size of the fee once split by the frequency of inspection would make the collection untenable. One fundamental aim of the Act is to minimise unfair practices of site owners who have control of the permanent homes of residents. This is not a problem on single and small family run sites, though any complaints received will be responded to in accordance with our complaints procedure.

If the applicant claims to qualify for exemption from the annual fee due to being a family site, then additional information may be requested by officers in order to verify this claim. If there is any doubt as to the legitimacy of the claim then the matter will be referred to the Environmental Health and Licensing Manager to determine the appropriate fee that needs to accompany the application.

6. Fees for Deposit of Park Rules

Park Rules are different to the site licence conditions and are put in place by the owner of a site to ensure acceptable standards are maintained which will be of benefit to occupiers or will promote and maintain community cohesion on the site. The MHA 2013 changes the way site rules must be agreed between both parties. The council must keep an up to date register of site rules on relevant protected sites and publish the register on-line.

Regulations came into force on 4th February 2014 which set timescales (12 months from that date) within which site owners will need to replace any existing site rules with new ones that should be deposited with the Council.

Before publishing the site rules the council must ensure that the rules deposited with them have been made in accordance with the statutory procedure. A fee can be charged for this function, which is shown in the table in Part 4.

Any site rules deposited with the local authority for the first time or applications to vary or delete existing site rules must be accompanied by the appropriate fee. The fee is the same for either a first deposit or for a subsequent variation or deletion. This is because the process will be very similar for all three types of deposits.

7. Fit and Proper Person Test

From July 2021 a charge will be made for entry on to the Register of Fit and Proper Persons. This will be required from that date for the person who owns or manages every relevant protected site run on a commercial basis. The charge for 2021-22 will be £230 per application and an entry on the Register will normally be for 5 years. If conditions are placed, by Horsham District Council, on the Decision Notice for a particular applicant, then a further charge of £100 per condition will be made annually for the monitoring of that condition. These charges will be reviewed annually.

8. Enforcement costs

The Act also introduces the ability for Local Authorities to serve compliance notices and to carry out works in default to remedy breaches of site licence conditions from 1st April 2014. A charge for any enforcement activities will be made on a case by case basis based on full cost recovery. Charges for enforcement costs cannot be passed onto the residents' pitch fee.

If any works in the compliance notice are not carried out, the licence holder commits a criminal offence and the local authority may consider taking legal proceedings. Any costs

associated with this process would be at the discretion of the court. If a prosecution was successful, the council would have the power to carry out the works in default of the licence holder and to pass on the costs.

8. Implementation date

The Fees Policy came into force on the 1st December 2014. Amendments to include the Fit and Proper Person Test are made from 1st July 2021.

9. Charging arrangements for annual fee

The annual fee will be due on the 31st January 2015 for any existing sites and annually thereafter. Any sites licensed for the first time after the implementation date will attract an annual fee on the anniversary of grant.

10. Publishing and reviewing the fees policy

This fees policy will be published on Horsham District Council's website at www.horsham.gov.uk.

A local authority is not permitted to make a profit from the fees and therefore the proposed fees are based on the cost of administering the regime having regard to a well-run site. This ensures that the owners of well-run sites are not subsidising poorly run sites where costs can be recovered through enforcement charges if necessary. The proposed fees will be assessed each year to determine their accuracy as part of the Council's annual fees and charges setting process. Any change to the fees policy itself must be approved by the Licensing Committee.

11. Other matters

Please note that a Local Authority is not required to consider any application made in relation to a Relevant Protected Site unless that application is accompanied by the correct fee. This also applies to fees due when park rules are being deposited with the Local Authority.

If the application is not approved then the applicant is **NOT** entitled to a refund, as the application has been processed.