



Law Society  
of Scotland

# Call for Views

## Licensing of Static Homes with Permanent Residents

17 February 2021



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Licensing Law sub-committee welcomes the opportunity to consider and respond to the Scottish Parliament's Local Government and Communities Committee's Call for Views on the Licensing of Static Homes with Permanent Residents.<sup>1</sup> Our sub-committee members represent the interests of the industry and are involved in advising individuals and organisations in relation to making licensing applications. They also include those working in-house in relation to granting, management and enforcement measures.

This Call for Views regarding the effectiveness of the current licensing system for static mobile homes parks and how well it protects permanent residents has been motivated by the letter dated 15 January 2021 from Alexander Burnett MSP for Aberdeenshire West.<sup>2</sup>

The sub-committee has the following comments to put forward for consideration.

## Introduction

Part 5 of the Housing (Scotland) Act 2014 (2014 Act), Caravans Sites and Control of Development Act 1960 (1960 Act) and the Licensing of Relevant Permanent Sites (Scotland) Regulations 2016 (2016 Regulations) (implemented on 1 May 2019) all set out the framework for the licensing of residential mobile home parks in Scotland. That makes for a system that is both unwieldy and complicated for all to understand. That includes experienced licensing solicitors who are familiar with working in both the public and private spheres who struggle to work with the patchwork effect of the legislation. These problems are even more pertinent for those who own or are involved in the operation of the system.

Since we understand that there are around 100 residential park home sites in Scotland housing some 7000 permanent residents (though the number may be higher as there are potentially a considerable number of

<sup>1</sup> <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/116961.aspx>

<sup>2</sup> [https://www.parliament.scot/S5\\_Local\\_Gov/General%20Documents/15122020HousingScotlandAct2014Act.pdf](https://www.parliament.scot/S5_Local_Gov/General%20Documents/15122020HousingScotlandAct2014Act.pdf)

holiday parks illegally housing such residents)<sup>3</sup> this is important when this regime affects and regulates the living accommodation of many people. These people are often in the vulnerable or elderly categories. We agree that these people require “the support of both Parliament and the local councils.”<sup>4</sup>

We agree with the views expressed that the 2016 Regulations (and relevant guidance) have allowed substantial variations to arise in relation to the interpretation of the legislation which has resulted in inconsistencies arising across Scotland.

Our view is the current licensing regime is not fit for purpose. Our recommendation for proceeding is for a working group to be set up to report on the current practices and to make recommendations as to developing consolidated legislation going forward. That would set out the regime clearly and can then be applied consistently across Scotland. Such a group should be made up of the relevant interests such as local authority officers (licensing, planning, and environmental health), police, fire, commercial interests, SOLAR, Shelter, and other stakeholders.

The timescales for the publication of such a report should be set out clearly.

We respond to the specific questions as follows:

### **Question 1: Are you aware of the current rules on the licensing of mobile home parks with permanent residents?**

We are aware of the rules, to which presumably reference is being made to the legislation setting out the framework above. We highlight our comments above that these are complex, not readily understood and are accordingly not fit for purpose.

Solicitors working in licensing for the local authorities report that residents and licence holders both struggle to understand the rules. As a result, both tend to approach the relevant licensing authority for advice, which is not their role and the regulator, being the licensing authority, is not able to advise fully. A much more accessible licensing regime should be established. One approach may be to adopt or consider mirroring the well-established House in Multiple Occupation licensing regime.

Given how these rules impact on those residents on a day to day basis, it is vital to ensure in the interest of fairness and accessibility that these can be readily understood which is not the current situation.

<sup>3</sup> [https://www.parliament.scot/S5\\_Local\\_Gov/General%20Documents/15122020HousingScotlandAct2014Act.pdf](https://www.parliament.scot/S5_Local_Gov/General%20Documents/15122020HousingScotlandAct2014Act.pdf) quoted by the Scottish Confederation of Park Home Residents Associations (SCOPHRA),

<sup>4</sup> [https://www.parliament.scot/S5\\_Local\\_Gov/General%20Documents/15122020HousingScotlandAct2014Act.pdf](https://www.parliament.scot/S5_Local_Gov/General%20Documents/15122020HousingScotlandAct2014Act.pdf)

## Question 2: Do the rules seem fair? Do they get the balance right?

The rules appear unfair and fail to strike an appropriate balance between the rights of the licence holder and permanent residents. We outline some examples below (and indeed are aware of the examples provided in Alexander Burnet MSP's letter.<sup>5</sup>)

### Suitability of the applicant

The structure of the current licensing regime impedes the ability of the licensing authority to effectively evaluate the suitability of the applicant. The licensing regime fails to include statutory consultees. Licensing authorities can struggle to have Police Scotland and Fire Scotland engage with the process as they are not identified by law as statutory consultees. We suggest owing to the importance of the licence regime and in the interests of public safety that licensing authorities should be required to consult with at least these two important organisations.

The 2014 Act requires the licensing authorities to consider whether the applicant is a fit and proper person (where the relevant factors are set out at section 32O of the 1960 Act). The licensing authority needs to receive any relevant information from Police Scotland.

Placing the requirement on the applicant to produce evidence in fact in many instances means more work for the licensing authority as they have to explain this to the applicant whereas the alternative approach would promote consistency and also be in line with the operation of other licensing systems.

### Refusal of an application

When the licensing authority is considering refusing an application, the process is potentially prejudicial to applicants and is cumbersome in practice. Section 32D (4) of the 1960 Act states:

*Before refusing to issue or renew a Part 1A site licence, the authority must give to the applicant a notice stating that (a) it is considering refusing the application and its reasons for doing so, and (b) the applicant has the right to make written representations to the authority before the date which is specified in the notice (such date to be at least 28 days after the date on which the notice is given).*

Does this mean that if a committee of the licensing authority, when considering an application (along with any representations) is minded to refuse it, then it must adjourn the meeting, issue a notice and request written representations? If so, does this potentially mean that a separate committee must consider the application as there is a potential argument that the first committee has prejudged the application.

The guidance issued to licensing authorities appears to suggest that the licensing authority may consider rejecting an application without having first heard from the applicant. How does this sit with the interests of justice?

<sup>5</sup> [https://www.parliament.scot/S5\\_Local\\_Gov/General%20Documents/15122020HousingScotlandAct2014Act.pdf](https://www.parliament.scot/S5_Local_Gov/General%20Documents/15122020HousingScotlandAct2014Act.pdf)

The creation of a two-stage test appears unnecessary and unhelpful. Justification of why that two-stage test is necessary would be useful since this is not an approach adopted elsewhere in any other Scottish licensing regime. There seem to be no specialist aspects regarding these types of licensing that require this two-stage test.

Our view is that there should simply be a system whereby, if required by the scheme of delegation, a hearing is held with the reports and representations having been timeously served on the applicant.

### **Question 3: Local councils are in charge of the licensing system in their area. Do you have a view on how well this is done in your area? Do they have the resources and powers they need to do it effectively?**

While we are of the view that licensing authorities do their best in the difficult circumstances outlined above, the structure of the licensing regime remains unhelpful and places a significant burden on these authorities.

As regulator, the licensing authority appreciates the important and vital role that they play given that these licensed sites often accommodate vulnerable and elderly persons. But the lack of clarity and consistency is unfair and disproportionate.

Licensing authorities also struggle with the short timescales for the processing of applications. The 1960 Act permits a licensing authority only three months in which to decide. This timescale is far shorter than any other equivalent licensing regime. Bearing in mind the other applications with which a licensing authority must deal, this places an undue burden upon the relevant authority.

There will be areas and times of year too when there are more applications received and this will not affect all licensing authorities equally. This causes more difficulties too where the three-month period runs over the summer or festive period as on a staffing level, it can be difficult to convene a committee of elected members. It is hard to plan for these contingencies on a year by year basis.

We agree that licensing these sites is beneficial and allows the licensing authority to use conditions and improvement notices to regulate the standard of the site. However, the ability of the licensing authority to apply to appoint an interim manager where a licence is revoked creates an expectation from residents that the licensing authority will “step in” where there is an issue. Given the relevant legislation, this may create an expectation that where a licence is revoked, there will be an expectation amongst residents that the authority would seek to appoint such a manager.

That decision to do so is not straightforward for a licensing authority. This decision carries responsibilities which render the authority responsible for the welfare of a caravan site and therefore, various repairs as presumably, the revocation was linked to a failure to maintain the site. It may therefore be unlikely that a licensing authority will seek to revoke a licence.

#### **Question 4: Do you have any other views you wish to share on the licensing system for mobile home with permanent residents?**

The 1960 Act (as amended) fails to have regard to the requirement for planning permission. While licensing and planning are, of course, two entirely separate functions, we are of the view that is unhelpful. This allows an operator to obtain a site licence without there being planning permission in place. Planning permission should be a prerequisite to an application being made.

Looking to the future, the COVID-19 pandemic has resulted in the residents of many holiday parks having been unable to leave the parks so that they have become, in effect, permanent residents. This potentially brings holiday parks into the ambit of the licensing of static mobile homes with permanent residents.

As part of the review, there should also be consideration of the current and long-term implications arising from this.



**For further information, please contact:**

Gillian Mawdsley

Policy Executive

Law Society of Scotland

DD: 0131 4768206

[gillianmawdsley@lawscot.org.uk](mailto:gillianmawdsley@lawscot.org.uk)