

# Report to Executive

Meeting Date: 31<sup>st</sup> August 2021

Portfolio: (Cross) Finance, Governance and Resources  
Economy, Enterprise and Housing

Key Decision: NO

Policy and Budget Framework No

Public / Private Public

Title: Update to Mobile Homes Policy 2021

Report of: Corporate Director of Governance and Regulatory Services

Report Number: GD.51/21

## Purpose / Summary:

This report sets out the proposed updates to the Council's Mobile Homes Act Policy, to include the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 ("the Regulations") and sets out the charges for carrying out the new functions from 1<sup>st</sup> July 2021.

## Recommendations:

The Executive is asked to agree the changes to the policy as detailed and set out in the report and accompanying Appendices.

## Tracking

Executive:	
Scrutiny:	
Council:	

## **1. BACKGROUND**

- 1.1** In 2014, the Executive approved the adoption of the Mobile Homes Act 2013 Implementation Policy 2014. The Policy acts as a backdrop to the work within the Environmental Health team around the licensing and enforcement of residential caravan sites it provides clear direction for those Officers authorised to undertake enforcement and includes the associated charging structures for any licensing and enforcement.
- 1.2** The latest update is to reflect new powers enacted by Her Majesty's Government to update the licensing regime, to include a Fit and Proper person element to ensure that those that own and manage residential caravan sites are deemed to be fit and proper persons.

## **2. PROPOSALS**

- 2.1** The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 ("the Regulations") introduces a fit and proper person test for mobile home site owners or the person appointed to manage the site, unless exempted by the Regulations.

The legislation came in on 1 July 2021 and site licensees have until 1 October 2021 to demonstrate they are being managed by a fit and proper person. The report and appendices sets out how the local authority are currently preparing to implement the new regulations to enable site owners, or the person appointed to manage the site, to make their applications to be included on the register of fit and proper persons.

- 2.2** The legislation makes allowances for Local Authorities to charge for the process of administering the licensing regime and keeping a Fit and Proper Person register.

Carlisle City Council will write to owners of protected sites before 1<sup>st</sup> October 2021 to advise that they need to apply to be added to the register of fit and proper persons and will provide the relevant application form. It is a criminal offence for site manager/owners not to apply.

## **3. RISKS**

- 3.1** **In order to enforce the legislation and make a charge for the licence process the Authority need to have an adopted mobile homes implementation policy which covers enforcement and a charging policy, without this in place we risk**

**a legal challenge should we choose to take enforcement or recover any debts associated with the licensing process.**

#### **4. CONSULTATION**

- 4.1** As these statutory changes have been widely consulted on by central government before they were introduced there is no need to undertake any additional consultation or local consultation.

#### **5. CONCLUSION AND REASONS FOR RECOMMENDATIONS**

- 5.1** The revised policy will enable officers to apply the licensing regime and any enforcement in a fair and consistent manner in recognition of the Enforcement Concordat and the Regulators' Compliance Code.

#### **6. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES**

- 6.1** It is considered the proposals will support the following priorities:-
- Address current and future housing needs to protect and improve residents' quality of life.

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**Appendices attached to report:** Appendix A - The Mobile Homes Implementation Policy update 2021, including appendices to the policy. (1 to 4)  
Appendix 1 Exemptions  
Appendix 2 Charges  
Appendix 3 Fit and Proper Person Procedure  
Appendix 4 Risk matrix for Fit and Proper person register

**Note: in compliance with section 100d of the Local Government Act 1972 the report has been prepared in part from the following papers:**

- None

#### **CORPORATE IMPLICATIONS:**

**LEGAL –** The report sets out the Council's response to the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020. These

Regulations, along with the Mobile Homes Act 2013 and the Caravan Sites and Control of Development Act 1960, are the responsibility of the Executive, save as regards the issuing of a licence which is the responsibility of the Council's Regulatory Panel. Further, the proposed new charge in Appendix 2, being a new charge, also falls to the Executive for approval, in line with Financial Procedure Rule D31.

**PROPERTY SERVICES** - No property implications

**FINANCE** – The proposed new charge in relation to the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 is set out in Appendix 2. Any additional income expected from this new charge will be considered as part of the Director's Corporate Charging report considered each year as part of the annual budget cycle.

**EQUALITY** – None

**INFORMATION GOVERNANCE** – The Council must ensure that related documentation is updated to reflect the additional processing of personal data, to determine whether an individual is considered a fit and proper person. This will involve amendments to the application form and related privacy notice.

# **The Mobile Homes Act 2013 Implementation Policy**

**2014**

**Updated 2021**

## **1. BACKGROUND**

The mobile homes Act 2013 came about when the Department of Communities and Local Government (DCLG) proposed major reforms to the caravan site legislation with the aim of giving greater protection to occupiers of residential caravans and mobile homes). DCLG stated in their Impact Assessment of the consultation “A Better Deal for Mobile Home Owners Changes to the Local Authority Site Licensing Regime” (published November 2012) that the existing legislation did not allow local authorities to charge fees for issuing and monitoring site licenses, or allow local authorities to take enforcement action if conditions were not met. They added that in practice, this severely limited local authorities resources to provide effective scrutiny of the sector.

The Mobile Homes Act 2013 (MHA 2013) was therefore introduced, receiving royal assent on 26 March 2013 with some parts implemented on 26 May 2013. The MHA 2013 introduced some important changes to park home site licensing on 1 April 2014 due to it's amendments to CSCDA 1960. These changes include the ability for Local Authorities to charge site owners a fee for applying for a site licence, for amendments or transfers of existing licences, and for annual fees. Site owners may recover the annual fees through an increase in pitch fees, however, residents will benefit as these fees will help Local Authorities to increase their activity in an area that has historically been under-resourced.

Section 29 of the 1960 Act defines what constitutes a caravan and caravan site, and these are commonly known as park homes and park home sites. This definition was amended by the Mobile Homes Act 2013, (Park homes site licensing definition of relevant protected sites)

As part of the changes the Council must produce a policy on charging fees. This Policy therefore sets out the Councils policy for implementation of a fee charging structure, the park home sites licence conditions and procedures for enforcement under the Mobile Homes Act 2013.

## **2. THE APPLICATION OF THE MOBILE HOMES ACT 2013 IN CARLISLE**

### **2.1 SETTING LICENCE FEES AND CHARGES**

The Act enables Local Authorities to fix different fees or to determine that no fee is required to be paid in certain cases. The fees associated with applying initially for a new site licence, for transfers, standard amendments, site expansion amendments and for annual fees are detailed in **Appendix 2**.

On 1 January 2021 the Council was administering site licenses for 19 residential caravan sites, 8 of which are single mobile homes sites and non-commercial, plus 2 showman's guild sites, this would mean that under the new licensing criteria for Fit and Proper person test, only 9 sites would be required to reapply for the licence. leaving 10 exempt according to the list and guidance issued which is contained within **Appendix 1** fall under the mobile homes act 2013 licensing regime.

Licences can only be issued to the owners of sites that have obtained valid planning permission.

## **2.2 TIME WHEN FEES ARE PAYABLE**

Section 10A(5) of the Amended Act states that the Fees Policy must include provision about the time at which the annual fee is payable. For the purpose of this policy the period covered by the annual fee will mirror the financial year (1 April to 31 March) and will be paid in advance. Invoices will be sent out during the month of April requiring payment within 30 days. Where a new site is licensed part way through the year then an invoice with the same payment terms will be sent shortly after the licence is issued for the pro-rata amount.

Where a site is expanded part way through the year to include additional units the corresponding higher fee would apply from that point. In such cases an invoice with the same payment terms, covering the difference between the original and increased fee for the remainder of the financial year will be sent shortly after the amended licence has been issued.

## **2.3 FIT AND PROPER PERSON UPDATE**

The MHA 2013 makes provisions for regulations to be made requiring site owners to be "fit and proper persons" and for Local Authorities to keep such registers up to date. This Policy has been updated in 2021 to reflect the introduction of the The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 and the guidance issued by government. The procedure note for applicants is contained in **Appendix 3**. The Fit and Proper person test will not apply to the non commercial family protected sites.

Regulation 10 permits the local authority to charge a fee for the processing of applications for Fit and Proper person tests. A local authority is not permitted to make a profit from the fees and therefore the proposed fees updated annually will continue to be based on the cost of administering the regime. 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. The costs will be calculated on the likely costs of administering these tests and calculate the time that that it will take, on average for these tests.

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.

This does not include the costs of enforcement, for which charges may be separately levied when enforcement action is necessary. The details of the charges are contained in **Appendix 2**

An owner (occupier) of land will commit an offence if they 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 First Tier Tribunal 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

## **2.4 SITE RULES**

Site rules are different to site licence conditions in that they are neither created nor enforced by Local Authorities. They are a set of rules created by the site owner which residents have to comply with. They may reflect the site licence conditions but will also cover matters unrelated to licensing. The Site Rule Regulations come into force on the 4 February 2014 and set out a 12 month period, within which site owners will need to replace existing site rules with new ones. These rules will need to be deposited with the Local Authority. A fee is built into the charging structure for depositing these rules.

A detailed copy of site rules is contained within appendix 4 and sites should base any rules on this locally adopted set of rules.

Local Authorities will need to satisfy themselves that replacement or new rules deposited with them have been made in accordance with the statutory procedure. They will also be required to establish, keep up to date, and publish a register of site rule. And the Local Authority may levy a fee for the depositing of site rules, or the variation or deletion of site rules.

## **2.5 SITE CONDITIONS**

The legislation allows the authority to adopt model standard for site conditions which will form part of the site licence.

The extent of any remedial works that maybe required under new site conditions will vary according to size, complexity, and whether there are issues arising with residents. Any works required will be agreed with individual site owners and time scales agreed for implementation in line with the enforcement policy.

### **3. ENFORCEMENT OF THE MOBILE HOMES ACT 2013**

Subject to those exemptions detailed in **appendix 1** there is a requirement for site owners to ensure that their park home sites are licensed. Failure to do so would be an offence under Section 1(2) of the CSCDA 1960 which can attract a fine not exceeding level 4 (currently £2500) on the standard scale upon summary conviction.

From the 1<sup>st</sup> April 2014 The MHA 2013 introduces the ability for Local Authorities to serve enforcement notices and to carry out works in default to remedy breaches of site licence conditions. The legislation also allows Local Authorities to charge a fee in relation to this.

Any enforcement will be inline with the authorities existing enforcement policies and based on the principles of openness, clear standards, proportionality, consistency of approach, targeting to areas of greatest need, and transparency as contained in the Enforcement Concordat issued by the Cabinet Office.

### **4 CHARGES FOR ENFORCEMENT UNDER THE ACT**

In order to set the charging fee at an appropriate level, research has been undertaken into similar fee structures within the Council and the charges reflected in this policy are based on an hourly officer rate determined by how much time is taken to carry out the enforcement, the rate was set at £67.40 per hour 2021/22 for Regulatory Services. As part of this policy any future amendments to officer rates will be automatic.

The cost associated with administering the works in default for park home site enforcement will be set at 15% of the total cost of the works.

### **5 DETERMINING INSPECTION FREQUENCY**

Each site will be risk assessed annually using a risk rating tool. The risk the site presents will be categorised as Low, Medium and High.

Low risk commercial sites will be inspected annually and therefore only pay one inspection fee. However medium sites will be inspected two times a year and their annual fee will therefore be double. A high risk site will be inspected four times a year and their annual charge will therefore be multiplied by four.

Family sites that are non-commercial sites as indicated under the new regulations, will be moved to the lowest risk and be removed from the inspection schedule completely, Officers will only inspect those sites if any complaints arise or matters come to an Officer attention during the bi annual Traveller, Gypsy and Show person caravan count. A standard questionnaire will be put into place to enable those sites who are non-commercial to provide any safety documentation every 3 year to satisfy the requirements of the licence, but a fit and proper person test will not apply.

## **6 COMPLAINTS**

In the event that an individual or company is not satisfied with the Service or they do not agree with the action taken by the investigating officer, they should first contact the relevant section manager who will then escalate the complaint to a Senior Manager if appropriate. If this does not resolve your complaint the Council also has a formal complaints system

### **List of Appendices**

Appendix 1, Exemptions

Appendix 2, Charges

Appendix 3, Fit and Proper person update 2021

Appendix 4, Risk scoring matrix for determining a Fit and Proper person

## **Appendix 1 - Exemptions**

The first schedule of the Act sets out cases where a site licence is not required, including:

- Local Authority-owned sites
- Use incidental to a dwelling house within the same cartilage
- Sites where a single caravan is stationed on land for not more than two nights and not more than 28 days in any 12 month period
- Sites where caravans are stationed on land not less than five acres for not more than 28 days and no more than three caravans are stationed at any one time
- Sites where caravans are solely for seasonal agricultural/forestry workers employed on land owned by the site owner
- Sites where caravans are solely for workers employed in building or engineering operations on that or adjacent land
- Sites used by travelling showmen who are members of a relevant organisation
- Sites occupied by organisations holding a certificate of exemption

Appendix 2, charging report update for Fit and Proper Person test

<b>Application verification of person for register</b>	Time	
<b>Check documentation provided is completed and is a full and valid application</b>	<b>45min</b>	
<b>register application on CIVICA</b>	<b>15 mins</b>	
<b>Check licence file and CIVICA for existing licence holder and conditions</b>	<b>45 min</b>	
<b>Carryout background checks, to include:</b>	<b>60 mins</b>	
the owners past compliance with the site licence		
the long-term maintenance of the site		
Have representations been made the the Residents Association		
whether the person has a sufficient level of competence to manage a site		
the management structure and funding arrangements for the site or proposed management structure and funding arrangements		
Verify information received with Partner agencies and any conditions		
<b>Preliminary Decision Notice with conditions or without</b>	<b>45 min</b>	
<b>take into account written representations</b>	<b>30mins</b>	

<b>Final Decision Notice</b>	<b>30 mins</b>	
<b>update notice register and CIVICA</b>	<b>30mins</b>	
	<b>5 hours</b>	<b>£337.00</b>
	<b>Hourly rate Reg Services</b>	<b>£67.40</b>

## **Appendix 3**

### **Mobile Homes Act update**

#### **Fit and Proper Person Test - Guidance note for applicants**

##### **Introduction**

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 ("the Regulations") introduced a fit and proper person test for mobile home site owners or the person appointed to manage the site, unless exempted by the Regulations.

It is important to highlight that from 1 July 2021 until 1 October 2021 protected sites, operated on a commercial basis, must be shown to be being managed by a fit and proper person.

The local authority are currently preparing to implement the new regulations to enable site owners, or the person appointed to manage the site, to make their applications to be included on the register of fit and proper persons.

Carlisle City Council will write to owners of protected sites before 1<sup>st</sup> October 2021 to advise that they need to apply to be added to the register of fit and proper persons and will provide the relevant application form.

It is a criminal offence for site manager/owners not to apply.

##### **What is a fit and proper person?**

The applicant wishing to be included on the register will have to show that there are suitable financial and management arrangements in place for the site and to provide information relating to their conduct in relation to any of the following:

- Offences relating to fraud, dishonesty, violence, arson or drugs or listed in schedule 3 of the Sexual Offences Act 2003.
- Contraventions of law in relation to: housing, caravan sites, mobile homes, public health, planning or environmental health or landlord and tenant law.
- Contraventions of law in relation to the Equality Act 2010, or in connection with the carrying out of any business.
- Harassment of any person in connection with the carrying out of any business.
- Insolvency within the last 10 years.
- Disqualification from acting as a company director within the last 10 years.
- Has the right to work in the UK

##### **Site Owner Guidance for Fit and Proper Person**

##### **Does it apply to all protected sites?**

No, only park home sites, which operate on a commercial basis, where units are sold or rented to residents. Park Home sites which are only occupied by the site owner or members of the site owner's family do not need to apply. However, if circumstances change, and units are rented out to non-family members, then the owner or site manager will need to apply to be included on the register.

## **Who will need to apply?**

Under the legislation the fit and proper person must be the person with day-to-day responsibility for managing a site, whether that is the site owner, or a person appointed to undertake the task on the owner's behalf.

Anyone currently with a licence of a protected site, applying for a new site licence, or the transfer of a site licence to a new owner, will need to apply to have themselves and the site manager included on the register. This may in some cases be more than one person and any registered companies it would be appropriate for any active Director to apply.

## **How do you apply to be put on the register of fit and proper persons?**

You must submit an application between the 1 July 2021 and by midnight of 30 September 2021 inclusive to be assessed as a Fit and proper Person.

**If you are operating a site and fail to comply with the fit and proper person test it is a criminal offence and if found guilty you would be liable, on summary conviction, of a fine up to level 5 (unlimited).**

Applying for inclusion on the register will have a reasonable fee attached and this should be included with the submitting application.

The applicant seeking entry on the register will need a basic DBS certificate (dated no more than 6 months before the date of the application) and this must be included with the application. The DBS certificate must be from an approved supplier. Information about how to arrange a DBS check can be found on the Government's web site:

- <https://www.gov.uk/request-copy-criminal-record>

As previously stated, an application form and guidance for applicants will be sent out to relevant site owners in due course.

## **What we'll consider on receipt of the application?**

To be sure that the relevant person is a fit and proper person to manage the site, and to add them to the register, we will consider:

- the owners past compliance with the site licence
- the long-term maintenance of the site
- whether the person has a sufficient level of competence to manage a site
- the management structure and funding arrangements for the site or proposed management structure and funding arrangements

We also consider whether the relevant person:

- has the right to work within the UK

We also may consider the conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis), if it appears that person's conduct is relevant. We can also consider any evidence on any other

relevant matters from third parties, to include our Partner agencies, Cumbria Constabulary, Cumbria Fire and Rescue Services and any active residents association.

## Decision

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

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

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.

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

If you have any questions about the regulations or how they will affect you, please email [EnvironmentalHealth@carlisle.gov.uk](mailto:EnvironmentalHealth@carlisle.gov.uk) or contact the department on 01228 817200.

Fit and Proper Person Risk Register (2021)		Scores/Pass or Reject
Applicant		
Site		
other connected applicants (site owners, Company Directors, Secretary, Manager only)		
submitted a DBS/Criminal Records check		Reject/Accept for review
Is the applicant permitted to live/work in the UK		Yes/No (Reject)
<b>Audit Subject</b>		
<b>Compliance with Site Licence Conditions (LA assessed)</b>	Full compliance	5
	Minor issues, advice provided	10
	Repeated Failings, formal writtern advice	15
	Signifcant Failings, compliance notice, court action/prosecution	20
<b>General Maintenance of site</b>	High standards, execptionally well maintained	5
	Minor issues at site visit and reported by residents	10
	Major issues noted on inspection or reported by residents	15
	Statutory Notice issued/Prosecution for non compliance	20
<b>Comptence demonstrated by licensee or management</b>	Applicant has competently managed the site of more than 5 years	5
	Applicant has compently managed the site for 1 - 5 years or has managed another site for more than 5 years	10
	Applicant has managed the site for less than 1 year	15
	Applicant is unable to demonstrate comptence, based on compliance with enforcement or with civil disputes	20
<b>Offences committed relevant to Fit and Proper Person Test (offences with notification requirements)</b>	Person has never committed an offence	5
	Person has no criminal or recorded offences in last 7 years	10
	Person has committed an offence in the last 5 years	15
	Person has committed more than one offence in the last 5 years	20

	Person has committed such an offence in the last 12 months	25
	Person as committed an offence which would lead to automatic rejection	Pass/Reject
Comments/Feedback received from multi agency partners on licence applicant suitability	Applicant application to register is positively supported, no comments made	5
	Partner Agency has some reservations	10
	Partner Agency would want additional conditions around management	20
	More than one Partner or department have made comment on additional conditions	25
	Partner Agency would object to the applicant being deemed a Fit and Proper Person	50
	More than one Partner agency have objected to the suitability	75
Complaint history from residents actionable or not)	No complaints to the Local authority, Site management support residents association	5
	No complaints, no engagement with residents association or no association present	10
	Minor issues reported, leading to site inspection	15
	minor issues reported, leading to more than two site visits a year	20
	Major issues between site management and residents being reported	25
Contraventions of any law, housing, caravan sites, mobile homes, public health, planning, environmental health, landlord/tenant	Person has never committed an offence	5
	Person has no offences in last 7 years	10
	Person has committed an offence in the last 5 years	15
	Person has committed more than one offence in the last 5 years	20
	Person has committed such an offence in the last 12 months	25
	Person as committed an offence which would lead to automatic rejection	Pass/Reject
Has been in the last 10 years personally insolvent or disqualified as a company Director	Yes	40
	No	
		0
has any person connected to the management or site ownership been disqualified or insolvent	Yes	20
	No	0
If any other Local Authority have rejected an application to the register in the last 3 years	Yes	50

No	0
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Score

## Criteria

Reject Application more than 175  
 Scored between 175 and 100, impose condition relevant  
 99 and 50, Consider additional conditions  
 49 and below, no additions

Note, the above will be on top of standard conditions to all applicants