

Dispute resolution under the Mobile Homes Act 1983 (as amended)

Summary of responses and further consultation

ISBN: 978-1-4098-1441-2

ISBN 978-1-4098-1441-2



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Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

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May 2009

Product Code: 09 PRL 05929

ISBN: 978-1-4098-1441-2

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Introduction

This paper comprises three parts. Part one sets out the Government's response to the May 2008 consultation on a new approach to resolving disputes under the Mobile Homes Act 1983. Part two is a mini consultation on termination provisions in the Act following on from the May consultation. Part three sets out the equality impact assessment prepared by Communities and Local Government in respect of the policy.

Parts one and two have been prepared jointly by Communities and Local Government (CLG) and the Welsh Assembly Government. Those parts apply to both England and Wales. Accordingly the reference to "Government" in those parts means CLG and Welsh Ministers.

Part three only applies to England.

Part One

Government response to the consultation paper: A new approach for resolving disputes and to proceedings relating to Park Homes under the Mobile Homes Act 1983 (as amended)

Summary of responses – introduction

This part summarises the responses to the consultation paper *A New Approach for Resolving Disputes and to proceedings relating to Park Homes under the Mobile Homes Act 1983 (as amended)*, issued by the Government in May 2008. It also sets out the Government's view about the proposals in the light of those responses and explains the changes that the Government intends to make.

The Government attaches great importance to a well run park home sector in which disputes, which inevitably arise as in any sector, can be resolved informally by negotiation and agreement. Inevitably, however, it will not always be possible for parties to resolve disputes themselves and so an effective and meaningful third party resolution system needs to be available. The consultation paper sought to elicit views on what the most appropriate system might be.

The consultation process

A 12 week public consultation was held between 22 May and 22 August 2008.

Numbers of Responses

In total the Government received 1760 responses.

A breakdown of respondents is summarised in the table below.

- **residents' associations** – includes the responses from three national groups, The Independent Park Home Advisory Service, the National Association of Park Home Residents and the Park Home Residents Action Alliance as well as local residents' groups

- **site owners** – includes responses received from their two trade bodies, the British Holiday & Home Parks Association and the National Park Homes Council
- **other** – includes responses from local authorities and other interested parties

Number of responses	
Residents	1730 (80)
Residents' Associations	12
Site Owners	6
Others	12

Of the 1730 responses from residents, 1650 were in the form of a residents' campaign letter. In the tables contained in this summary the figures given in brackets represent the number of responses received from residents that were not in the form of the campaign letter.

In addition we have taken into account the views expressed as part of the debate held on 23 June 2008 during the House of Lords Committee stage of the Housing and Regeneration Bill and responses received to the September 2008 consultation on applying the Mobile Homes Act 1983 to local authority owned Gypsy and Traveller sites¹. CLG has prepared an equality impact assessment in respect of this policy's impact on Gypsies and Travellers in England. The impact assessment is set out in part three of this paper.

General comments on the consultation document

The consultation was welcomed by park home residents and the industry and a good number of useful comments were provided, including examples of how disputes had previously been dealt with.

A number of respondents raised queries in relation to how a proposed transfer of jurisdiction to either Residential Property Tribunals (RPTs) or a dedicated tribunal would work in practice. As a result a number of respondents gave qualified support or opposed the proposal. Specific concerns were raised by Gypsy and Traveller stakeholders in response to both the May and September consultations². This summary endeavours to deal with those queries and concerns. The equality impact assessment sets out the measures that will be put in place to mitigate or eliminate any potential disadvantage that some Gypsies and Travellers might encounter by a transfer of dispute resolution to tribunals.³

¹ Implementing the Mobile Homes Act 1983 on Local Authority Gypsy and Traveller sites (September 2008).

² In total there were 52 responses to the September consultation. Of those 8 respondents commented on the potential transfer of disputes to a tribunal. Six of those respondents either objected to the transfer or expressed significant concerns about it.

³ The equality impact assessment is in Part 3 of this document.

Responses by question

Responses to the individual questions in the consultation document are listed below. Not all respondents replied to each question and therefore the total number of responses for each question does not always add up to 1760.

Question 1. Do you think that disputes and proceedings under the Act should remain in the jurisdiction of the county court? Please give your reasons.

	Yes	No
Residents	0	1723 (73)
Residents' Associations	1	10
Site Owners	2	3
Others	3	9

This question asked whether consultees were content to leave the current regime for resolving disputes under the Mobile Homes Act 1983 with county courts.

A number of consultees thought that dispute resolution and proceedings should remain in county courts. The two site owners who supported this proposition were concerned that tribunal decisions were not binding; one of them added that courts had a wide range of experience in this area; most disputes being termination cases would remain with the courts anyway and that courts can award costs, thus deterring frivolous applications. One residents' association commented that whilst a low cost arbitration system appeared attractive the lack of enforceability made the option unviable. Other consultees reiterated those concerns, adding that the use of the courts was of "paramount importance" to residents and the case for transfer had not been made out. More generally there was a concern about "ousting of courts in favour of administrative tribunals".

The majority of consultees were of the opinion that disputes under the Act should not remain vested in county courts. This was the view of almost all residents, some of whom commented that court proceedings were daunting, slow and expensive. Other residents and residents' associations also complained that the court system denied many residents access to justice because of the expense. A consultee added that the court system worked in favour of site owners who could afford to be legally represented. One resident thought that judges rarely had a detailed understanding of park home law and the system favoured those few solicitors who were well versed in it. Another comment was that some site owners routinely used the threat of court action as a means of intimidation.

Those site owners who considered the current regime was not appropriate were concerned to ensure that adequate mechanisms were put in place to ensure cases were dealt with properly in a tribunal and that complex cases or termination proceedings should remain within the jurisdiction of the courts.

Other consultees who did not support the retention of the court's jurisdiction shared the concerns referred to and one, in particular thought, "the expense, formality and anxiety of time consuming proceedings act as powerful disincentives to seeking formal dispute resolution at present".

Response:

Whilst one consultee, in favour of the retention of the court system, said the Government had failed to make a sufficient case for change, our view is that those subject to the current system make the case for change themselves. We note, in that respect, significant concerns about the formality and expense of court proceedings; the perception that there is not a level playing field between residents and site owners in access to the courts; that some residents think they do not get a fair deal through the system and concern that the threat of court action is used regularly. Overall it is apparent from consultees' representations that a significant part of the park home community neither uses nor has confidence in the current system. The Government, therefore, believes there is a case for change.

Question 2. Do you think that disputes and proceedings under the Act (other than those relating to termination of agreements) should be transferred to residential property tribunals (RPTs)? Please give your reasons.

	Yes	No
Residents	1723 (73)	0
Residents' Associations	10	1
Site Owners	4	1
Others	9	3

This question asked consultees if they thought that dispute resolution should be transferred to RPTs.⁴

A significant number of consultees, including most residents and residents' associations supported the proposition. A number of residents commented that proceedings before an RPT ought to be quicker and cheaper than those in county courts. One residents' association thought RPT proceedings would be less stressful than those in the courts.

⁴ Residential Property Tribunals were created under section 229 of the Housing Act 2004. They are one of four tribunals administered by the Residential Property Tribunal Service (RPTS). The others are the Leasehold Valuation Tribunals, Rent Assessment Committees and the Rent Tribunal. All members of the RPTS are eligible to sit on any of these tribunals. RPTS, therefore, comprises specialist housing tribunals.

Other residents thought that as the tribunals had experience in landlord and tenant issues this made them suitable to deal with park home cases. Whilst supportive of the overall proposal, there was some concern expressed about the enforceability of RPT decisions and one association thought it was essential that RPTs be given powers to enforce their decisions, otherwise rogue site owners would simply ignore them. One resident was concerned that no party should be entitled to legal representation in tribunal proceedings because site owners are more likely to be able to afford it, whilst residents would not. Without such a bar, site owners would be in a more advantageous position than residents.

The majority of site owners also favoured a transfer to the RPTs. However, a number of concerns were raised. One consultee commented that there needed to be strong safeguards against abuse; provision of training for tribunal members and a review of the system after three years. This consultee also believed that “complex issues” should remain in county courts. That view was shared by another site owner who added that other cases should be transferred because RPT proceedings would be cheaper and less intimidating than court action. Other consultees agreed in principle that disputes should be transferred to “local tribunals”, but had concerns about lack of enforceability and expertise in this area of law. In addition, consultees believed the Government needed to invest more in the training of tribunal members.

Other consultees, in favour of the transfer, echoed the opinions already mentioned. One consultee made the point that in the guise of leasehold valuation tribunals, RPTs are regularly and effectively used in leasehold dispute resolution cases and that there is no indication that the tribunals would be any less able to deal with park home disputes. Another commented that in other commonwealth countries, such as Canada and Australia, park home disputes are dealt with by expert tribunals rather than through the courts.

Those consultees who answered negatively to the question did so mainly for the reasons why they supported the retention of the use of county courts in answer to question one. A couple of consultees pointed out that RPTs have no experience in park home legislation. One site owner and one other consultee also pointed out that legal aid was not available for proceedings in tribunals. The other consultee was also concerned that tribunals do not order costs. It was pointed out that expert evidence would sometimes be required in complex cases in an RPT, which site owners could afford to obtain, while residents could not. Another consultee thought there was no better access to justice through tribunals than through the courts and that it was wrong to think that RPT proceedings would be any less formal or cheaper than those commenced in a court. One other consultee suggested that the “fatal flaw” with the use of RPTs was that their decisions could not be enforced. This concern was shared by the one residents’ association who objected to the transfer on the grounds that the Government’s intention was to put residents in a less favourable position in enforcing their rights under the Mobile Homes Act 1983.

In addition, this consultation has benefited from a number of comments made during Committee stage of the Housing and Regeneration Bill in the House of Lords when, on 23 June 2008, their Lordships debated a non Government amendment which called for the abolition of the role of the arbitrator in park home disputes. Peers urged the Government to carry out race equality and impact assessment, in respect of the proposed policy in view of its potential impact upon Gypsies and Travellers. Concern was also expressed that tribunal proceedings could be complicated, expensive and time consuming, one peer citing her experience as a member of the Employment Tribunal. Their Lordships were worried that parties to proceedings before an RPT would lose their right to legal representation, possibly because legal aid would not be available to them. Some of these concerns have been echoed in representations made by Gypsies and Travellers in response to the September 2008 consultation⁵.

Response:

The Government accepts that many consultees (even those supporting such a transfer) have concerns around the issue of the knowledge base of RPT members, training needs and, in particular, enforceability of RPT decisions. We have also noted the wider issues raised during the House of Lord debate and those of the consultees who oppose such a transfer outright.

Dealing with the points raised by their Lordships and in representations received in response to the September consultation.

First, following their Lordships' concerns and those raised by consultees in response to the September 2008 consultation, CLG has published an equality impact assessment – see part 3 of this paper.

The Government agrees with their Lordships that any type of tribunal cases can sometimes be expensive, complex and time consuming, in much the same way as court cases can be. However, we are not convinced that a direct comparison can be made between experience in employment rights cases and cases involving housing disputes. It would be more appropriate to look at the experience of other tribunals dealing with similar matters, such as the Leasehold Valuation Tribunal, which operate under similar rules, procedures and targets that will apply to RPTs. We also noted in that respect that despite the complexity of Employment Tribunal cases, there did not appear to be any suggestion that those kinds of disputes should be taken away from the specialist tribunal.

We do not agree that legal representation is not available for RPT proceedings, although we recognise that legal aid will not routinely be available to pay for such representation. A party may choose to have legal representation, but there is no requirement for him to be represented, since RPTs are required to ensure "parties are on an equal footing procedurally and are able to participate fully in the proceedings" and to assist "any party in presentation

⁵ In total there were 57 responses to the September consultation. Of those eight respondents commented on the potential transfer of disputes to a tribunal. Six of those respondents either objected to the transfer or expressed significant concerns about it.

of his case without advocating the course he should take” and to use the tribunal’s “special expertise effectively”⁶. In other words, tribunals are required to ensure that a party can effectively make his case and fully understand the other side’s case. Unlike courts as a rule, tribunals are inquisitorial, and participate in the proceedings, so that both the tribunal members and the parties fully understand the issues the tribunal has to resolve.

If a party chooses to be legally represented he does so at his own expense because costs do not automatically follow if he wins. It is because tribunal proceedings are inquisitorial rather than adversarial that users do not normally need the service of an advocate. This is the reason why tribunals do not routinely award costs, unlike the courts, and is also why legal aid funding is not normally available for tribunal proceedings. However, legal help is available to those eligible to receive it for legal advice and preparation (but not advocacy) in tribunal cases. These principles and rules apply to proceedings in most specialist tribunals, including Employment Tribunals, not just RPTs. However, legally aided representation may be available in exceptional circumstances for RPT proceedings, so it is also not the case that legal aid will never be available.

The Government notes the concern that the proposals could deprive persons of their right of access to the courts and the suggestion that this would be a breach of their Human Rights. We do not accept that the hearing of cases brought under the Mobile Homes Act 1983 before an RPT would infringe a person’s right to a fair trial. RPTs are independent and impartial tribunals established by law, as required under Article 6, and they are specialist housing tribunals. Having regard to the majority of responses to this question and question 1 it would appear that many people living and working in this sector believe that currently, whilst in theory they have a right to a fair and public hearing through the courts, in practice they are unable to obtain justice because of the expense, formality and anxiety of the courts proceedings. We firmly believe that the proposal to transfer the jurisdiction to deal with disputes to RPTs, and the procedures and safeguards that will be put in place are fully compliant with human rights legislation, and will provide greater access to justice for all parties.

Turning to other concerns raised by consultees.

First, we do not agree that, because RPTs do not currently have any experience in dealing with park home and caravan legislation, jurisdiction for such disputes should be left with county courts. Many consultees claim to be dissatisfied with the service they experience in the courts at present. Given the small number of disputes which actually reach court it could be argued that there is also little expertise in this area of law within the existing system. The advantage we see with RPTs is that as specialist housing tribunals they would be in a better position than the courts to readily build up and retain the necessary comprehensive expertise in this area. It is also intended that those members of the tribunal service panel who will be dealing with disputes under the Act will receive sufficient and appropriate training.

⁶ Regulation 4 (2) of the Residential Property Tribunal Procedure (England) Regulations 2006.

The Government also rejects the suggestion that court proceedings are no more expensive than those commenced in RPTs. As noted above we are not suggesting that RPT cases can never be expensive, as of course, depending on their complexity, they can be. However, what we can confidently predict is that an RPT resolving a dispute over pitch fees would not, after a seven day hearing, make a shared costs order for £200,000. However, we have been informed that this was the outcome of a recent dispute in a county court. On balance, as tribunals do not routinely award costs it follows that proceedings will normally be significantly less expensive than in the courts.

As to the question about the enforceability of RPT decisions, we would like to clarify that the consultation paper did not say that RPT decisions were not enforceable. On page 14 of the consultation paper it states "RPTs cannot enforce their own decisions". Some consultees have, therefore, queried as to how RPT decisions are enforced. In short, tribunal decisions are enforced in a county court. This is done in the same way as judgements of a county court are enforced.

When a judgement is made in a county court it is not automatically enforced, but where a judgement has not been complied with, a plaintiff must go back to the court to ask the court to register the judgement and enforce it. As such, in order to obtain justice where a defendant ignores a judgement against him, the plaintiff must go through a two stage process. In relation to an RPT decision, the enforcement route is the same. Where a decision has not been complied with the applicant must go to a county court to enforce it.

No administrative tribunal in England and Wales has a power to enforce its own decisions, so this is not a unique issue for RPTs.

It has been suggested that if a person has to apply to a court to enforce an RPT decision, he would incur additional costs and the process would be more time consuming. Registration of a decision would attract a fee and, of course, going through the process to enforce the decision would take time. However, this is no different from the process of registration and enforcement of any tribunal decision or a county court judgement. It is not the case, as one consultee suggested, that the courts provide a "one stop" service.

The Government does not make any claim that enforcement of RPT decisions will be any quicker or less expensive than if a county court judgement was enforced through the courts. What the consultation paper was indicating was that the RPT process of obtaining the decision would be quicker and cheaper than obtaining a court judgement.

Whilst the Government recognises there are concerns about this option, we note that a significant majority of the consultees support this option. RPT proceedings are cheaper (in general) and less formal than those conducted in the courts because legal representation is not usually necessary, which significantly reduces potential costs to the parties. Also, because proceedings are inquisitorial, rather than adversarial, parties can more easily represent themselves or be represented by a person who is not an advocate. In particular

there are safeguards in place to ensure that parties are treated on an equal footing and are given the necessary assistance to present their cases and understand the issues raised by the parties. RPTs, through their sister tribunals, Leasehold Valuation Tribunals and Rent Assessment Committees, have considerable experience in adjudicating on and resolving disputes between landlords and tenants, which makes RPTs particularly suitable to deal with similar disputes arising under the Mobile Homes Act . We are fortified in that view given the concern expressed by some residents that the courts do not always understand the issues in the park home sector.

Question 3. Do you think that disputes and proceedings under the Act should be transferred to a dedicated park homes tribunal? Please give your reasons

	Yes	No
Residents	1	1722 (72)
Residents' Associations	2	8
Site Owners	1	4
Others	0	11

This question sought views on whether consultees thought disputes and proceedings should be transferred to a dedicated tribunal set up to only deal with park home issues.

Most consultees did not support the option. Many expressed the view that it would be too expensive to set up and administer, especially given the projected number of cases. Some were concerned that setting up such a tribunal would lead to delay in the reform process.

Some consultees who favoured a dedicated tribunal thought this would be “ideal” but accepted that it would be unlikely to be cost effective. One consultee thought that as such a tribunal would build up a specialism in the law that may reduce the number of appeals over a period of time.

Response:

As the consultation paper made clear this was the Government’s least favoured option and that remains the case. The set up and administration costs of a new tribunal dealing with a small case load cannot be justified. In addition we believe that an RPT can deliver the benefits that consultees felt would come from a new dedicated tribunal.

Question 4. Of the three options, please give your preferred one.

	Option 1	Option 2	Option 3
Residents	0	1724 (74)	4
Residents' Associations	1	9	1
Site Owners	0	3	1
Others	3	9	0

This question asked which of the options consultees preferred – option 1 being retention of jurisdiction for disputes in county courts, option 2 being transferring the jurisdiction to RPTs and option 3 being the creation of a dedicated tribunal.

As can be seen, a very significant number of consultees supported option 2. Slightly more respondents supported option 3, than option 1.

Response:

Whilst we have paid very careful consideration to the reasons put forward by consultees who favoured retaining the current regime under option 1, we also note that the majority of consultees thought that the system was not working as well as it should and needed to be changed. The Government agrees that a case has been made for a change for the reasons outlined above. We do not propose to adopt option 3, but instead will be transferring the disputes and proceedings outlined in this response paper, to residential property tribunals as suggested in option 2.

We note the concerns that certain safeguards should be put in place in taking forward this option and we have accepted the need for them. Such safeguards will include a comprehensive training programme for those members of the tribunal who will hear park home and caravan cases, as well as procedural safeguards, as explained in this paper. We also intend to carry out a review of RPTs' functions under the mobile homes legislation within three years of them coming into operation. In addition we propose to carry out a separate review of our action plan in the equality impact assessment (see part 3) after one year.

Question 5. Do you agree that cases 1 to 8 of county courts’ express jurisdiction (as set out in the table in chapter 1) are suitable for transfer to a tribunal under options 2 or 3? If you do not think that one or more of those cases are suitable to be transferred please give your reasons.

	Yes	No
Residents	1723(73)	0
Residents’ Associations	10	1
Site Owners	4	0
Others	9	2

This question sought views on whether any transfer of jurisdiction to a tribunal should include the matters listed in paragraph 3 of the consultation paper.

A significant majority of consultees thought those types of cases should be transferred. One resident thought this was because county courts have no special knowledge of park home and caravan law. One site owner whilst agreeing that the jurisdiction should transfer to tribunals believed that complex cases should remain in the courts. Another made the point that contract cases which begin in an RPT could be transferred to a court if it involved termination of proceedings. Both residents’ associations and site owners agreed there was a need for tribunal members to be properly trained. Two consultees commented that re-siting of homes should remain in the courts as this could lead to an agreement being terminated.

One consultee said none of the types of cases should be transferred and pointed out that mediation was available in county courts; another said that if a tribunal had any future part in dispute resolution, it should be limited to “administrative matters” and that matters fundamental to the relationship of the parties should be left the courts.

Response:

The Government agrees that the types of actions and disputes listed in paragraphs 1 to 8 of the table should be transferred to a tribunal. We do not believe there is any particular reason why re-siting of homes should be treated separately from the others. The Residential Property Tribunal Service in England has advised that they will be rolling out a programme for providing mediation services, including on park home and caravan issues, which will enable parties to resolve their disputes informally through mediation.

Question 6. Do you agree that case 9 termination of agreements should remain within the jurisdiction of a county court even if the other express jurisdictions are transferred to a tribunal? If you think that termination proceedings should be transferred to a tribunal please give your reasons.

	Yes	No
Residents	1722(72)	1
Residents' Associations	10	1
Site Owners	4	0
Others	10	1

This question asked whether termination of agreement cases should remain with county courts.

Overwhelmingly, consultees believed that termination cases should remain with county courts. One site owner thought this was important because legal aid would not be available for tribunal proceedings and the courts were well versed in this area of park home and caravan law. A resident thought it was important that the courts retain this jurisdiction because of the "implication of the outcome". This view was shared by one other consultee who was concerned about dispossession and potential homelessness arising from possession cases. As all other 'housing' possession cases were dealt with by county courts, it would be wrong to treat park home and caravan cases any differently. One consultee thought it would be "completely unjust, unreasonable and discriminatory" if cases of termination/possession were dealt with in tribunals. It was further suggested that as a matter of case law people should not face the threat of eviction without having had the chance of proper advice and representation. Another consultee pointed out that as it was unlikely that RPTs were going to be given jurisdiction of possession cases for tenancies or leases it would be consistent if park home and caravan cases remained with the courts.

The resident who thought RPTs should take over termination cases did so because he believed threat of court action to terminate was used as a means of coercion by site owners. He believed that the role of the court should be limited to enforcing an RPT decision. The residents' association that shared the view did so because it thought the cases would be cheaper, quicker to dispose of and would be less threatening.

Response:

The Government agrees that decisions to terminate an agreement pursuant to paragraph 4, 5 or 6 of part 1 of schedule 1 to the Mobile home Act 1983 should remain in the jurisdiction of county courts for the many reasons advanced by the consultees.

We have heard from residents that site owners sometimes use termination proceedings as a bullying tactic and as a means of securing their own way. If that is so we believe this is an abuse of the court system and that no cases should come before a court unless the facts relating to it have been established and verified.

The Government, therefore, proposes to introduce a filter mechanism in respect of termination cases; similar to that which applies to long leasehold forfeiture cases under section 168 (4) of the Commonhold and Leasehold Reform Act 2002, which provides that before a landlord can apply to a county court to forfeit a lease he must apply to a leasehold valuation tribunal to establish the ground for forfeiture (unless the leaseholder has already agreed that the lease is to be forfeited).

We would seek views from consultees on the proposal to transfer the “fact finding” functions in termination cases to RPTs. The scheme and proposals are set out in part 2 of this paper.

Question 7. Do you agree that the general jurisdiction of a county court should be transferred to a tribunal? If you do not, please give your reasons.

	Yes	No
Residents	1723(73)	0
Residents’ Associations	10	1
Site Owners	3	1
Others	9	2

This question asked whether the jurisdiction outlined in paragraphs 4 and 5 of the consultation paper should be transferred to a tribunal.

Most consultees agreed that the general jurisdiction should be conferred on a tribunal. One site owner consultee reiterated that complex cases should remain with courts and another that members should be adequately trained. One residents’ association thought it was important that a tribunal should have a power to transfer complicated cases to a court. It was suggested that it was important that a tribunal was given the power to grant injunctions, to accept undertakings and make declarations. One consultee thought that RPT decisions should be subject to mandatory enforcements in the courts.

One site owner thought that county courts were best placed to adjudicate in these matters and that any dual responsibility would “simply add confusion” One residents’ association commented that the law was complicated, open to interpretation and that errors can be made. It was, therefore, unable to support the transfer unless there was an appeal to a court.

Response:

RPTs are specialist housing tribunals who regularly deal with complicated cases involving inter party disputes. We do not believe that the RPT would be less equipped than the courts to consider such cases. We agree that giving county courts and tribunals dual or overlapping jurisdiction would cause confusion, could lead to additional costs and expenses and might cause delay if the case needed to be transferred to or from a court or tribunal. As to the comment about appeals we would remind consultees that appeals are to the Lands Tribunal (which is equivalent to the High Court). In terms of the comment that RPTs need appropriate powers to operate this jurisdiction, we are aware of this and intend to give them those powers.

We, therefore, propose to transfer the general jurisdiction of the courts to deal with disputes under the Mobile Homes Act to RPTs.

We have grouped questions 8 to 10 together as they concern issues about the transfer of cases between tribunals and courts.

Question 8. Do you agree with the Government’s approach to those cases where there is an overlap between a tribunal’s and a court’s jurisdiction?

	Yes	No
Residents	1723(73)	0
Residents’ Associations	11	0
Site Owners	3	1
Others	9	2

Question 9. Do you agree that where such overlap exists and proceedings are commenced in a tribunal that it must transfer any aspect of the case relating to termination to a county court for determination, but if proceedings are commenced in a court it will have the discretion to decide whether to transfer part of the proceedings to a tribunal?

	Yes	No
Residents	1721(71)	0
Residents’ Associations	10	0
Site Owners	2	2
Others	7	4

Question 10. Question 10. If you do not agree with either of questions 8 or 9 please give your reasons.

Most respondents answered in the affirmative to these questions.

Response:

Although we have noted the calls for complicated cases to be dealt with by the courts and to give tribunals the powers to refer such cases to the courts, this is not something which we think is necessary because of the level of experience and expertise within the RPTs in housing matters. We also think that transferring cases would, in any case, add to the costs and expenses and add to delay in resolving disputes.

When we consulted on provisions relating to transfer of cases we had in mind mainly termination cases, in circumstances where what appeared to be a non-termination case started in the tribunal subsequently became one or where a court wants to ask a tribunal to carry out an investigation of the facts before it makes a decision.

We are consulting on whether the fact finding role in termination cases – see part 2 of this paper- should be transferred to RPTs. We will, therefore, defer any decision as to whether it is necessary to make provision for the transfer of cases between courts and tribunals until a decision is made on termination cases because there will be no need for transfer provisions if the fact finding element of termination cases is vested in RPTs.

Question 11. Do you agree that if option 2 or 3 is selected then site agreements should not be permitted to bind the parties to resolve disputes through arbitration? If you do not please give your reasons.

	Yes	No
Residents	1722(72)	1
Residents' Associations	11	0
Site Owners	2	0
Others	10	1

This question asked whether compulsory arbitration clauses in agreements should be permitted.

There was a significant body of opinion that compulsory arbitration should not be permitted. Indeed the House of Lords debate on 23rd June was on the back of a non Government amendment to the Mobile Homes Act 1983 proposing to abolish the provision for arbitration in the Act. One consultee agreed with the proposal but was unhappy it was being linked by the Government to the introduction of a tribunal system.

Another consultee thought that it should be abolished even if option 1 was adopted (the continued use of the courts). The one consultee who supported its retention pointed out that no one was “compelled to accept an arbitration agreement”.

Response:

With regard to the remark about compelling people to accept such agreements, whilst this may be technically true, most potential residents do not have the opportunity to negotiate an agreement as they often take an assignment of an existing one, which might contain such a provision without them understanding its significance. If a resident takes such an assignment, he may have unwittingly lost some or all rights to have a case dealt with by a court or a tribunal.

The Government agrees that compulsory arbitration clauses in agreements should no longer have effect as they appear to favour site owners, since such clauses are normally drafted on behalf of owners and often require residents to pay the fees of the arbitrator.

Question 12. If you agree that site agreements provision should not be permitted to bind the parties to resolve disputes through arbitration do you think this should apply retrospectively (i.e. extend to existing agreements) or only prohibit arbitration provisions in new agreements?

	Yes	No
Residents	1723(73)	0
Residents' Associations	11	0
Site Owners	4	0
Others	9	1

This question asked whether the repeal should apply retrospectively (i.e. that clauses in existing agreements should cease to have effect).

There was almost universal agreement that it should, since applying it only to new agreements would leave existing residents under the unfair system. One consultee, however, queried whether applying to existing agreements might be unfair especially if incentives had been given to residents to enter into such agreements.

Response:

The Government believes that it would be important to give retrospective effect to the abolition of compulsory arbitration because such agreements are seen as operating unfairly to residents. Furthermore, in particular cases new residents often take an assignment of an existing agreement and so do not have the opportunity to negotiate whether the agreement should be subject to compulsory arbitration.

Question 13. Do you think that if option 2 or 3 is selected the parties should retain the right to agree to refer individual disputes to an arbitrator, and that a decision of the arbitrator should be binding on the parties? If you do not agree, please give your reasons.

	Yes	No
Residents	1720(70)	3
Residents' Associations	10	1
Site Owners	3	1
Others	10	1

This question asked whether residents and site owners should be able to voluntarily refer cases to arbitration.

Most consultees thought it was right that parties could agree between themselves to refer individual disputes to an arbitrator, provided safeguards against abuse are in place. Some consultees thought there could be a right of appeal. Those who thought arbitration should not be available at all thought it was not an equitable system and that arbitrators tended to favour site owners.

Response:

The Government agrees with the majority view that if parties freely choose to use arbitration to settle individual cases on an ad hoc basis then we should not step in to prevent them from doing so. Where the parties have voluntarily entered into an arbitration agreement that arrangement will be regulated under the Arbitration Act 1996.

Question 14. Do you agree that any decision as to where civil licensing appeals should lie should await the results of the consultation paper on the reform of licensing? If you do not agree please give your reasons

	Yes	No
Residents	1723(73)	0
Residents' Associations	11	0
Site Owners	4	0
Others	11	0

This question asked whether any decision concerning civil licensing appeals should wait the outcome of the forthcoming consultation paper on site licensing.

There was unanimous agreement that any decision should await the outcome of that consultation.

Response:

The Government agrees that any decision concerning civil licensing appeals should await the outcome of the site licensing consultation.

Question 15. Please state your preferred option on onward appeals and give your reasons for selecting that option.

	Option 1	Option 2	Option 3
Residents	1	0	1722 (72)
Residents' Associations	0	0	12
Site Owners	0	0	4
Others	0	0	10

This question was concerned with whether parties should be able to appeal RPT decisions at all and if so under which conditions. The options were:

- prohibition on appeals
- automatic right of appeal
- right to appeal with permission

Most consultees preferred option 3. There was a good deal of consensus that this option was the fairest of the three because it permitted a party with a legitimate ground of appeal to pursue it, whilst providing a mechanism to prevent illegitimate appeals from going forward.

One resident preferred option 1 on the basis that this would prevent unscrupulous park owners from using legal representation "to appeal every loophole". One other respondent thought none of the options were appropriate.

Response:

The Government believes that option 1 would operate unfairly on both site owners and residents by denying them a right to challenge a first instance tribunal determination, where the parties have a legitimate point of fact or law which needs to be addressed by a higher appellate forum. We also consider that option 2 (which was not supported by any consultees) would lead to parties becoming involved in hopeless appeals before the Lands

Tribunal, which would place significant and unnecessary pressures on the resources of those parties and the tribunal itself.

The Government has, therefore, decided to proceed with option 3. This is a tried and trusted method of appeal, which already applies to RPT appeals under the Housing Act 2004 and Leasehold Valuation Tribunal decisions. We believe this appeal structure provides for a fair and proportionate system.

Whilst the concern of the resident who favoured option 1 is recognised, the Government believes that option 3 equally prevents the kind of abuse feared, since it provides a filtering method based on the merits of the appeal.

Question 16. Do you agree with the proposed rules on time limits for applications in each of the jurisdictions listed? If not please give your reasons and suggest any alternative time limits or if you do not think there ought to be time limits please say why.

	Yes	No
Residents	5	1727 (77)
Residents' Associations	3	1
Site Owners	2	2
Others	7	3

This question was about whether consultees agreed with the time limits specified in the paper for making applications to a tribunal and sought views on alternative time limits. Opinion was divided. Most residents did not agree with the suggested time limits. On the other hand residents' associations did, whilst park owners were evenly divided. Other consultees were generally in favour.

Those who opposed the proposed time limits did so, in general, because they considered the limits were too short. Some also pointed out that disputes can arise at anytime and so it would not be reasonable to set out when those disputes should be referred to an RPT for adjudication. Generally, those who thought the time limits were reasonable did so because they were concerned that without limits disputes could go on indefinitely. A number of supporters thought that it was very important that parties should be aware of any time limits.

Response:

The Government believes there is a need for time limits for certain applications to a tribunal to encourage continuity and finality in certain dealings where the parties need to know where they stand. However, we also recognise that in some cases time limits are not appropriate.

In particular we agree that the general jurisdiction of an RPT does not lend itself to hard and fast rules about when a case can be referred. It is, therefore, our intention not to propose any time limits on such cases.

On the other hand, the review of pitch fees is an area where an application should be made to a tribunal within a reasonable time if the parties have been unable to agree the new fee. Specific concern was raised that 28 days was too short a period since it restricted the parties' ability to negotiate a new fee. However, that is the statutory minimum period as the legislation is currently drafted. A site owner can allow a longer period if he wants, but he does not have to, so he effectively would be in control of any negotiation timetable. This could very well operate to the disadvantage of a resident. This is, therefore, one area where there is a need for finality so the parties know where they stand in any negotiation process. We, therefore, have concluded that the 28 day period specified in paragraph 64 is the appropriate time limit for applications to be made to an RPT.

The Government also believes that there ought to be a time limit where a resident wishes to apply for the RPT's approval of a person to whom he wishes to sell or gift his home. Again concern was raised that 28 days was too short a period. It was suggested that some residents may lose their right to apply to the RPT because they may be unaware of the short time in which to do so. It was also thought that negotiations could be protracted and, therefore, this short period would interfere with the parties' rights to negotiate an agreement. It was suggested that the time limits in such cases should range from three to six months. The Government has carefully considered these representations and appreciates those concerns. We believe it would be rare and normally unreasonable for the only issue between the parties – namely the suitability of the person to whom the assignment or gift is to be made – to take six months to resolve, but accept that 28 days may be too short a period. We, therefore, have concluded that a reasonable time for making an application to an RPT for its approval of a person to whom a resident wishes to sell or gift his home, is three months from the notification by the site owner of the decision to refuse his approval of the person, or where no decision has been given three months, from the period ending 28 days after the original request was made.

We do not propose to introduce any other time limits or to amend any time limits that currently exist in the legislation.

Question 17. Do you think the tribunal should have a power to extend the time limit for appealing in certain cases? If so, which cases?

	Yes	No
Residents	1721(71)	2
Residents' Associations	11	0
Site Owners	2	2
Others	9	1

This question sought views on whether an RPT should have a power to extend time limits for making applications and if so in what type of cases.

A significant number of consultees thought that an RPT should have the power to extend time limits. This was subject to the caveat in most responses that the applicant could justify the reason for delay. Those who did not agree were mainly concerned about the need for finality, possible delays and the use of such a provision as some kind of 'tactic'.

No consultees expressed an opinion as to which jurisdictions this power should apply to.

Response:

The Government believes that, where there are time limits for applications to the RPT as set out above, it is essential in the interest of justice that there should be an opportunity for out of time applications to be made. It is, however, important that RPTs do not routinely grant permission and that they consider the merits of each out of time application carefully. For that reason we are minded to make provisions that an out of time application can only go forward for a determination if a tribunal is satisfied that there was a reasonable excuse for the delay in presenting the application and that the particular case raises a matter of some importance so as to justify the application being accepted. These safeguards will ensure that out of time applications will only proceed to a full determination in appropriate circumstances.

Question 18. Do you agree that the tribunal should be able to issue a summary decision in the circumstances specified?

	Yes	No
Residents	1723(73)	0
Residents' Associations	11	0
Site Owners	4	0
Others	8	2

This question sought views on whether an RPT should have a power to issue a summary decision in the circumstances set out in paragraph 67 of the consultation paper.

Most consultees thought a tribunal ought to have that power. The one reasoned response in support explained the need for clear guidance as to the circumstances in which such decisions are made and the importance of consistency between tribunals in exercising such a power. The minority who did not agree that RPTs should have this power were concerned about its practical application and the need to determine the level of ‘engagement’ by holding a hearing.

Response:

Having considered the competing arguments the Government believes it would not be appropriate to give RPTs a power to make a summary decision where the question is whether the respondent has meaningfully ‘engaged’ with the applicant before the application was made. We agree with the minority opinion that it should be for a tribunal to determine the level of engagement in a full hearing. However, we intend to make a provision which would enable an RPT to make a summary decision if the respondent indicates in his response to the reference that he does not intend to contest the proceedings.

Question 19. Do you agree with the proposals relating to the holding of oral hearings?

This question was in two parts.

	Yes	No
Residents	1721(71)	1
Residents’ Associations	12	0
Site Owners	4	0
Others	10	0

An overwhelming majority of consultees thought an RPT must hold an oral hearing if one of the parties to the proceedings asked for one to be held, or the tribunal decided to hold one on its own volition.

Response:

The Government agrees that a tribunal must hold an oral hearing if one of the parties requests one and should be able to arrange such a hearing without such a request, if it thinks that it ought to hold one.

Do you think there are circumstances in which such hearings should be held in private? If so, please give examples.

	Yes	No
Residents	4	1719 (69)
Residents' Associations	3	9
Site Owners	3	1
Others	6	4

The second part of the question sought views on whether a hearing could be held in private and if so in which circumstances.

A significant number of respondents, mainly residents and residents' associations, did not think that hearings should be held in private. Primarily the concerns were that proceedings should be seen to be fair and open and that holding hearings in private would allow bad site owners to escape adverse publicity. Those who agreed thought that hearings could be held in private in "extreme or exceptional circumstances" and/or with the permission of a tribunal.

Response:

As a rule oral, hearings will be held in public. However, the Government accepts that there may be exceptional circumstances in which part or all of the hearing should be held privately. These may include cases which involve particularly sensitive matters which are not in the public domain or in the public interest. A tribunal must determine on the merits of the case whether a hearing can be held in private. We agree with the residents that simply an attempt to avoid adverse publicity would not be a reason to hold a hearing in private. Whether or not a hearing is held in private, an RPT will be required to issue a reasoned decision which will be publicly available.

Question 20. Do you agree that there should be an urgent case procedure? In which circumstances do you consider the procedure should be available?

	Yes	No
Residents	1723(73)	0
Residents' Associations	12	0
Site Owners	4	0
Others	10	0

This question sought views on whether in certain circumstances an RPT should be able to deal with a case on a “fast track” basis and if so what those circumstances might be. The suggestions being those applications in relation to the approval of a person to whom a resident wishes to sell or gift his home and applications to re-site homes in an emergency.

Consultees unanimously supported the concept of an urgency procedure. Two consultees believed that it should be a matter for the discretion of an RPT as to when to treat a case urgently. Others thought the types of cases in which the procedure ought to be available should be limited to those cases listed in paragraph 72 of the consultation paper, although one site owner correctly pointed out that in the case of an emergency the site owner did not (under the current law) have to apply to a court to move the home. Some consultees thought a special fee should be payable for applications under this procedure.

Response:

The Government believes that there should be provisions in place that allow RPTs to deal with urgent cases expeditiously. In order to prevent abuse of such a procedure its availability should be strictly limited to certain types of cases such as selling or gifting a home. For that reason we do not believe there is a need for further safeguarding of abuse by requiring a special fee to be payable.

Question 21. Do you agree that an RPT should have a power to inspect the site etc. to which an application relates?

	Yes	No
Residents	1723(73)	0
Residents’ Associations	12	0
Site Owners	4	0
Others	10	0

All consultees thought RPTs should have powers to inspect appeal sites etc.

Response:

The Government intends to give RPTs appropriate powers to visit park home and caravan sites and to inspect park homes and caravans internally with the permission of the occupier.

Question 22. Do you agree an RPT should have powers to dismiss cases of no merit or prevent such applications being made?

	Yes	No
Residents	1723(73)	0
Residents' Associations	12	0
Site Owners	4	0
Others	10	0

This question sought views as to whether an RPT ought to have powers to dismiss a case for the reasons set out in paragraph 76, or to refuse to entertain certain applications as outlined in paragraph 77, of the consultation paper.

All consultees agreed that RPTs should have a power to dismiss cases of no merit. One resident thought this ought not to apply in pitch fee review cases, whilst another was concerned that a tribunal ought to get a "second opinion" before dismissing a case. Some consultees thought a tribunal should give reasons for dismissing such a case. One other consultee was concerned about giving RPTs a power to prevent applications being made to it, as this was considered as "somewhat radical".

Response:

The Government intends to give RPTs a power to dismiss cases that fall within the description set out in paragraph 76 of the consultation paper. We see no reason why pitch fee reviews should be excluded from this provision and do not agree that a tribunal should obtain a second opinion before exercising its discretion in this respect. We agree that a person whose application has been dismissed on this ground should be given sufficient information so as to know the reasons for the decision.

We do not accept that giving a power to prevent vexatious or mischievous applications being made is radical. It is a power exercisable by county courts and in the High Courts as well as other tribunals, such as the Employment Tribunal. It can be an important safeguard to prevent respondents from being harassed or caused distress, or, tribunal resources being pressured by hopeless applications. However, we are not convinced that it is necessary at this early stage of the new jurisdiction to give RPTs an express power to combat such applications, although we will keep the matter under review.

Question 23. Do you agree that an RPT should have the power to award costs in the limited circumstances set out above?

	Yes	No
Residents	1723(73)	0
Residents' Associations	12	0
Site Owners	4	0
Others	10	0

This question asked whether, and if so in what circumstances, an RPT should award costs against a party.

All consultees thought an RPT should have a limited power to award costs in the circumstances set out in paragraph 79 of the consultation paper. Some consultees thought this was essential to prevent abuse of the system. One residents' association and a site owner were concerned to ensure costs should not be awarded against parties who acted reasonably and in good faith. One consultee thought that the financial circumstances of a party should not be taken into account in any decision to award costs. However, this view was not shared by others who thought that the financial circumstance of a party was a very important consideration.

Response:

The Government believes it is essential that RPTs have adequate powers to award costs in the circumstances set out in paragraph 79 of the consultation paper. The provision will not penalise residents or site owners who have acted in good faith and reasonably in presenting their cases; it is intended to apply to those people who abuse the system by bringing or defending hopeless cases or who act disruptively in proceedings. In all cases if a tribunal is minded to make an order for costs it must give the party against whom it is proposed the order be made an opportunity to make representations to the tribunal and must take account of the financial circumstances of that party before making any order.

Question 24. Do you think the maximum amount of a cost order should be £5,000?

	Yes	No
Residents	1721(71)	3
Residents' Associations	10	2
Site Owners	3	1
Others	7	3

The majority of consultees thought £5,000 was the appropriate amount of costs a tribunal should be able to award against a party. Some site owners believed this amount should be kept under review. One thought any lower amount would not be a disincentive to making applications lacking merit. Some residents and their representatives and other consultees thought any higher amount would take the proceedings outside of a low cost forum and more akin to county court action. One residents’ group thought £5,000 was fair for site owners, but that a lower maximum amount should apply to residents.

Opinion as to the appropriate amount amongst those who did not support £5,000 varied significantly. One resident contended it should be £50,000 and a site owner thought not less than £15,000. Other consultees thought that £5,000 was too much and suggested the appropriate maximum should only be raised to £2,000. There was concern that park home and caravan residents would not be able to afford £5,000 and in one response it was suggested they would struggle to afford £500.

Response:

The Government believes that a maximum award of costs of £5,000 is sufficient and proportionate.

It is apparent from the comments of some of the consultees that they are under the impression that costs will be awarded routinely. The RPT cannot, however, award costs except in the limited circumstances referred to in the previous question. Thus, a party will only risk incurring costs, whether he is a site owner or resident, if he has acted unreasonably in connection with the proceedings. So the vast majority of people should have no need to fear a cost order. As we pointed out in response to question 23, an RPT must also offer a party an opportunity to be heard and must take account of the financial circumstances of that person before making a costs order. Furthermore, the order could be for any amount the tribunal considers is reasonable, subject to it not exceeding £5,000.

We also propose that an RPT will be able to order the respondent to pay the applicant’s fee for making the application if it appears to the tribunal that the respondent had acted unreasonably.

Question 25. Do you agree that a consolidated application should be able to be made to an RPT?

	Yes	No
Residents	1722(72)	1
Residents’ Associations	12	0
Site Owners	4	0
Others	10	0

This question was about whether group/consolidated applications should be permitted to be made to an RPT and apart from one resident (whose objection is not relevant to the general principle) there was universal support for the proposal.

Response:

The Government intends to make provisions which will permit consolidated applications to be made to and heard by an RPT.

Question 26. Do you agree that RPT decisions take effect within the time limits specified and that there is a case for different approaches to different cases? If so, do you agree with the exceptions specified? Do you think there ought to be any more?

	Yes	No
Residents	1722(72)	1
Residents' Associations	12	0
Site Owners	3	1
Others	10	0

This question was concerned with when an RPT decision comes into force. It was proposed that, subject to specified exemptions, the decision should come into force when the period for appealing to the Lands Tribunal has ended (unless an appeal has been made).

Almost all consultees agreed with the proposals (set out in paragraphs 89 and 90 of the consultation paper) as to when RPT decisions should come into force. Only two consultees objected outright to those proposals. A site owner made reference to the fact that no application for a pitch re-location was needed in emergency situations (which is, of course, the case). Other points were that the date of the RPT decision should be when it comes into force, and there ought to be shorter time limits for appeals for cases in paragraph 90.

Response:

Where the decision relates to:

- re-siting of homes
- refusal to approve the sale of a home or
- refusal to approve the gift of a home

the Government is satisfied these decisions must come into effect at the time of the RPT decisions. All other decisions will come into force when the period for appealing to the Lands Tribunal has ended (unless an appeal has been made).

Question 27. Do you agree with the proposed rules regarding time limits for seeking permission to appeal against RPT decisions?

	Yes	No
Residents	1723(73)	0
Residents' Associations	10	2
Site Owners	1	3
Others	7	3

This question was concerned with the time limits for seeking permission to appeal to the Lands Tribunal. Essentially the consultation paper proposed that permission be sought from the RPT first and within 14 days of its decision and if that permission is refused there will be a further 14 days to apply for permission to the Lands Tribunal itself.

Although most consultees supported this approach, none provided any reasons for doing so. Of those who did not support it, one residents' association thought that seven days was a sufficient period for appealing. However, the majority of consultees who gave reasons, thought 14 days was too short a time, since the issues may be complex and legal advice might need to be sought.

Response:

The Government, having carefully considered these representations, agrees with the minority view that 14 days is too short a period in which to expect a party to apply for first instance permission, given the possible complexity of the issues and the possible need to obtain legal advice. We also agree with one of the consultee's comments that there ought to be consistency on rules about RPT appeals. For those reasons we intend to provide that an application for permission to appeal must be made, in the first instance, to the RPT within 21 days of the tribunal giving its written reasons for the decision and that any renewal for permission to appeal must be made within 14 days of the RPT giving its written reasons for refusal to grant permission.

Question 28. Do you agree with our proposals relating to fee structures? If you do not please give details of how you think it might be different.

	Yes	No
Residents	1720(70)	3
Residents' Associations	10	2
Site Owners	1	3
Others	8	2

This question sought views on the proposed fee structure for submitting applications to RPTs.

Whilst the proposed structure was supported by a number of consultees, there was concern about the complexity and potential expense of the structure particularly as it related to pitch fee reviews, consolidated actions and urgency cases.

Response:

The Government recognises the concerns expressed by consultees.

As we responded in question 20 we do not think that an urgency (special) fee should be payable.

We have given further consideration as to whether a fee should be payable at all in connection with pitch fee reviews and if so what that fee should be. We have considered that as pitch fee reviews are regulated by statute it would not be appropriate to require a site owner or resident to pay a fee in order to secure a level of fee he might very well have secured without the need to resort to the tribunal. So no fee will be payable for a pitch fee review application. As we advised in response to question 6, no fee will be payable for the type of application referred to in that response.

In all other cases the standard fee payable will be £150, subject to the sliding scale set out for group action cases in paragraph 94.

A person in receipt of certain state benefits will be exempt from paying any fee.

Conclusion

The Government has, therefore, decided to transfer dispute resolution and other proceedings arising out of the provisions of the Mobile Homes Act 1983 (as amended) to Residential Property Tribunals. In summary the main proposals include that:

- RPTs will be given powers to determine any issues arising out of the express and general jurisdictions (Questions 5 and 7)
- subject to the consultation in part 2 either we shall transfer termination fact finding cases to RPTs or leave that role within the jurisdiction of the county courts (Question 6)
- time limits will be imposed on making certain applications and appeals to an RPT (Question 16)
- urgency procedures will be available in respect of certain appeals to an RPT (Question 20)
- RPTs can award costs in certain circumstances limited to a maximum sum of £5,000 (Questions 23 and 24)

- residents and site owners will have a right to apply for permission to appeal RPT decisions to the Lands Tribunal and to renew such applications to that tribunal itself within specified time limits (Questions 15, and 27); and
- arbitration clauses in agreements (including existing ones) will no longer have effect, but residents and park owners may still seek the services of an arbitrator on an ad hoc basis (Questions 11, 12 and 13).

The Government, therefore, intends to introduce the necessary measures in Parliament and the Welsh Assembly to make the necessary changes to legislation to give effect to these proposals at the earliest opportunity, with a view to bringing into operation the new jurisdiction as soon as possible.

Part Two

Further consultation on termination provisions in the Mobile Homes Act 1983 (as amended)

Scope of the consultation

Topic of this consultation:	This consultation relates to the transfer of dispute resolution under the Mobile Homes Act 1983.
Scope of this consultation:	The purpose of this consultation is to seek views on whether the fact finding role of the court in termination cases should be transferred to Residential Property Tribunals. It seeks further clarification on consultees' views following responses to Question 6 of the consultation paper <i>A new approach for resolving disputes under the Mobile Homes Act 1983 (as amended)</i> and to proceeding relating to Park Homes published in May 2008. The summary of response to that consultation is part 1 of this paper. This is subject to a shorter period for consultation because it introduces no new policy principle, but merely seeks clarification of consultees' views on a discrete aspect of the proposals.
Geographical scope:	This consultation paper covers the issues as they relate to both England and Wales.
Impact Assessment:	An impact assessment (consultation stage) was prepared for and attached to the May 2008 consultation.

Basic Information

To:	This document is aimed at the organisations that are listed at Annex A) and those that have an interest in the park homes industry, including site owners and managers and residents as well as those members of the Gypsy and Traveller community, owners of Gypsy and Traveller sites and persons representing members of that community and site owners .
Body/bodies responsible for the consultation:	Park Homes Team, Communities and Local Government (CLG). Welsh Assembly Government.
Duration:	From 12 May 2009 until 9 June 2009.
Enquiries:	Samya Muddathir 020 7944 6226 Parkhomes@communities.gsi.gov.uk
How to respond:	Preferably electronically to: Parkhomes@communities.gsi.gov.uk marking your response 'Termination of agreements consultation'. Or by post to: Samya Muddathir Park Homes Policy Team Department for Communities and Local Government 1/C3 Eland House Bressenden Place London SW1E 5DU
After the consultation:	Within three months of the consultation closing we will publish on our website (www.communities.gov.uk) a summary of the responses and the Government's response to them.
Compliance with the Code of Practice on Consultation:	This consultation complies with the code of practice on consultation.

Background

Getting to this stage:	We consulted on the transfer of disputes in May 2008 in our paper <i>A new approach for resolving disputes and to proceedings relating to Park Homes under the Mobile Homes Act 1983 (as amended)</i> .
Previous engagement:	Communities and Local Government have met with stakeholder users since the close of that consultation to discuss the proposals and options in greater detail.

Termination cases under the Mobile Homes Act 1983

1. In paragraphs 33 and 34 of the consultation paper *A new approach to resolving disputes under the Mobile Homes Act 1983 (as amended)* the Government indicated that its intention was to transfer to Residential Property Tribunals (RPTs) all jurisdictions currently vested in county courts under the Mobile Homes Act 1983 (as amended) (the Act), except those relating to termination cases. Question 6 sought views on whether termination proceedings should remain vested in county courts. Most consultees thought this should be the case.
2. Paragraphs 35 to 38 considered the difficulties that might arise with such an approach and set out how we thought these might best be overcome. Those difficulties were about breaches of contractual obligations which could ultimately lead to termination proceedings and in which forum (court or RPT) such cases should be commenced, continue and concluded. Questions 8 and 9 of the paper sought views on how 'overlap' jurisdictions may be best addressed, by (for example) putting procedures in place for the transfer of cases between the respective forums.
3. Having carefully considered the responses to questions 6, 8 and 9 in particular, and the general thrust of responses to the paper, the Government has deferred any decision on whether to make transfer procedures until a decision has been made following on from this consultation⁷.
4. As we have said in our response to question 6 the consultation highlighted concerns from residents that county courts did not always understand the issues affecting park homes and that the threat of court action was sometimes used as a means of intimidating occupiers.
5. Furthermore, the Government recognises that residents of park homes are not in the same position as tenants of residential accommodation. A park home resident in general owns his home and has permission to station it on a pitch for which he pays a fee. This is much more akin to the position of a flat or house owner who owns a leasehold interest only in the property and pays the landlord ground rent. Both park home residents and long leaseholders own valuable assets which may be lost if their agreements/leases are brought to an end. A high threshold test is required to be satisfied in proceedings that may ultimately result in the resident having to give up his home. This test is currently considered by the county court when hearing the alleged facts in termination cases before it.
6. We propose introducing a new requirement in relation to termination proceedings, which will involve both the RPT and the county court. Our proposal would operate in a similar (but not exactly the same) way as forfeiture proceedings in respect of long leases

⁷ See response to question 10 in Part 1

under section 168 (4) of the Commonhold and Leasehold Reform Act 2002 under which a landlord of such a lease cannot apply to a county court to forfeit it unless he has satisfied a Leasehold Valuation Tribunal that the leaseholder is in breach of his lease.

7. Before explaining how the proposal will work it is worth setting out in summary how the existing mobile homes legislation relating to termination and eviction operates. Termination and eviction actions are distinct and separate proceedings.
8. Paragraphs 4, 5 and 6 of part 1 of schedule 1 to the Act set out the grounds on which a court can authorise the site owner to terminate the agreement. These are:
 - (paragraph 4(a)). The resident has breached a term of the agreement; the site owner has given notice to remedy the breach and the notice has not been complied with within a reasonable time
 - (paragraph 5(a)). The resident is not occupying the park home as his only or main residence
 - (paragraph 6⁸). The condition of the home is a detriment to the site
9. In each of these grounds the court must be satisfied that it is reasonable for the agreement to be terminated before it makes an order to that effect. Thus, even if the court is satisfied of the facts of the case it does not have to make the order.
10. With regard to cases that come within paragraph 6 (the condition of the park home or caravan is having a detriment to the amenity of the site) in addition to establishing the facts of the case and whether in light of those facts it would be reasonable to make an order authorising the termination of the agreement, the court has an important additional power. The court can make an order, if it is practical to do so, specifying what reasonable repairs are required to be carried out and by when, in order to eliminate the home's detriment to the site. The resident has to agree to the order being made. If the court makes an order and it is complied with then that is the end of the matter. However, should the order not be complied with the site owner may return to court to ask it for authority to terminate the agreement.
11. If a court makes an order under paragraphs 4, 5 or 6 permitting an agreement to be terminated, it is an offence for a site owner to re-possess the pitch other than by securing an order to do so from a court under section 3(1) (b) of the Caravan Sites Act 1968. In such a case the court has no discretion and must make the eviction order, although it may suspend its operation for 12 months (at a time) under section 4(3).
12. In practice, if a court has authorised the termination of a park home agreement (and the agreement has been brought to an end) it is unlikely that it would suspend the eviction order for other than a short period.

⁸ Under paragraph (6) the court has a specific power, if it is satisfied that the detriment can be cured by carrying out certain repairs and this is agreed by the resident, to adjourn the proceedings to allow the resident to carry out the specified repairs within the period allowed in the court order.

13. The Government does not propose to make any changes to the requirements in the Caravan Sites Act 1968 for securing an eviction order or the operation of such orders in respect of park homes and caravans. It is also not our intention to remove from the court the jurisdiction to authorise, or as the case may be not to authorise, on the basis of whether it would be reasonable to do so, the termination of agreements under the Act.
14. We propose, however, that before an application can be made to a court for authority to terminate an agreement, an RPT will need to certify that one or more of the grounds in paragraphs 4(a) or 5(a) of part 1 of schedule 1 to the Act has been met.
15. In practice this means that a site owner would need to apply to an RPT and satisfy it that one or more grounds for termination of the agreement have been made out. The tribunal's role would be to make a thorough examination of the facts and to establish on the balance of probabilities whether one or more of the grounds for termination are made out. If it is so satisfied, and if the site owner still wishes to terminate the agreement, he will need to apply to the court for an order permitting termination. It will be the court, not the tribunal, who will decide whether, on the basis of the facts established by the tribunal, it is reasonable to permit the agreement to be terminated.
16. Under the new termination procedure we propose that in the paragraph 6 cases (i.e. those where the condition of the park home or caravan is detrimental to the amenity of the site) the tribunal will be required to make a finding whether the condition of the home is detrimental to the amenity of the site.
17. One question is whether the repairs order (see paragraph 10 above) should be made by the court or the tribunal. It may be more practical for it to be made by the tribunal. This is because the tribunal would have seen the condition of the home when making its assessment on whether the home or caravan was a detriment. It will, therefore, have a firm view from its inspection whether the park home or caravan is reasonably capable of being repaired to eliminate the detriment and what form those repairs should take. The tribunal will include members who have expertise in property conditions, and thus unlike in the court, the parties may not have to present expert evidence as to the nature of the required repairs and their practicality and reasonableness. Like the court, the RPT will not be able to make such an order unless the resident indicates that he is willing to carry out the repairs.
18. This new approach would mean that if the resident does not agree to carry out the repairs, or the tribunal does not think that reasonable repairs can be undertaken, the site owner would, therefore, be able to apply to the court for authority to terminate the agreement. The court would then have to decide whether it was reasonable to terminate the agreement.

19. If the resident, however, agreed to carry out the repairs and the tribunal is satisfied that the repairs are reasonably practical then it would make an order specifying what works need to be done and by when. If that order is complied with that would be the end of the matter. On the other hand, if the site owner considered the order had not been complied with, he would have to go back to the RPT. The tribunal would then need to make a determination as to whether the order had been complied with. If the tribunal is satisfied it had been, then the site owner can take no further action. However, should the tribunal make a finding that the order had not been complied with, the site owner would be entitled to apply to the court to seek authorisation to terminate the agreement. The court would then decide whether it was reasonable to give that authorisation.
20. The alternative approach is to leave any question of whether to make a repair order or what should be included in such an order to the county court. In that case an RPT's role would be limited to determining whether the condition of the home or caravan is having a detriment to the amenity of the site. If the tribunal made a finding to that effect the site owner would be permitted to apply to the court and that would be the end of the role of the tribunal in the termination process.
21. We would welcome comments on which alternative is preferred for paragraph 6 cases.
22. As it is our intention to ensure only termination cases of merit go to court and wish to encourage only well founded applications being brought before the tribunal, we propose to give RPTs a power to dismiss a case as an abuse of process if the site owner has himself caused the breach or fault, or has significantly contributed to it, or the matter complained of is minimal. The tribunal would also need to decide that, in its opinion, in bringing the proceedings the site owner has acted frivolously or vexatiously.
23. Where an application is dismissed as an abuse of process we propose that the tribunal **must** make an order for costs against the site owner, which shall not exceed £5,000. The tribunal will not be required to make such an order if, although it has dismissed the application, it considers the applicant has acted in good faith in bringing the proceedings.
24. In any case which is not concerned with termination proceedings we propose that an RPT should have discretion as to whether to award costs depending on the circumstances set out therein (see response to Question 23 in part 1). However, we do not believe that the discretion should extend to termination cases because we wish to deter cases of little or no merit being brought to the tribunal and clearly a cost free forum could be abused in that way. In order to discourage such cases we want site owners to know that they risk a costs order against them if they pursue unmeritorious proceedings.

25. However, we propose no fee should be payable for an application to an RPT (but a fee will be payable to commence proceedings in the court), but in view of the requirement for the tribunal to award costs in abuse of process cases we believe this will deter vexatious or frivolous applications.
26. There may be termination cases which are urgent, such as where the home or the conduct of the resident is considered to be a detriment to the site and the other occupiers of it, or where there are considerable and increasing pitch fee arrears. We propose such cases should be capable of being fast tracked under the urgency procedure we propose for certain other cases- see response to question 20 in part 1.
27. We propose that if an RPT dismisses the application because the case has not been made out, or it is an abuse of process, the court may not entertain an application for authorisation to terminate the agreement and (subject to appeal to the Lands Tribunal on a point of law only) that will be the end of the matter.
28. All certificates authorising an application to the court must be in writing and all decisions must set out the issues between the parties and the tribunal's findings.
29. It is proposed that there should be a right to seek permission to appeal the decision of the RPT to the Lands Tribunal, limited to a point of law only. There will be no right of appeal simply because a party does not agree with the findings and conclusions the tribunal reached (unless these were founded on a misapplication of the law).
30. As we explained in response to question 2 of the consultation (see part 1), in addition to the tribunal's duty to assist parties in proceedings, legally aided advice and assistance (known as legal help) will be available to those eligible to receive it, to assist them with preparation of their cases. Given, however, that the role of the tribunal will be of particular importance in determining termination cases which could ultimately lead to eviction, legally aided representation may be available in exceptional circumstances if the applicant meets the eligibility criteria.
31. Our proposal is designed to ensure that the RPT acts as a filter to prevent cases of no merit from getting to a court in the first place and thereby reduce or remove unnecessary anxiety, distress and expense to innocent residents. It will also help stop the routine 'threat' of court action as a bullying tactic. It will help ensure residents' assets are properly protected against speculative or vexatious applicants. It will help residents, against whom a claim is made out focus their minds on what needs to be done to prevent matters going further with the possibility of the loss of their homes. Above all it will also ensure that in any proceedings before a court there will be an accurate record of the issues between the parties and the findings of the tribunal.

32. We are confident that RPTs have the necessary experience and expertise, as specialist housing tribunals, to undertake this discrete but important part of the termination application process. This view is confirmed by the fact that since 2005 Leasehold Valuation Tribunals (which come under the auspices of the Residential Property Tribunal Service) have successfully dealt with the fact finding element of forfeiture proceedings in respect of long residential leases.
33. Nevertheless, we recognise that the proposal is a significant extension of RPT's jurisdiction. We, therefore, want to monitor the policy's impact and effectiveness and whether there is need to consider the scope for help with legal representation. To that end we propose, if we decide to proceed with it, to carry out a review one year after implementation.

Question 1. Do you agree in principle that RPTs should decide whether one or more of the grounds under paragraphs 4 (a) or 5 (a) or 6 (a) referred to in paragraph 8 above has been established before an applicant may make an application to a court seeking authorisation to terminate an agreement?

Question 2. Which do you consider is the most appropriate forum for consideration of a repair order under paragraph 6 (4) (a) the court or (b) the RPT. Please give your reasons.

Question 3. (a) Do you agree with the circumstances in which a tribunal may dismiss a case as an abuse of process? (b) Do you agree that a tribunal must award costs against the site owner if the tribunal finds the application is an abuse of process?

Question 4. Do you agree the right of appeal against an RPT decision should be with permission and limited to a point of law and that an appeal should be to the Lands Tribunal?

About this consultation

This consultation document and consultation process have been planned to adhere to the code of practice on consultation issued by the Department for Business Enterprise and Regulatory Reform and is in line with the seven consultation criteria, which are:

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome;
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible;⁹
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach;
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained;
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation;
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated

⁹ In this particular consultation, the consultation period is for one month as mentioned under Basic Information on page 38.

by your IT system will not, of itself, be regarded as binding on the department.

The Department for Communities and Local Government will process your personal data in accordance with DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

How to respond to the consultation

Please send your response no later than 9 June 2009 to:

Samya Muddathir
Park Homes Policy Team
Department for Communities and Local Government
1/C3 Eland House
Bressenden Place
London
SW1E 5DU

Or by email to: Parkhomes@communities.gsi.gov.uk marking your response 'Termination of agreements consultation'.

Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

CLG Consultation Co-ordinator
Zone 6/H10
Eland House
London SW1E 5 DU

Or by e-mail to: consultationcoordinator@communities.gsi.gov.uk

Appendix A – List of key organisations to be consulted

Administrative Justice & Tribunals Council
Association of Chief Police Officers
Age Concern England
All Local Authorities in England and Wales
Bar Council
Better Government for Older People (BGOP)
British Chamber of Commerce
British Holiday & Home Parks Association
Canterbury Gypsy and Traveller Support Group
Care & Repair England
Chartered Institute of Environmental Health
Chartered Institute of Housing
Community Law Partnership
Confederation of British Industry
Derbyshire Gypsy Liaison Group
East Anglian Gypsy Council
East Notts Traveller Association
East of England Black and Minority Ethnic Network
Elderly Accommodation Counsel
Equality and Human Rights Commission
Federation of Small Businesses
Foundations
Friends, Families & Travellers
Friends of the Elderly
Gypsy Council
Gypsy Council for Education, Culture, Welfare and Civil Rights
Gypsy and Traveller Federation
Help the Aged
HM Courts Service
Home Space Sustainable Accommodation CIC
Housing Ombudsman
Hull Gypsy and Traveller Exchange
Independent Park Home Advisory Service
Institute of Directors
Irish Community Care Merseyside
Irish Traveller Catholic Chaplaincy
Irish Travellers Movement in Britain
Justice for Travellers

LACORS
Law Commission
Law Society
Legal Services Commission
Leeds Gypsy and Traveller Exchange
Leicestershire Gypsy Council Liaison Group
Lincolnshire Gypsy Liaison Group
Local Government Association
London Councils
London Gypsy and Traveller Unit
Ministry of Justice
National Association of Citizen's Advice Bureaux
National Association of Gypsy and Traveller Liaison Officers
National Association of Park Home Residents
National Housing Federation
National Park Home Council
National Travellers Action Group
One Voice
Ormiston Children's and Families Trust
Park Home Residents Action Alliance
Residential Property Tribunal Service
South West Alliance of Nomads
SPARC (Society for the Promotion and Advancement of Romany Culture)
Surrey Community Action
The Clearwater Gypsies
The Forum for Private Business
The Gypsy Council Ltd
The Redbridge Traveller Women's Group
The Residential Property Tribunal for Wales
The Social Enterprise Coalition
The Southern Network
Traveller Law Reform Project
The Tribunals Service
UK Association of Gypsy Women
We're Talking Homes/Northern Network
Which?
Youth Division

Part Three

Transfer of disputes under the Mobile Homes Act 1983 (as amended): equality impact assessment

Background

Communities and Local Government (CLG) has prepared the attached equality impact assessment, in consultation with the Ministry of Justice, the Legal Services Commission and the Residential Property Tribunal Service, having identified that the transfer of disputes from county courts to residential property tribunals might adversely impact upon Gypsies and Travellers. The impact assessment identifies why and how the policy affects that group: explains why nevertheless it is proposed to implement the policy and sets out what measures will be put in place to mitigate or eliminate any potential disadvantage to Gypsies and Travellers by the policy's implementation.

EQUALITY IMPACT ASSESSMENT

Part 2: Full Assessment

<p>1 Name of programme, Project, or Policy</p> <p>Transfer of jurisdiction for disputes under Mobile Homes Act 1983 from county courts to residential property tribunals</p>

<p>2 Full Assessment undertaken by:</p>	
Director or Deputy Director	Simon Llewellyn
Policy Developer/Lead	Robert Skeoch
Other people involved in the assessment	Melanie Sturtevant, Charlotte Sewell, Theresa Graves, Stephen Clarke

<p>3 Scope of the assessment</p> <p>The initial screening recognised a possible negative impact on the Gypsy and Traveller community. This full assessment will consider this further, and what action may be required to eliminate or mitigate it.</p> <p>The policy is to transfer the jurisdiction on appeals and applications under the Mobile Homes Act 1983 (as amended) ("the Act") from county courts to residential property tribunals (RPTs).</p> <p>The aim of the policy is to provide residents of mobile homes (including caravans) and the owners of sites on which they are located with a level playing field in the resolution of disputes by providing the parties with access to a dedicated, low cost specialist (housing) tribunal, which can deal with cases quickly and without the parties needing to be legally represented.</p> <p>The lower costs and less formal nature associated with RPTs will help empower individuals to more effectively protect their rights and challenge poor service by providing them with better access to a forum that can help deliver those objectives.</p>

3 Scope of the assessment (*continued*)

There are approximately 85,000 mobile homes in the private sector that are subject to the Act. From October 2009 it is proposed that a further 6,500 caravans occupied by members of the Gypsy and Traveller community on local authority sites, will become subject to the Act. This amounts to 8 per cent of the total stock. Therefore, Gypsies and Travellers are likely to be the largest black and minority ethnic group within the sector.

A cheaper, less formal and quicker dispute resolution procedure which will benefit site residents (and owners), and in particular those on limited and fixed incomes, older persons (two-thirds of residents in the sector, other than Gypsies and Travellers, on whom we do not have any data, are over 60) and persons with mobility problems. This is because the RPT is a low cost forum where those on limited and fixed incomes will not normally incur fees for making applications and will not run the risk of costs being awarded against them should they lose their case. Hearings of cases can be held locally, thus avoiding the need and expense of travelling to a county court.

Although the court system does not require the use of legal representation, the majority of persons applying to the court will use a lawyer given the adversarial nature of the court. Figures from HM Court Service estimate the average legal costs of cases heard by the county court to be approximately £4,000. As the RPT procedure is inquisitorial, i.e. the tribunal asks questions to find out relevant information, rather than relying on the user to present an argument, the parties can more easily present their cases themselves, rather than relying on legal representatives to do so. Thus, there is an average potential saving in representation costs of £4,000 for cases heard in the tribunal.

4 Evidence Sources

Data from the Legal Services Commission

Data from the Department for Children Schools and Families on Gypsy and Traveller children's educational achievements (2006-07)

Economics of the Park Home Industry, published by the Office of the Deputy Prime Minister (October 2002)

4.1 Data

Sources (with dates):

As above

Equality Target Areas: Race

Although we are not aware that data on this is specifically collected it is widely accepted that literacy levels are lower amongst the Gypsy and Traveller community. This is supported by DCSF statistics which indicate that only 14-15 per cent of Gypsy and Traveller children achieve 5 GCSE passes compared to 60 per cent of all pupils.

This indicates that Gypsies and Travellers could be disadvantaged in bringing or defending complex proceedings in any court or tribunal, including an RPT, unless assistance is made available to help them to prepare and present their cases.

4.2 Research

Sources (with dates):

No additional research has been carried out

Equality Target Areas:

4.3 Consultation

Equality Target Areas: Race

There have been two public consultations on this proposal. The first in May 2008 was not targeted specifically at members of the Gypsy and Traveller community. 94 per cent of the 1760 respondents supported disputes being moved from the courts to tribunals. However, we became aware from a number of respondents that potentially this transfer might adversely affect Gypsies and Travellers, as legally aided representation, which is available at the county court, would not routinely be available for hearings at residential property tribunals.

4.3 Consultation (*continued*)

We, therefore, highlighted this proposal as part of the September 2008 consultation on Implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller sites. There were 57 responses in total to that consultation, of which eight respondents commented on the proposed transfer. Six of those consultees opposed, or had serious reservations about, the proposal. Some of those concerns raised issues of Human Rights – concerns which the Department is aware of and have been addressed in the response to the May 2008 consultation response (see part 1 of this document). A theme of the responses was the lack of legal aid funding in tribunal proceedings.

It is therefore worth clarifying the position on legal aid.

Legal aid is available, subject to the usual tests of the client's means and the merits of the case, for repossession cases and some other types of proceedings (but not all) in the county court.

The Legal Services Commission does collect data on the ethnicity of those that receive legal aid, but this does not include a specific category for Gypsies and Travellers.

Furthermore, as the Act does not currently apply to local authority Gypsy and Traveller sites we do not know whether disputes arising under it on these sites would qualify for legal aid in the courts. It is therefore difficult to know whether the Gypsy and Traveller community may be discouraged from making an application or appeal under the Act in a tribunal.

Where cases are heard in tribunals, legal help is available to provide advice and assistance (though not advocacy) for those who qualify.

4.3 Consultation (*continued*)

By contrast, legal aid for advocacy is not available for most tribunals because these are inquisitorial fact-finding processes rather than adversarial court proceedings. Certain exceptional tribunals do remain in scope, for example, the first-tier mental health tribunal, which concerns whether someone should be detained under mental health legislation, but is generally not available for other specialist tribunals, such as employment tribunals or housing tribunals.

However, in an individual case legal aid for advocacy at a tribunal can be granted by the Lord Chancellor in exceptional circumstances, under the powers at section 6(8)(b) of the Access to Justice Act 1999.

We consider that the availability of legal help (advice and assistance) to assist eligible clients at a tribunal, and the provision of advocacy at a tribunal in exceptional circumstances discharges the State's obligations under Article 6 of the European Convention on Human Rights.

It was suggested by some consultees that preventing access to the court was a breach of Human Rights. The use of an independent and impartial tribunal such as an RPT, which has well established procedures, would not in our view contravene any human rights legislation.

New Consultation (with dates):

Equality Target Areas: Race

We invited Gypsy and Traveller stakeholder groups to a meeting in April 2009 about the transfer of disputes to the RPT and the measures which will be in place to mitigate any potential adverse impact on those communities. The majority of those attending did not object to the proposals and had no comments or concerns about the measures that will be put in place. Some positively supported the proposal. One was concerned that legal aid would not be available for tribunal proceedings and thought that this would put residents at a disadvantage because local authorities would be represented by a legal officer. All attendees thought it was important that residents' associations should be formed as these would be useful in (amongst other things) in helping residents present their cases in tribunal proceedings. CLG was asked to support and encourage the formation of local residents' associations. Those stakeholder groups that were unable to attend the meeting were sent copies of the papers.

Equality Groups	Key Insights	Assessment of scale of potential impact – positive or adverse
RACE		
	Literacy issues	It would be a serious negative impact on the Gypsy and Traveller community if some of its members were deterred from making an appeal or application under the Mobile Homes Act to the RPT or defending proceedings brought against them under that Act, because measures were not in place to deal with potential problems that some Gypsies and Travellers might experience (as outlined above).
DISABILITY		
N/A		
GENDER AND GENDER IDENTITY		
N/A		
AGE		
N/A		
SEXUAL ORIENTATION		
RELIGION/BELIEF		
HUMAN RIGHTS		
N/A		

6. Proportionality

The policy is widely supported by most residents and site owners currently covered by the Mobile Homes Act 1983. It will have a positive impact upon groups including the economically disadvantaged, older people and residents with mobility difficulties. It would, therefore be disproportionate not to implement the policy, if, as is the case, measures can be put in place to deal with its potential negative impact upon Gypsies and Travellers.

7. Summary of the Assessment

This policy is designed to increase access to justice for park home and caravan dwellers by providing a cheaper and less formal forum in which disputes under the Mobile Homes Act 1983 can be resolved. As indicated in the consultation response it has overwhelming support from park home residents and is also generally supported by the industry. Whilst there was some concern about its potential impact upon some Gypsies and Travellers we intend to put measures in place which will mitigate any potential adverse effect on those communities.

The policy has positive impacts on a number of groups. People on low or fixed incomes will not risk cost bills (as they presently do in the courts) for bringing or defending proceedings and they will not need to employ legal representation (although they will be able to so if they wish). This cheaper system will encourage residents to exercise their rights and challenge site owners' abuses of the Act, which currently many are deterred from doing so because of the potential cost implications. Tribunal hearings are (outside of London) held locally to the site to which the application relates, thus avoiding the need to travel to the nearest county court. This will particularly benefit older persons and those with mobility difficulties.

We have identified that the policy could have a potential impact upon the Gypsies and Travellers community because of lower literacy levels amongst some of its members. However, as the Mobile Homes Act 1983 does not currently apply to local authority owned Gypsy and Traveller sites and, in any case, as the Legal Service Commission collects no data on legal aid granted to Gypsies and Travellers we do not agree there is evidence to support the view that legal aid would routinely be available for disputes under the Act should the transfer not take place.

We have identified a number of measures that can be put in place that will mitigate or effectively eliminate that potential disadvantage on some gypsies and travellers in tribunal proceedings. We consulted on those measures with Gypsy and Traveller stakeholder users in a meeting with them in April 2009. The measures are set out in the action plan below.

8. Monitoring and Review

The impact of measures to assist gypsies and travellers access the tribunal will be reviewed by Communities and Local Government one year after its implementation to assess its impact on the ground and to review the effectiveness of the actions we will put in place. The Residential Property Tribunal will continuously monitor the number of cases and outcomes and the effectiveness of its guidance to staff.

ACTION PLAN

Actions taken or proposed	Rationale for the Action	Beneficiaries of the Action	Timing	Responsibility
Changes made: Changes that have been made to policy as a result of the Equality Impact Assessment.				
N/A				
Mitigation: For areas where a policy may have a differential impact on certain groups, what arrangements are in place or proposed to mitigate these effects?				
Regulations will be made which supplement the RPT's general duty to ensure that parties receive equal opportunity in presenting cases by requiring tribunals to provide adequate facilities for Gypsies and Travellers to present their cases.	To ensure that applicants are fully conversant with cases and ensure they are equipped to present their cases without the need for funded legal representation.	Gypsies and Travellers.	Proposed to come into force late 2009 when the jurisdiction transfers.	Communities and Local Government and the Residential Property Tribunal Service.

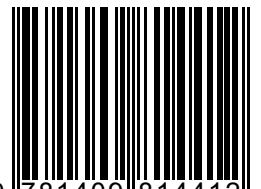
Actions taken or proposed	Rationale for the Action	Beneficiaries of the Action	Timing	Responsibility
The Chief Executive of the Residential Property Tribunal Service will issue guidance to the residential property tribunal service administrative staff (having consulted relevant stakeholders) on the form of the assistance to be given to Gypsies and Travellers.	To ensure that those with difficulties in reading and writing have effective access to the tribunal service.	Gypsies and Travellers.	When the jurisdiction transfers.	The Residential Property Tribunal Service.
Legal Help (i.e. advice and assistance) is available for cases commencing in the RPT, subject to the usual legal aid means and merits tests. In exceptional cases, legal aid for advocacy can be made available in exceptional cases.	To ensure that eligible persons can be legally advised and/or represented in any proceedings commenced in an RPT.	All persons affected by the change who are financially eligible and whose cases meet the merits test.	When the jurisdiction transfers.	Ministry of Justice and Legal Services Commission.
A dedicated helpline service will be available to those eligible to receive free legal advice.	This is a replacement service that will come into operation at the same time as the extension of the provisions of the Mobile Homes Act 1983 to Gypsy and Traveller sites and the introduction of the new dispute resolution procedure.	This service is dedicated to the Gypsy and Traveller community.	Late 2009.	Funded and overseen by the Legal Services Commission.

Actions taken or proposed	Rationale for the Action	Beneficiaries of the Action	Timing	Responsibility
Guidance on the formation of Residents' Associations on local authority on Gypsy and Traveller sites.	This was proposed by stakeholder users as a means of raising residents of their rights and their empowerment. In particular it was considered that Residents' Associations could bring and defend proceedings in the tribunal, on behalf of residents.	Gypsies and Travellers.	Late 2009.	Communities and Local Government.
Justification: For areas where a policy may impact negatively (but not illegally) on certain groups but mitigation is not possible (e.g. an overriding societal driver) there needs to be a strategy for handling issues of unfairness.				
N/A				
Opportunities: Please state actions designed to maximise positive effects, i.e. opportunities identified for: promoting equality, good relations or knowledge about groups; increasing civic & democratic participation; or addressing inequalities.				
N/A				

Actions taken or proposed	Rationale for the Action	Beneficiaries of the Action	Timing	Responsibility
Monitor: how will you monitor the impact and effectiveness of the new policy?				
There will be a review of the impact of the measures on gypsies and travellers and the effectiveness of the action plan.	To ensure that the mitigation works in practice.	Gypsies and Travellers and others eligible for legal aid.	One year after the jurisdiction transfers.	Communities and Local Government.
The Residential Property Tribunal Service will monitor the number of cases and their outcomes relating to Gypsy and Traveller sites and the effectiveness of the assistance provided.	To ensure the actions work on the ground and to inform the review.	Gypsies and Travellers.	From implementation.	Residential Property Tribunal Service.

ISBN: 978-1-4098-1441-2

ISBN 978-1-4098-1441-2



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