

Eden District Council

Executive

19 October 2021

Mobile Homes Act 2013- Requirement for Fit and Proper Person

Portfolio:	Housing and Health
Report from:	Assistant Director Communities
Wards:	All Wards
OPEN PUBLIC ITEM	

1 Purpose

- 1.1 This report is to seek authorisation to adopt a new policy regarding the implementation of section 8 of the Mobile Homes Act 2013.
- 1.2 In summary a relevant protected site is a site, which requires a Licence, which is not solely for holiday purposes. A relevant protected site cannot operate unless the local authority is satisfied that the manager qualifies as a fit and proper person, Sections 12A -12E of the Caravan Sites and Control of Development Act 1960, as implemented by Section 8 Mobile Homes Act 2013.

2 Recommendation

- 2.1 It is recommended that the policy set out in Appendix 1 is adopted.

3 Report Details

3.1 Introduction

- 3.1.1 The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (SI No.1034) – ('the Regulations'), require that a local authority must be satisfied that the owner of a mobile home site is fit and proper person to manage the site, or that a person appointed by the owner to manage the site is a fit and proper person to do so. The local authority also has the power to appoint a fit and proper person to manage the site, with the owner's consent.
- 3.1.2 This requirement is to ensure that those responsible for operating the site licence and managing the site are of sufficient integrity and good character to be involved in the management of a regulated site for mobile homes to which an application relates and as such they do not pose a risk to the welfare or safety of persons occupying mobile homes on the site. The policy for how the Council intends to discharge this duty is set out in Appendix 1.
- 3.1.3 These Regulations do not apply to non-commercial family-occupied sites which are not operated on a commercial basis in accordance with Regulation.

4 Policy Framework

4.1 The Council has four corporate priorities which are:

- Sustainable;
- Healthy, safe and secure;
- Connected; and
- Creative.

4.2 This report is required to meet the statutory functions within licensing and therefore meets the corporate policy.

5 Consultation

5.1 No consultation has taken place as this is a statutory requirement.

6 Implications

6.1 Financial and Resources

6.1.1 Any decision to reduce or increase resources or alternatively increase income must be made within the context of the Council's stated priorities, as set out in its Council Plan 2019-2023 as agreed at Council on 7 November 2019.

6.1.2 A fee policy will be adopted to allow the Authority to recover its costs. There are no proposals in this report that would reduce or increase resources as the income generated by the fees policy will be proportional to the resources required to administer the new requirements.

6.2 Legal

6.2.1 The Authority, by virtue of the Mobile Homes Act, has the power to enforce the licence provisions and charge relevant fees.

6.3 Human Resources

6.3.1 This work will be carried out as part of the existing workload within the communities department who already licence relevant protected sites.

6.4 Environmental

6.4.1 There are no significant effects on carbon emissions and ecosystems.

6.5 Statutory Considerations

Consideration:	Details of any implications and proposed measures to address:
Equality and Diversity	None
Health, Social Environmental and Economic Impact	The implementation of this legislation is designed to protect residents who live on these sites
Crime and Disorder	The implementation of this legislation is designed to enhance the operations of sites and to highlight and address any crime and disorder convictions which make site operators unsuitable to hold the position
Children and Safeguarding	None

6.6 Risk Management

Risk	Consequence	Controls Required
Risks to public, financial or reputational risk to Council- By refusing or granting a licence	Refuse a licence which should have been granted or grant a licence that should have been refused	Review/Appeal and tribunal system in place

7 Other Options Considered

7.1 National guidance been followed for this statutory requirement.

8 Reasons for the Decision/Recommendation

8.1 It is recommended that the council adopt this report to comply with their statutory requirements.

Background Papers: None

Appendices: None

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Policy for Discharging the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020

1. Matters to be considered

- 1.1 When considering whether a person is 'fit and proper' the local authority must have regard to the suitability of the person concerned ('the relevant person'). Schedule 3 paragraphs 2 to 4 of the Regulations make reference to those matters that **must** be considered by the local authority as part of any application. These include;

Whether the relevant person is able to secure the proper management of the site. This includes, but is not limited to;

- a) compliance with the site licence;
- b) the long term maintenance of the site;
- c) whether the relevant person has sufficient level of competence to manage the site;
- d) The management structure and funding arrangements for the site or proposed management structure and funding arrangements.

Other matters to be considered are whether the relevant person has:

- a) committed any offence involving fraud or other dishonesty, violence, arson or drugs or listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements);
- b) has contravened any provision of the law relating to housing, caravan sites, mobile homes, public health, planning or environmental health or of landlord and tenant law;
- c) has contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business;
- d) has harassed any person in, or in connection with, the carrying on of any business;
- e) is, or has been within the past 10 years, personally insolvent;
- f) is, or has been within the last 10 years, disqualified from acting as a company director;
- g) whether the relevant person has the right to work within the United Kingdom;
- h) whether any other local authority has rejected an application for the responsible person to be included in a register.

- 1.2 The local authority may also have regard to the conduct of any person associated or formerly associated with the relevant person (whether on a personal, work or other basis) if it appears to the authority that that person's conduct is relevant to the question of whether the relevant person is a fit and proper person to manage the relevant protected site or proposed relevant protected site (as the case may be).

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

1.4 The 'responsible person' means a person in relation to whom the applicant is required to provide information under paragraph 10(2) or (5), 11 or 12 of Schedule 2 of the Regulations.

2. Application

2.1 Once an application has been received the local authority may:

- a) grant the application unconditionally;
- b) grant the application subject to conditions;
- c) reject the application.

3. Decision

3.1 As soon as is reasonably practicable after a full and complete application is received (including the relevant fee) the local authority must make a decision on the application and either;

- a) where the decision is to grant the application unconditionally and to include the relevant person on the register for 5 years, serve a final decision notice on the applicant or;
- b) otherwise serve a preliminary decision notice on the applicant.

3.2 Once a full and completed application has been received by the authority, the nominated case officer will review the information and obtain any further information deemed relevant to the application.

3.3 The officer will then prepare the application for review by the relevant nominated and authorised officer.

3.4 The nominated officer may authorise that an application be granted unconditionally or subject to relevant conditions.

3.5 Where an application is to be rejected the nominated officer will consult with the relevant Principal Officer, or equivalent in advance of issuing the preliminary decision notice.

4. Appeals

4.1 Any preliminary decision notice will be in accordance with the Regulations and will provide the applicant with 28 days, beginning with the day after the day on which the notice was served, to make written representations to the authority.

4.2 Once written representations have been received the authority may then make a final decision which may include approving an application subject to specific conditions.

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

4.4 The local authority may withdraw or amend:

- a) a preliminary decision notice before service of the final decision notice;
- b) a final decision notice before the decision to which it relates takes effect or;
- c) a notice of proposed action before the proposed action is taken.

- 4.5 A person on whom a final decision notice is served may appeal to a First-tier Tribunal (FTT) against:
- a) any decision to include the relevant person on the register for an effective period of less than 5 years;
 - b) any decision to include the relevant person on the register subject to conditions and;
 - c) any decision to reject the application.
- 4.6 A person on whom a notice of action is served may appeal to the FTT against:
- a) any decision to remove the relevant person from the register;
 - b) any decision to impose a condition on the inclusion of the relevant person in the register and;
 - c) any decision to vary a condition.
- 4.7 No compensation may be claimed for loss suffered, pending the outcome of the appeal, in consequence of the local authority making a final decision or taking action relevant to Regulation 8(1)(a), (b) or (c).

5. Register

- 5.1 The Regulations require a local authority to establish and keep up to date a register of persons who they are satisfied are fit and proper persons to manage a relevant protected site in their area and to make the register open to inspection by members of the public at the offices of the local authority during normal office hours.
- 5.2 The authority must also publish the register online and the contents of the register will be in accordance with the Regulations.
- 5.3 A person's inclusion in the register has effect for a maximum period of 5 years.

6. Fees

- 6.1 Regulation 10 permits the local authority to charge a fee for the processing of applications and this fee will be determined in accordance with the relevant fees guidance. This is to cover the cost of processing applications and will be reviewed annually.
- 6.2 Where the authority has, with the occupier's consent, appointed a person to manage a site, the authority will recover from the occupier the reasonable costs incurred or to be incurred in making the appointment in accordance with Regulation 10.

7. Offences

- 7.1 An owner (occupier) of land commits an offence if he causes or permits any part of the land to be used as a relevant protected site (which falls within the scope of the Regulations) without the manager of the site being registered with the local authority as a fit and proper person.
- 7.2 An applicant also commits an offence if he:
- a) withholds information from a registration application or;
 - b) includes false or misleading information in a registration application;
 - c) fails to comply with a condition imposed under Regulation 6(2)(b) or Regulation 8(1).

- 7.3 An owner (occupier) of land who is guilty of an offence is liable on summary conviction to a level 5 fine (unlimited).
- 7.4 Where an owner (occupier) of land who holds a site licence in respect of that land contravenes the relevant Regulations, the FTT may, on application by the authority, make an order revoking the site licence in question on the day specified in the order.

Where:

- a) an owner (occupier) of land who holds a site licence in respect of that land is convicted of an offence under Regulation 11 for a contravention of the fit and proper person requirement and;
 - b) has been convicted on two or more previous occasions of the offence in relation to that land.
- 7.5 The court before which the occupier is convicted may, on application by the local authority, make an order revoking the site licence in question.