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Licensing of Caravan Sites in Scotland – An Analysis of Consultation Responses



Licensing of Caravan Sites in Scotland
An Analysis of Consultation Responses

**Lucy Robertson and Chris Thornton
Craigforth Consultancy and Research**

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EXECUTIVE SUMMARY

- 1 This summary sets out the main issues to emerge from the analysis of responses to the Scottish Government's recent consultation on the Licensing of Caravan Sites in Scotland¹. The principal focus of the proposals is to strengthen the licensing regime to protect the welfare of permanent residents. It also included the suggested introduction of statutory minimum application criteria, the introduction of a Fit and Proper Person Test, increasing fines for non-compliance with licence conditions, giving the local authority powers to revoke a site licence and entitling local authorities to charge a fee on application for and renewal of a site licence. In addition, views were sought on the duration of a site licence and the appropriate period for renewal.
- 2 The consultation period ran from 21st May to 13th August 2012, with 129 responses received. Fifty three of these were submitted by groups or organisations and 76 by individual members of the public. Of the 76 responses submitted by individuals, 55 were submitted by residents of two park homes. Of the 53 group responses received: 13 were submitted by Local Authorities, 6 responses by Resident Groups or Resident Action Groups; 3 by Residents Group for a specific site and 3 from Resident Action Groups; 4 by bodies connected with or representing various aspects of the park home or holiday park industries; and 21 by owners and operators of park home and/or holiday sites.
- 3 As is often the case with public consultation exercises, those that supported the proposals often made only limited further comment and hence their views can only be reflected through the overall balance of opinion at each question. This also means that the analysis of further comments tends to focus on issues raised by those who disagreed with the proposals, although they were often in a minority of all respondents.

Statutory Minimum Application Criteria

- 4 The first proposal suggested the introduction of statutory minimum application criteria. This would require information to be submitted to a local authority at the point of requesting a licence. Most respondents who made a comment identified positive benefits that could result from the introduction of statutory minimum application criteria, the principal benefit being equipping the licensing authority with sufficient, accurate and up-to-date information to inform their 'fit and proper person' determination.
- 5 A clear majority of respondents did not anticipate that any difficulties would arise from the introduction of statutory minimum application criteria. Among the issues raised by respondents who felt the introduction of minimum criteria would not be without its challenges was the administrative burden that would be placed on both local authorities and

¹The consultation documents are available from the Scottish Government website at: <http://www.scotland.gov.uk/Publications/2012/05/6927>

site owners and the importance of robust enforcement regulations being in place.

- 6 Most of the respondents who disagreed with the minimum criteria as currently proposed felt additional criteria were required. Suggested additions included: details of all other sites currently or previously owned or managed by the applicant; the names and addresses of all directors of any company applying for a licence; contact details for the day to day operator of the site; and various information about the site itself (such as site plans, fire certificates etc).

Fit and Proper Person Test

- 7 Many respondents expressed their broad support for the introduction of the Fit and Proper Person Test and even those who went on to express some reservations about the proposals as they stand, sometimes noted that they supported the introduction of the Fit and Proper Person Test in principle.
- 8 The main issue that respondents (including many individual and group respondents) expected a Fit and Proper Person Test to address is unsuitable people holding a licence, particularly people with relevant criminal convictions. However, a number of respondents also noted that the Fit and Proper Person Test will need to be workable, sufficient and robustly applied if it is to deter unsuitable people from remaining in or entering the sector.
- 9 Industry body or site owner respondents were often expressing fundamental concerns as to the feasibility of the current proposals. Local Authority, Resident Group and Other group respondents tended to raise specific, process related issues or be looking for further clarification about how the test would be expected to work.
- 10 Most respondents agreed with the suggested criteria to be used when the Fit and Proper Person Test is applied. Further comments tended to focus either on the principles on which the criteria should be based - such as transparency, fairness and consistency - or suggest additional criteria which should be included.
- 11 There was a high level of consensus that a local authority should have the power to refuse a site licence if the fit and proper criteria are not met. Suggestions as to when a local authority should be able to refuse a licence generally focused on the record on the applicant themselves – for example, if the applicant for the licence had previously acted inappropriately and in particular have an adverse record in the industry.

Duration of a Site Licence

- 12 The proposal to require licence holders to renew their licence on a regular basis divided respondents. Many respondents agreed with the proposition that a licence should have to be renewed every 3 years. These respondents often noted this change would bring caravan site licensing into line with many other licensing regimes.

13 However, a number of respondents expressed considerable concerns about *any* fixed period being applied to licences. Many of these respondents were site owners, and holiday site owners in particular, and expressed concerns that the introduction of 'fixed period' licences could undermine the viability of park businesses.

Issue of a Site Licence

14 Many of those who commented had concerns about the proposed changes to the current time limits awarded to a local authority to issue a site licence. Some respondents (generally commenting from an industry perspective) stated their basic opposition to the proposed changes, often going on to suggest that the current time limits should remain in place. It was suggested that, for straightforward applications it is reasonable to expect a time limit to be imposed.

15 Other respondents, including some local authorities, were concerned that the current proposals lack clarity and detail and, for example, there is no consideration given to the quality or acceptability of information provided by the applicant on request from the local authority. Although some respondents were critical of the proposals, others did see advantages in the changes, including ensuring that an applicant has a clear incentive to provide any requested information in a timely manner.

16 Some respondents stated that once the standard set of application and Fit and Proper criteria had been met and planning permission obtained, it should be possible to issue a licence in all cases. Others suggested specific circumstances under which a licence could reasonably be refused – for example if appropriate planning permissions were not in place on the applicant for the licence had not passed the Fit and Proper Person Test.

Enforcement of a Site Licence

17 A number of respondents stressed that effective enforcement will be critical to the success of any new licensing regime and some also suggested that the current enforcement framework – both in terms of its content and critically how it has been applied – is insufficient and has allowed 'rogue operators' to remain largely unchallenged. There was a very clear consensus that change is required, with Local authority respondents amongst those suggesting that the changes proposed would give them more effective and 'useable' enforcement powers.

18 Most respondents, including standard text respondents, favoured local authorities having the power to revoke a site licence without application to the courts. Local Authority and Resident Groups or Resident Action Group respondents tended to favour this option, whilst Industry Bodies and Site Owners tended to favour application to a court being required. Respondents who took this view often suggested that application to the court would help ensure that due process, fairness and transparency underpinned the licensing authorities' use of its enforcement powers. However, respondents who supported local authorities being able to

revoke a site licence without application to the courts were often concerned that site owners might use the court process as a 'delaying tactic'.

- 19 Those that offered support for the use of alternative arrangements through management conditions sometimes suggested this was their preferred option, whilst others suggested that it should be an option that sits alongside powers to revoke a site licence. Those that supported the potential use of management conditions often suggested it offered 'one more possible option'. However, it was suggested that local authority staff may not have the necessary skills and experience to manage a site.
- 20 There was strong support for the proposal to increase fines for non-compliance with licence conditions up to a maximum of £50,000. Most respondents who commented also supported the introduction of Statutory Improvement Notices and enabling giving Local Authorities to make an application to the court for a Management Order. There was also support for giving Local Authorities the powers to revoke a Site Licence, although those respondents that commented often had reservations or caveated their support. Most frequently, respondents stressed that the revocation of a site licence must only be used as a last resort and that the considerable implications for both site owners and residents must be taken into account.
- 21 Most respondents who commented on Penalty Notices offered their support for the basic principle, sometimes commenting that it would be a useful addition to the enforcement tools available to local authorities. However, some respondents did have reservations and were keen to have further information as to how a penalty notice system would work in practice.
- 22 The final question under Proposal 5 asked respondents whether they agreed with a minimum inspection interval, and if so whether it should be statutory. Most respondents agreed that there should be a minimum inspection interval, with most then also going on to agree that it should be a statutory minimum. Those respondents who disagreed with a minimum inspection period generally suggested that inspections should be carried out as required and/or that the interval between inspections should be based on a transparent risk approach, prioritising sites with poor compliance and a history of justified complaints.

Ability of the Licensing Authority to Charge a Fee

- 23 A clear majority of respondents who answered this question were in agreement with entitling local authorities to charge on application for a licence and at the renewal stage. Those that supported the principle of charging tended to focus their comments on similarity with other licensing regimes. Those that disagreed with fees being chargeable – at application, renewal or both stages – generally focused on additional costs being imposed on reputable and well-established businesses for what was seen as an unnecessary change.

- 24 The overall majority of respondents thought that site owners should not be able to recover these costs through pitch fees, although a clear majority of group respondents thought they should. Differences of opinion on this issue appeared to stem from how respondents viewed the relationship between running costs and pitch fees. Respondents who suggested that licensing costs should be recoverable through pitch fees often noted that licensing costs would form part of any park's legitimate running costs and hence would be eligible for consideration in the pitch fee review process. Those who suggested that licensing costs should not be recoverable suggested that this meant they should not be recoverable through pitch fees.
- 25 Most respondents disagreed that local authorities should have the power to exempt certain sites from licensing fees. However, a majority of group respondents, including a majority of local authorities, thought that local authorities should be given these powers.

Additional Considerations

- 26 The majority of respondents that answered the specific question about which types of sites should remain within the scope of the reformed licensing regime considered that all types of sites (Permanent Residential, Protected and Holiday Sites) should be covered under the new licensing regime. However, a number of respondents – including Site Owners and Industry Bodies made comments which clearly stated that holiday parks should be excluded.
- 27 Respondents who wished to see holiday sites excluded often suggested that the proposals are aimed at improving standards for permanent residents of caravan sites and that no evidence has been presented to suggest that the welfare of occupants of holiday sites is at risk under the current system of licensing. The financial consequences of the proposed changes for holiday and touring park businesses, and by extension Scottish tourism more widely, were also raised.

1. INTRODUCTION

Background

- 1.1 This report provides analysis of responses to the Scottish Government's recent consultation on the Licensing of Caravan Sites in Scotland². The proposals, which focus on improving the site licensing and enforcement regime, were developed jointly with local authority, industry and resident stakeholders. Although the emphasis is on improving management standards on those sites where people live permanently, the consultation also sought views on the types of site that should be covered by any future licensing regime.
- 1.2 The current licensing regime is governed by the Caravan Sites and Control of Development Act 1960 (from now referred to as the 1960 Act), which sets out the criteria that must be met in order to qualify for a site licence and also covers the conditions that may be attached to a site licence. Any changes to the licensing regime would be brought in through updating the 1960 Act.
- 1.3 The principal focus of the current proposals is on strengthening the licensing regime to protect the welfare of permanent residents. However, there is evidence to suggest that a small minority of residents are living permanently on sites that are only licensed for holiday or restricted occupancy. These residents are particularly vulnerable as they are not covered by the legal protections offered by the Mobile Homes Act 1983 (from now referred to as the 1983 Act). Such residents, even if occupying a mobile home as their only or main residence, do not have any statutory protections since the 1983 Act does not apply to sites which have a licence for holiday or restricted use only.
- 1.4 Whilst wishing to ensure that no additional burdens are placed on already well-run holiday sites, the Scottish Government also wishes to ensure that a less comprehensive site licensing regime does not result in the holiday sector becoming more attractive to unscrupulous site owners. The consultation sought views on whether a revised licensing regime should be applied to:
 - Permanent residential sites, generally known as either residential mobile home or park home sites;
 - Caravan sites that are either a mixture of holiday and residential or are exclusively for holiday use; and
 - Gypsies/Travellers living on privately owned sites which require to be licensing.

² The consultation documents are available from the Scottish Government website at: <http://www.scotland.gov.uk/Publications/2012/05/6927>

- 1.5 As at present, it is anticipated that the administration of any future Site Licensing regime would be undertaken by the local authority in whose area the site is located. At this point, dialogue is ongoing with the Convention of Scottish Local Authorities (COSLA) to consider the impact of an enhanced role.
- 1.6 The current process is largely determined by the relationship between planning permission and licensing. Under the 1960 Act land cannot be used as a caravan site unless the owner holds a site licence and a licence can only be granted if the applicant for the licence has planning permission for the use of the land as a caravan site. A local authority can request further information from an applicant for a licence and is not obliged to issue a licence until that information has been received. However, under the current arrangements a local authority cannot withhold a licence if information is supplied but is not to their satisfaction.

The consultation process

- 1.7 The consultation period ran from 21st May to 13th August 2012 and sought views on the following proposals for improvement to the site licensing and enforcement regime:
- The introduction of statutory minimum application criteria, with this information required to be submitted to the local authority at the point of request for a licence;
 - The introduction of a Fit and Proper Person Test for each person, company or partnership applying for a site licence or to participate in the management of the site;
 - Amending current provision to require the licensing authority to notify the applicant of the approval or decline of the licence as soon as practicable after a decision has been made;
 - Requiring the local authority to undertake a site inspection;
 - Increasing fines for non-compliance with licence conditions up to a maximum of £50,000 and introducing a new power which would give the local authority the ability to serve a formal Improvement Notice on the licence holder;
 - Giving the local authority powers to revoke a site licence where other routes of enforcement activity have not had the required impact;
 - Giving the local authority an option of a Management Order (to order that a managing agent is appointed to manage the site, to remove the site owner's right for contact with the residents, or to apply to the Courts for a Management Order to take over the running of the site);
 - Introducing a Penalty Notice whereby the local authority can impose a suspension of pitch fee payments should the site owner fail to apply for a site licence and meet the licensing conditions within a set period of time; and
 - Entitling local authorities to charge a fee on application for a site licence, and at the licence renewal stage.

1.8 Views were also sought on the duration of a site licence and the appropriate period for renewal. This report sets out the findings from the analysis of all responses received. Please note that, wherever possible, the report uses the same terminology as the Consultation Paper. In particular, the term *park home* is used to refer to permanent residential homes situated on licensed sites. Sites licensed exclusively for holiday use are referred to as *holiday parks* and those that are licensed for both permanent residential and holiday use as *mixed use sites*. The owners of park home or holiday sites are referred to as *site owners* and those who own a mobile home or caravan and live on a site as *residents*. The local authority responsible for administering the licensing regime is referred to as the *licensing authority*.

Profile of respondents

1.9 A total of 129 responses were received, with 53 submitted by groups or organisations and 76 by individual members of the public. Of the 76 responses submitted by individuals, 55 were submitted by residents of two park homes³. In one case, all the residents from the park home who submitted a response gave the same answers. There were two slightly different variations of comments submitted by respondents living on the other park home. These submissions are referred to as *standard text* responses within this report.

1.10 A profile of the respondents is set out in the table below.

Table 1 - Profile of Respondents

	Total
Industry Bodies	4
Local Authorities	13
Others	9
Resident Groups or Resident Action Groups	6
Site Owners	21
Standard text (Individuals)	55
Individuals	21
Total	129

1.11 Of the 53 group responses received, 13 were submitted by Local Authorities. The Local Authorities which responded came from across Scotland - ranging from Dumfries and Galloway to Highland and from Eilean Siar to Aberdeenshire – and were varied in their population size (from Fife to Eilean Siar) and urban/rural mix (for example, from Aberdeen City to Aberdeenshire).

1.12 Although only limited information is available on the number of park home sites in any local authority area⁴, local authority respondents also

³Suggested comments appeared to have been made available to site residents, who then used these suggested comments to submit their own response.

⁴ Both Consumer Scotland and Park Homes Legislation Action Group have collected information on the location of park homes and have passed this information on the Scottish Government.

represented a range in terms of number of park home sites in their area (from Dumfries and Galloway which is thought to have around 10 park home sites, through to East Ayrshire which is thought to have none). No information is available on the number of holiday sites in each area, although respondents included areas for which tourism would be expected to play a sizable role in the local economy, such as Highland.

- 1.13 Of the six responses submitted by Resident Groups or Resident Action Groups, three were from the Residents Group for a specific site (Annsmuir, Millhouse and Riverview) and three were from Resident Action Groups (the Park Home Legislation Action Group Scotland (PHLAGS), the Independent Park Home Advisory Service (IPHAS) and the National Association of Park Home Residents (NAPHR)).
- 1.14 A further four responses were received from bodies connected with or representing various aspects of the park home or holiday park industries. These were the British Holiday and Home Parks Association Scotland (BH&HPA)⁵, The National Caravan Council (NCC)⁶, the Federation of Small Businesses⁷ and Scottish Land and Estates⁸.
- 1.15 In addition, a number of owners and operators of park home and holiday sites responded to the consultation⁹. Of the 21 responses received:
 - 14 were submitted by respondents who own and/or operate one or more holiday parks only;
 - 3 were submitted by owners of park homes only;
 - 3 were submitted by owners of mixed use sites; and
 - 1 was submitted by someone who owns a park home, a mixed use site and a holiday park.
- 1.16 The sites owned by the respondents varied considerably in size (from having over 300+ holiday pitches through to around 25 residential pitches) and were also in a various locations across Scotland. Many of the site owners identified themselves as members of the BH&HPA and made reference to or offered support for the BH&HPA's response.

⁵An organisation established to serve and represent the interests of the British parks industry and whose members include owners and managers of park home estates.

⁶A trade association which represents the collective interests of the 'tourer', motor home, and holiday and residential park industries.'

⁷A direct-member business organisation which campaigns for an economic and social environment which allows small businesses to grow and prosper.

⁸A member organisation that represents the interests of both land managers and land-based businesses in rural Scotland.

⁹Some of the respondents that indicated they wished their submission to be taken as a response from an individual also gave information which suggested they own or manage sites, but in line with the respondents' wishes these have been considered as individual responses within the analysis. However, where no respondent information form was submitted, but respondents made it clear that they were operating a business, these responses have been treated as group responses. To protect the respondents' privacy, these respondents have not been named within the appendix.

- 1.17 In addition to the group respondents detailed above, there were 9 other responses received (categorized as 'Other' in the table above). These organisations were: The Caravan Club; Chief Fire Officers Association; Consumer Scotland; Fife Fire and Rescue Service; Hunter's Quay Community Council; Scottish Tourism Alliance; Scottish Water; SLAB Project, Moray and Nairn CAB; and Visit Scotland.
- 1.18 Although it is not possible to draw any definitive conclusions as to the profile of individual respondents, information available (for example, addresses or comments made within responses) suggests they include both those involved in running park home and/or holiday home sites, as well as those living on park home sites).
- 1.19 A list of all group and individual respondents who requested their name be published is included within the appendices to this report.

Overall balance of opinion

- 1.20 The remainder of this report presents analysis of responses given to each of the specific proposals in turn. However, the following points summarise the overall positions of the different stakeholders:
- Those respondents (including group and individual respondents) who approached the proposals from the 'residents perspective' were generally in support of the suggested changes and often expressed clear support for an enhanced licensing and inspection regime;
 - Respondents who approached the proposals from the 'industry perspective' disagreed with some of the suggested changes. These respondents often suggested that the proposed regime would impose additional administrative and financial burdens on reputable site owners, but would be unlikely to tackle the problems created by a small number of 'rogue' owners. These respondents also tended to the view that the focus should be on local authorities using their existing powers to tackle the small number of 'rogue owners';
 - Industry respondents (industry bodies, site owners and individual who appeared to be site owners) often focused their comments on how the proposals would affect that part of the industry with which they were most closely connected – this applied particularly to respondents who were concerned about the regime being applied to holiday sites. Most other respondents (both group and individual) appeared to focus primarily on the appropriateness of the proposals to the park home industry;
 - Local Authority respondents appeared to be supportive of the need for change and of the requirement for an enhanced licensing regime. Local authority respondents also tended to be in broad agreement with most or all of the proposals as put forward, although some did express reservations about certain of the proposals as they currently stand and were generally looking for them to be strengthened. For example, some of these respondents suggested additions to the

current proposals in terms of information that a local authority could gather or the reasons why a licence could be refused; and

- There were no apparent connections between the profile of the Local Authority and their response to the proposals. For example, whilst some Local Authorities that have a relatively high number of park home sites within their area did not respond to the consultation at all, detailed responses were received from some Local Authorities that have only a few sites. There was no clear correlation between any Local Authority's views on the proposals and the number of sites in their area.

1.21 Finally, please note that (as is often the case with public consultation exercises) those that supported the proposals often made only limited further comment. This means that the analysis of further comments tends to focus on the views expressed by the usually relatively small proportion of all respondents who disagreed with any particular proposal. Where larger numbers of respondents have made the same point (either in agreement or disagreement) this has been stated. However, many of the other points covered, and particularly those that make very specific or technical points, may only have been raised by a single or small number of respondents.

2. PROPOSAL 1 – STATUTORY MINIMUM APPLICATION CRITERIA

- 2.1 The first proposal suggested the introduction of statutory minimum application criteria. This would require information to be submitted to a local authority at the point of requesting a licence and includes, for example, the applicant's name, address and date of birth, their correspondence address and the name and address of all joint owners¹⁰. Local authorities would also retain the discretion to request further details they deemed appropriate to any particular application.

Question 1:

What key issues do you believe the introduction of statutory minimum application criteria would address?

- 2.2 Overall, most respondents who made a comment identified positive benefits that could result from the introduction of statutory minimum application criteria and the proposal was generally not seen as contentious. There were, however, a small number of respondents (3 individuals and 1 site owner respondent) who considered that the introduction of statutory minimum application criteria would not tackle any issues that cannot already be addressed under the current licensing regime.
- 2.3 A number of group respondents, and local authority respondents in particular, noted that although the current legislative framework assumes relatively simple relationships between land ownership, planning consent and the operation of a site, in reality these relationships are often complex. The lack of clarity, particularly when ownership is being transferred from one owner to another, was seen as a particular problem for a licensing authority which is required to consider whether a current or prospective licence holder passes the 'Fit and Proper Person' Test.
- 2.4 The principal benefit expected to come from the introduction of statutory minimum application criteria was equipping the licensing authority with sufficient information to inform their 'fit and proper person' determination and other key decisions relating to site licensing. Importantly, this information would be up to date and accurate. The licensing authority simply having the necessary information to make contact with the actual site owner was also seen as being of clear benefit.
- 2.5 Other issues raised by group respondents, in these cases by industry bodies, included that:

¹⁰ A full list of all information required is set out at paragraph 4.5 of the Consultation Document.

- The designation of a ‘manager’ would need to be flexibly drafted to allow for a broad range of ownership and management arrangements; and
- The scope of licensing authorities’ duties with regard to site regulation requires clarification.

2.6 The key issues which individual and shared text respondents identified as being addressed through the introduction of minimum criteria were similar to those identified by many group respondents and include:

- The applicant’s competence and trustworthiness to own and operate a site;
- The true ownership of the site and of the management officers associated with the site and by association allowing the ‘fit and proper person’ test to be carried out for the owner or all joint-owners of a site; and
- A range of other issues raised by a few respondents, including tackling unsatisfactory management standards and preventing the blocking of sales of mobile homes.

Question 2:

Do you perceive any difficulties in introducing statutory minimum application criteria and requiring that the local authority be informed of the statutory information changing?

2.7 The clear majority of respondents that answered Question 2 (78 out of 97) did not perceive any difficulties in introducing statutory minimum application criteria and requiring that the local authority be informed of the statutory information changing. The 19 respondents that did perceive there could be difficulties included 13 group respondents, 6 of which were local authorities. Analysis of further comments made suggests that all but one of these respondents was not objecting to the introduction of the criteria ‘in principle’, but they could nevertheless envisage practical challenges that could arise.

Table 2
Question 2 - Total Responses

	Yes	No	Not answered
Group	13	15	25
Individual	6	8	7
Standard Text	0	55	0
Total	19	78	32

Table 3
Question 2- Group Responses by Type of Respondent

	Yes	No	Not answered
Industry body	0	2	2
Local Authority	6	7	0
Other	2	3	4
Resident Group or Action group	3	1	2
Site Owners	2	2	17
Total	13	15	25

- 2.8 Among the issues raised by respondents considering the issue primarily from an industry perspective (some of the Industry Body and Site Owner respondents), were the following:
- The administrative burden associated with providing information must be taken into account;
 - Information should only be collected for clearly defined purposes and must be held and used according to legislation governing information management;
 - Some respondents disagreed with local authorities retaining the discretion to request further details as they deemed appropriate. Whilst recognising the need for local decision making, these Industry and Site Owner respondents did not think that the information required to make such decisions needs to vary and hence any information that is *required* should simply be included under the standard criteria. One site owner respondent felt it was important for practice to be consistent across local authority areas and that the same criteria should apply irrespective of where in Scotland someone is running their business;
 - It was also suggested that there should be clear guidelines which take account of the administrative time associated with providing information and which recognise the potentially complex ownership and management structures to which the information may relate. It will also be important not to forget that compliance with planning and other regulatory regimes (such as that relating to fire safety) will still be required in respect of a proposed site and all efforts should be made not to duplicate existing requirements.
- 2.9 The principal concern raised by respondents considering the issue primarily from a resident perspective (including 2 Resident Group respondents) was that information supplied must be accurate, particularly with regard to the 'real' ownership of the site. There were also concerns that unscrupulous site owners might not advise the licensing authority of changes to the statutorily required information. Robust sanctions - such as heavy fines or the loss of the licence – were suggested. However, some respondents also noted that licensing authorities must have effective powers to require provision of

information and critically must have sufficient resources and commitment to use those powers if necessary.

- 2.10 Four Local Authority respondents also raised the issue of enforcement. Specific suggestions were made including that applicants for a site licence should be required to make a legal declaration that the information they have provided is correct. One particular concern raised by a local authority respondent was around the identification of which companies own the land and operate the site. This issue arises because companies can be wound up, dissolved, made dormant or change names easily and in some cases without being fully transparent on Companies House records.

Question 3:

Do you agree that the minimum application criteria (as set out at paragraph 4.5) are appropriate? If 'no', please provide additional or alternative suggestions.

- 2.11 Moving on to consider the minimum criteria suggested within these proposals, a very clear majority of respondents who answered this question (80 out of 98) considered them to be appropriate. However, while individual and standard text respondents generally agreed, group respondents were evenly divided and Local Authority and Resident Group or Resident Action Group respondents more likely to disagree than agree.

**Table 4
Question 3 - Total Responses**

	Yes	No	Not answered
Group	14	15	24
Individual	11	3	7
Standard Text	55	0	0
Total	80	18	31

**Table 5
Question 3 - Group Responses by Type of Respondent**

	Yes	No	Not answered
Industry body	2	0	2
Local Authority	5	8	0
Other	4	1	4
Resident Group or Action group	1	4	1
Site Owners	2	2	17
Total	14	15	24

- 2.12 Most of the respondents who disagreed with the minimum criteria, and who then went on to make further comment, suggested additional criteria were required, with many of the more detailed suggestions coming from Local Authority respondents. Suggested additions included:
- The type of caravan site licence that is being applied for;
 - The place of birth (town/city) and age of the applicant/agent (to enable police checks to be carried out). Details of criminal convictions of the applicant(s), of partners, directors and any manager;
 - Details of all other sites currently or previously owned or managed by the applicant, either solely or in partnership with others which were/are licensed by other local authorities;
 - If the application is by a company, the names and addresses of all directors of the company, together with those for the manager. Information should also be provided about any other companies within a group of companies if they are likely to be involved in any way with the site for which the application applies;
 - Where the 'occupier' is not the owner, the relationship between the two must be explicit. For example, the lease concerned or intra-company relationship should be provided / demonstrated. Similarly, the names and addresses of all joint occupiers of the land should be provided;
 - The contact details for the day to day operation of the site should include a phone number and where possible, an e-mail address;
 - A clear and fully scaled site plan should be required and should include all infrastructure (water supply, surface and foul drainage, gas, electricity, phone and TV lines) existing or proposed, the boundaries of all pitches and common, amenity or recreation areas. Where sites have more than one type of caravan operation the areas for each should be clearly delineated;
 - An 'approved' Fire Safety Risk assessment - the responsibility for fire safety on sites now rest with the Fire Authority and it was suggested that that the caravan licensing regime needs to be updated to take account of this and to create a formal connection between the two regimes;
 - Applicants should be asked to provide Maintenance Plans and a clear statement of the site owner's responsibilities and those of the resident;
 - Applicants should provide copies of proposed written statements including the park rules which will assist in identifying the applicant's responsibilities;

- Applicants should advise the level of the pitch fee chargeable to the resident and what it covered and should advise of any additional costs that would be chargeable to the resident.
- 2.13 Finally, thinking specifically about existing owners, one respondent suggested that there should be a focus on how the site is being managed and that the applicant's past record in running the park needs to be part of any criteria.

Summary of Views on Statutory Minimum Application Criteria

- Most respondents who made a comment identified positive benefits that could result from the introduction of statutory minimum application criteria, the principal one being that licensing authorities would be equipped with sufficient, accurate and up-to-date information to inform their 'fit and proper person' determination.
- A clear majority of respondents did not anticipate any difficulties would arise from the introduction of statutory minimum application criteria. The issues raised by those who felt the introduction of minimum criteria could present challenges included: the administrative burden that would be placed on both local authorities and site owners; and the importance of robust enforcement regulations being in place.
- Most of the respondents who disagreed with the minimum criteria as currently proposed felt additional criteria were required. Suggested additions included: details of all other sites currently or previously owned or managed by the applicant; the names and addresses of all directors of any company applying for a licence; contact details for the day to day operator of the site; and various information about the site itself (such as site plans, fire certificates etc).

3. PROPOSAL 2 – FIT AND PROPER PERSON TEST

- 3.1 At present there is no formal assessment process through which a local authority can consider the suitability of applicants to hold a licence to operate a Caravan site. The second proposal involved the introduction of a Fit and Proper Person Test for each person, company or partnership applying for a site licence or to participate in the management of the site. Fit and Proper Person Tests are already used across a range of other licensing and registration regimes and allow the relevant licensing body to take into account a range of information that is appropriate to the regime being managed.

Question 4:

What key issues do you believe that the introduction of a Fit and Proper Person Test would address?

- 3.2 Many respondents expressed their broad support for the introduction of the Fit and Proper Person Test, with a number of respondents noting that many other licencing regimes already apply the test and that it would be appropriate to extend the practice to cover those applying for a Caravan Site licence. As with the statutory minimum application criteria, some respondents (particularly industry-related respondents) who went on to express some reservations about the proposals as they stand, noted that they supported the introduction of the Fit and Proper Person Test in principle.
- 3.3 The main issue that respondents (including many individual and group respondents) expected a Fit and Proper Person Test to address is unsuitable people holding a licence, particularly people with relevant criminal convictions. Examples given in this respect included those who have been convicted of a violent offence or of having committed fraud. Many respondents noted that, by extension, this would help protect potentially vulnerable residents from people with this type of history owning or managing the site on which they have made their home.
- 3.4 However, a number of respondents also noted that the Fit and Proper Person Test will need to be workable, sufficient and robustly applied if it is to deter unsuitable people from remaining in or entering the sector.
- 3.5 Other issues that respondents suggested would be addressed by the introduction of the Test included:
- The lack of clarity and consistency around who can and cannot hold a licence. This point was often associated with calls to ensure that the new Test is applied consistently across Scotland;
 - Licensing authorities having insufficient information on which to make decisions regarding site licencing and having to grant a licence in the absence of that information; and
 - People or companies that have a track record of non-compliance in relation to other relevant legislation being granted a site licence.

Question 5:

Do you perceive any difficulties in introducing A Fit and Proper Person Test for all applicants for a site licence based on the proposals?

- 3.6 Most respondents (69 out of the 98 that answered Question 5) did not perceive that there would be any difficulties in introducing A Fit and Proper Person Test for all applicants for a site licence. Most of the respondents that did perceive there could be difficulties were group respondents and included 9 local authorities.
- 3.7 Analysis of further comments made suggest that industry body or site owner respondents were often expressing fundamental concerns as to the feasibility and appropriateness of the current proposals. Local Authority, Resident Group and Other group respondents tended to raise specific, process related issues or be looking for further clarification about how the test would be expected to work.

Table 6
Question 5 - Total Responses

	Yes	No	Not answered
Group	21	9	23
Individual	8	5	8
Standard Text	0	55	0
Total	29	69	31

Table 7
Question 5 - Group Responses by Type of Respondent

	Yes	No	Not answered
Industry body	2	0	2
Local Authority	9	4	0
Other	5	1	3
Resident Group or Action group	2	3	1
Site Owners	3	1	17
Total	21	9	23

- 3.8 Amongst the concerns raised was that 'rogue' park operators are likely to find routes to evade a Fit and Proper Person Test and the regulations would not resolve the problems expected. As an example, it was suggested that if a park operator lost their Fit and Proper status, they would probably appeal the decision and by the time the case came to Court the park(s) in question could be owned and operated by a different limited company. In such a situation, although a new person with Fit and Proper status would be operating the park(s) it would be likely that the original operator would still be involved with, and possibly

giving instructions to, the new operator. It was also pointed out that in some parts of the UK¹¹ 'rogue' park operators are known to operate numerous limited companies within their operations and some have individual companies owning and operating each individual park.

3.9 It was also suggested that local authorities are not best placed to take responsibility for the application of the Fit and Proper Person test and would face considerable challenges when site owners own parks across a number of local authority areas. Duplication of training requirements across different local authorities was also noted by one respondent. A suggested alternative was the establishment of a team with an across-Scotland remit, as well as a national register containing information on owners' financial status and any criminal convictions. The Institution of Environmental Health Officers was suggested as an appropriate national body to host such a team.

3.10 Other issues or concerns raised included:

- England has already considered the introduction of a Fit and Proper Person Test but rejected the proposal as unworkable;
- The changes will result in more expense for park owners who trade legitimately. The majority of residential parks in Scotland have an average of 30 – 40 pitches and it would not be possible for them to absorb additional overheads in the form of administration or management costs;
- The resource implications of introducing the Test could be considerable not only for the applicant but also for the licensing authority required to process and verify that information;
- It may take local authorities longer to process applications than under the current system and this will need to be taken into account;
- Employers could supply very little information on their employees without contravening the Data Protection Act;
- If removing a site owner's Fit and Proper status, a local authority would need to have transitional arrangements, including local authority default powers if no alternative applicant was forthcoming. This might include, for example, having a Credit Licence to allow for the sale of mobile homes and holiday caravans on finance. Otherwise, no sales requiring finance could be completed;
- Equally, larger residential parks and, to a greater extent, mixed parks often have licensed shops, bars, restaurants, amusement arcades, etc. Unless the owner has committed a serious criminal offence, they would retain these licences and the right to operate them on the park. Most also live on their park and they could not be removed from their home. This would mean they would effectively remain on the site; and

¹¹ This respondent noted that they were not aware of this being a particular issue in Scotland.

- Some respondents were not clear how the Fit and Proper Test would be applied when a company was seeking to hold a licence and there were concerns that directors of companies would be able to 'circumnavigate' the Test.
- 3.11 Finally, a number of (principally industry-related) respondents also stated clearly that, if introduced, the Fit and Proper Person Test should not apply to holiday park owners. Issues relating to the suitability of the various proposals for different types of sites will be discussed in greater detail within Chapter 8 of this report.

Question 6:

Do you agree that the criteria as set out at under proposal 2 are appropriate? If 'no', please provide additional or alternative suggestions.

- 3.12 Moving on to consider the appropriateness of the specific criteria which could be considered in applying the test, most respondents (79 out of the 97 respondents that answered this question) agreed with the suggested criteria. These included, for example, whether the applicant has any spent/unspent convictions for certain types of offences or has practiced unlawful discrimination.
- 3.13 As with previous questions, it was group respondents that were more likely to disagree, although those that disagreed came from a range of different types of organisation.

**Table 8
Question 6 - Total Responses**

	Yes	No	Not answered
Group	18	11	24
Individual	6	7	8
Standard Text	55	0	0
Total	79	18	32

**Table 9
Question 6 - Group Responses by Type of Respondent**

	Yes	No	Not answered
Industry body	0	1	3
Local Authority	10	3	0
Other	5	1	3
Resident Group or Action group	2	3	1
Site Owners	1	3	17
Total	18	11	24

- 3.14 Further comments tended to focus either on the principles on which the criteria should be based or offered specific alternative criteria. Turning first to principles that should underpin the criteria it was suggested that they should be: objective, fair, transparent and clearly defined; consistently applied across the industry; and start with the assumption that an individual is 'fit and proper' unless there is evidence to the contrary. It was also suggested that where an individual has been shown to fail to meet those criteria, the consequence in terms of revocation of the site licence should be applied across all parks within the individual's control and any parks that the individual seeks to manage in the future.
- 3.15 Specific suggestions made, largely by Local Authority or Resident group respondents, included that:
- All directors (or partners in the case of a partnership) should be subject to individual Fit and Proper Person checks.
 - There should be a requirement on the applicant or current licence holder to disclose full details of all other sites that they own across Great Britain. This would allow local authorities to cross-reference with other relevant local authorities to establish whether the applicant or licence holder has breached other licence conditions or contravened any law relating to any other site;
 - Wherever possible, the proposed 'Fit and Proper Person' test criteria should be tied to those in the Antisocial Behaviour (Scotland) Act 2004, Section 85 as amended. This is to help ensure refinements made are automatically incorporated into the caravan site licensing regime, keeping it up to date and relevant;
 - Applicants should be required to disclose any history of bankruptcy or loss of directorships; and
 - Failure to comply with the following should be taken into account:
 - Fire Safety Requirements - the Fire Authority should be a statutory consultee in respect to the Fit and Proper test;
 - Health and Safety requirements of the Health and Safety at Work etc Act 1974 and regulations made thereunder; and
 - Improvement Notices etc.

Question 7:

Should there be a duty for companies and partnerships to notify a local authority of changes in directors or partners?

- 3.16 When considering whether there should be a duty for companies and partnerships to notify a local authority of changes in directors or partners, there was a high degree of consensus, with all but 4 respondents that answered this question (all 4 being group respondents) in agreement.

Table 10
Question 7 - Total Responses

	Yes	No	Not answered
Group	27	4	22
Individual	12	0	9
Standard Text	55	0	0
Total	94	4	31

Table 11
Question 7 - Group Responses by Type of Respondent

	Yes	No	Not answered
Industry body	1	1	2
Local Authority	13	0	0
Other	5	1	3
Resident Group or Action group	6	0	0
Site Owners	2	2	17
Total	27	4	22

3.17 Further comments made by respondents that disagreed with the proposal included that an update at the time of renewal or by request of the Local Authority would be adequate and that if a company holds a licence it is the company being assessed not each individual director.

Question 8:

Do you agree that a local authority should have the power to refuse a site licence if the fit and proper criteria are not met?

3.18 There was a similarly high level of consensus that a local authority should have the power to refuse a site licence if the fit and proper criteria are not met. Again, all but 4 respondents that answered this question were in agreement, in this case 2 group respondents and 2 individual respondents.

Table 12
Question 8 - Total Responses

	Yes	No	Not answered
Group	28	2	23
Individual	11	2	8
Standard Text	55	0	0
Total	94	4	31

Table 13
Question 8 - Group Responses by Type of Respondent

	Yes	No	Not answered
Industry body	0	1	3
Local Authority	13	0	0
Other	6	0	3
Resident Group or Action group	6	0	0
Site Owners	3	1	17
Total	28	2	23

- 3.19 Respondents who agreed with the proposal and who went on to make further comment often suggested that if a local authority did not have the power to refuse a site licence if the Fit and Proper criteria were not met, there would be little point in introducing the Test in the first place. Other points or suggestions made by those supporting the proposal include that transparent internal governance and appeal structures must be in place within the licensing authority and that, as with other licencing regimes, an applicant refused a licence should have a right of appeal to the Sheriff.
- 3.20 Respondents who disagreed with local authorities having the power to refuse a licence were generally concerned that the licensing authority would not be required to act in a reasonable manner and would be given too great a power which if exercised could seriously damage a park business. As an example, the potential for a licence being refused based on a technical regulatory breach was cited.
- 3.21 Another key issue raised by one respondent concerned about the current proposal focussed on the differences between the Test being applied when a new park is being developed as opposed to being applied when there is an existing park with privately owned park homes in situ. The respondent noted that in the case of a 'new' park, the 1960 Act requires local authorities to issue a site licence to applicants where the proposed site has the benefit of planning permission. Upon achieving planning consent, a site licence should be issued with appropriate conditions, although if the applicant does not meet the licensing authority's reasonable conditions then refusal of a personal licence may be appropriate. However, the situation would be very different for an existing park, with the respondent suggesting that licence refusal at renewal must be a last resort, come with a right of appeal and be accompanied by fully formed proposals as to how the local authority would deal with the aftermath of refusing a licence.

Question 9:

Are there any other reasons a local authority should be able to refuse a site licence?

3.22 Question 9 asked respondents if there are any other reasons for which a local authority should be able to refuse a site licence. The response rate at this question was low compared to many others within the consultation, in large part because only one of the standard text responses answered this question. The largest group of respondents suggesting there were other reasons for which local authorities would be able to refuse a licence, were local authorities themselves.

Table 14
Question 9 - Total Responses

	Yes	No	Not answered
Group	23	5	25
Individual	6	6	9
Standard Text	0	6	49
Total	29	17	83

Table 15
Question 9- Group Responses by Type of Respondent

	Yes	No	Not answered
Industry body	0	0	4
Local Authority	11	1	1
Other	6	0	3
Resident Group or Action group	4	2	0
Site Owners	2	2	17
Total	23	5	25

3.23 A range of suggestions were made as to when a local authority should be able to refuse a licence. Individual, Standard Text and Resident Group respondents generally focused on the record on the applicant themselves – for example, if the applicant for the licence had an adverse record in the industry, including previous breaches of site licence conditions or not acting when criminal behaviour had occurred on their site.

3.24 Further specific suggestions put forward by one or more respondent included the following:

- When there is no valid planning consent or when there is a breach of planning consent which is, or may be, subject to investigation and enforcement under planning legislation;
- When the proposed caravan type(s) are not consistent with the terms of the planning consent;
- If the number of residents on a site would exceed one third of the total number of residents in the surrounding area;

- If the applicant has failed to provide the requested information or acceptable responses to questions posed;
- If at the time of the licence application the site does not comply with the site licence conditions in place under the existing / preceding occupier or does not or will not comply with the draft site licence conditions proposed;
- If the site infrastructure does not or will not comply with the site licensing conditions and no evidence can be provided that site infrastructure completed before issue of the licence does or will comply with licensing conditions, relevant legislation, or British or European standards;
- In particular, until the site can show it complies/can comply with licence conditions/model standards and the model standards should be revised, and in particular clarify the fire safety requirements and the role of the fire authority and fire safety legislation; and
- When a copy of the site rules has not been lodged with the application.

3.25 Finally, and in relation to applications from parks which are being newly developed at a green/brown field site with no park homes already sited, one respondent found it difficult to imagine the circumstances in which a site licence would be refused. This respondent suggested that to grant planning consent and then deny a site licence would be unjust and before granting planning permission the local authority will have carried out the usual enquiries as to the appropriateness of the site for the establishment of a park. This respondent suggested that, before any amending legislation is drafted, it is important that there is a full understanding of the relationship between planning and site licensing law.

Summary of Views on the Fit and Proper Person Test

- Many respondents expressed their broad support for the introduction of the Fit and Proper Person Test and even those who went on to express some reservations about the proposals as they stand, sometimes noted that they supported the introduction of the Fit and Proper Person Test in principle.
- The main issue that respondents (including many individual and group respondents) expected a Fit and Proper Person Test to address is unsuitable people holding a licence, particularly people with relevant criminal convictions. However, a number of respondents also noted that the Fit and Proper Person Test will need to be workable, sufficient and robustly applied if it is to deter unsuitable people from remaining in or entering the sector.
- Industry body or site owner respondents were often expressing fundamental concerns as to the feasibility of the current proposals. Local Authority, Resident Group and Other group respondents tended to raise specific, process related issues or be looking for further clarification about how the test would be expected to work.
- Most respondents agreed with the suggested criteria to be used when the Fit and Proper Person Test is applied. Further comments tended to focus either on the principles on which the criteria should be based - such as transparency, fairness and consistency - or suggest additional criteria which should be included.
- There was a high level of consensus that a local authority should have the power to refuse a site licence if the fit and proper criteria are not met. Suggestions as to when a local authority should be able to refuse a licence generally focused on the record on the applicant themselves – for example, if the applicant for the licence had previously acted inappropriately and in particular have an adverse record in the industry.

4. PROPOSAL 3 – DURATION OF A SITE LICENCE

- 4.1 The Scottish Government considers that granting of indefinite length licences would not aid effective regulation of the industry - Proposal 3 related to the duration of a site licence and invited views on the most appropriate renewal period. Consistency with other licensing and registration regimes would suggest a requirement to renew every 3 years. At this point the fit and proper person declaration would also have to be renewed.
- 4.2 More specifically, the change would mean that all **current** licence holders would be required to apply for a **new** licence, although they would have a period of up to two years to make that new application and meet any conditions attached to the granting of a new licence.

Question 10:

What do you believe would be an appropriate renewal period for a site licence?

- 4.3 This proposal divided respondents. While many respondents agreed with the proposition that a licence should have to be renewed every 3 years, others expressed considerable concerns.
- 4.4 Analysis of comments made at Question 10 suggests that around 75 respondents (including all standard text respondents) support a 3 year renewal period. When respondents gave supporting reasons, these tended to focus on comparability to other licensing regimes. The other suggested renewal periods, along with the number of respondents suggesting it were:
- Up to a maximum of 2 years (1 respondent);
 - 5 years (2 respondents);
 - 10 years (4 respondents); and
 - 25 years (1 respondent).
- 4.5 The possibility of extending the licencing period (perhaps to 5 years) for applicants with a track record of operating a well-run site was also suggested by some respondents.
- 4.6 However, a number of respondents expressed considerable concerns about *any* fixed period being applied to licences. Many of these respondents were site owners and holiday site owners in particular,

and submitted letters (often referring to the response of the BH&HPA response) rather than a standard consultation form¹².

Question 11:

Do you perceive any difficulties in requiring all existing licence holders to reapply for a site licence?

- 4.7 The majority of respondents (65 out of the 96 respondents who answered Question 11) could not see any difficulties in requiring all existing licence holders to reapply for a site licence. However, it should be acknowledged that the group of site owner respondents who did not wish to see any renewal period (as set out above in paragraph 4.6) did not answer this specific question. Had they done so, it seems likely that they would have expected there to be difficulties.

Table 16
Question 11 - Total Responses

	Yes	No	Not answered
Group	24	5	24
Individual	7	5	9
Standard Text	0	55	0
Total	31	65	33

Table 17
Question 11 - Group Responses by Type of Respondent

	Yes	No	Not answered
Industry body	2	0	2
Local Authority	12	1	0
Other	3	2	4
Resident Group or Action group	3	2	1
Site Owners	4	0	17
Total	24	5	24

- 4.8 As noted earlier, a number of respondents expressed concerns that any site licence should last for only a 'fixed period' and these tended to be industry respondents (either industry bodies or site owners). The issues raised by these respondents focussed on the continuing viability of park businesses and can be summarised through the following questions:

¹²As these respondents did not answer Question 11 specifically, they are included within the 'did not answer' figure in Tables 16 and 17. Based on their comments, however, it may reasonably be inferred that most would have answered 'yes' at Question 11 if they had completed the standard form.

- Who would invest in a park business if the right to trade could simply expire? The business simply couldnot be sold;
 - What bank would provide funding to such a park business or continue to provide funding for a park out of licence and without guarantee of renewal?; and
 - Who would enjoy security of tenure or be able to sell their park home or caravan holiday home?
- 4.9 These respondents felt that businesses and consumers need certainty for the future and that this would be undermined by the current proposals. One industry body respondent also pointed out that local authorities already have the power to alter licences (under the 1960 Act) and suggested that there is no sound reason for changing a system that has operated very well for more than 50 years. This respondent went on to suggest that a variation of existing licences is all that is required and that rather than requiring decent, hardworking park owners to re-apply for licences they have successfully worked within for decades, local authorities and the police should target their resources to deliver effective enforcement where it is most needed.
- 4.10 Other issues raised (by those opposing any renewal period as well as respondents who supported a renewal period) included the following:
- There may be issues with Licence Holders having carried out changes to their sites without the benefit of Planning Permission or contrary to existing site licences;
 - Some mixed use parks may exist on one Site Licence. How will the new regulations apply to them?
 - Where permitted residential accommodation exists on holiday parks for parkmanagers, how will a residential site licensing regime apply to them?
 - Site owners may take the opportunity to maximise income by selling as many park homes/caravans as possible and then ‘walk away’ knowing they will not be issued with a new licence;
 - If existing site owners are in any doubt as to whether to continue in business - for example if approaching retirement - they may decide not to apply for a new licence and put the site up for sale. This may result in previously well run sites being sold on to unscrupulous or inexperienced owners and the consequence of this could be that there are more issues to be dealt with at the outset of the new licensing regime;
 - The renewal of licences could place a considerable administrative burden on local authorities. If all licence holders have to apply at the

same time the situation will be further exacerbated and limited resources may lead to delays in issuing licences;

- Without information being made public (so that residents can check the validity/ completeness of the information provided) some owners may not declare all relevant personnel;
- Although there should be a transitional period for current licence holders, 2 years is too long and should be reduced to 1 year; and
- Lessons should be learned from the implementation of the Licensing (Scotland) Act 2005 and all efforts made to minimise the upheaval any changes will cause to the industry.

4.11 Suggestions as to how the proposals could be 'made to work' included:

- That the onus should fall on the local authority to advise the site owner that their licence is due for renewal and why. This should be by recorded delivery and should be pre-dated by 6 months before normal renewal. This would 'start the clock ticking' giving 6 months for outstanding issues to be resolved;
- In the event of changes to the existing legislation, all existing licence holders should be advised at the earliest opportunity of their requirement to apply for a new site licence. This should be by recorded delivery;
- If local authorities can legally change the required site licence conditions 'between' licences, some sites may have difficulty complying when applying for a new licence. Revised model standards must be available in time for this process, whilst accompanying guidance must emphasise the need for conditions to be site appropriate, whilst not departing from the intentions of the model standards;
- Any additional administration costs should not be passed on to residents and site operators should bear the administrative and licensing costs themselves; and
- If a caravan site is problem free with a track record of 10 years or more then they should be exempt from reapplying for a licence.

Summary of Views on the Duration of a Site Licence

- The proposal to require licence holders to renew their licence on a regular basis divided respondents. Many respondents agreed with the proposition that a licence should have to be renewed every 3 years. These respondents often noted this change would bring caravan site licensing into line with many other licensing regimes.
- However, a number of respondents expressed considerable concerns about *any* fixed period being applied to licences. Many of these respondents were site owners, and holiday site owners in particular, and expressed concerns that the introduction of 'fixed period' licences could undermine the viability of park businesses.

5. PROPOSAL 4 – ISSUE OF A SITE LICENCE

- 5.1 Proposal 4 relates to the issue of a site licence. The 1960 Act currently states that the licensing authority has 2 months from the date they receive any information within which to issue the licence. It also provides that if after the information is received and the applicant does not have the relevant planning permission, the local authority has a further period of six weeks to make a decision from the date that planning permission is granted. If the licensing authority fails to issue the licence within these statutory time limits, the applicant does not commit an offence by using the land as a caravan site.
- 5.2. It is proposed to amend this provision requiring the local authority to notify the applicant of the approval or decline of the licence as soon as practicable after a decision has been made, unless the parties agree in writing to extend the period the local authority has to make their decision.

Question 12:

What do you view as the key implications of the changes proposed to the current time limits awarded to a local authority to issue a site licence?

- 5.3 Many of those who commented on these proposals raised concerns. Some respondents (generally commenting from an industry perspective) stated their basic opposition to the proposed changes, often going on to suggest that the current time limits should remain in place. It was suggested that, for straightforward applications, in which no concerns are raised, it is reasonable to expect a time limit to be imposed, and that it seems reasonable to assume that a licensing decision can be made within the same 8 week timeframe as a planning decision. However, it was reported that current experience suggests that some local authorities may already take an inordinate amount of time to attend to issues which could be virtually rubber stamped.
- 5.4 From a business planning perspective, one respondent noted that time is of the essence in the transfer and issue of a site licence. For example, the costs associated with park development are high and on a highly geared development the cost of borrowing will be significant. Given these costs, this respondent felt it was only reasonable to require local authorities to consider applications in a timely way. Equally, where a licence already exists but ownership of a site is being transferred to a new owner, timescales can also be critical. This respondent suggested that there should be no penalty imposed on businesses which are 'unlicensed' in such periods through no fault of their own.
- 5.5 Other respondents, including some local authorities, were concerned that the current proposals lack clarity and detail and in particular that

'practicable'¹³ will require definition. Among other concerns raised were:

- The potential grounds for refusal are not explicit;
- There is no consideration as to the quality or acceptability of information provided by the applicant on request from the local authority;
- The option to extend the decision period is subject to agreement by the applicant. Given that the applicant will gain immunity from regulation if the local authority do not issue a licence within the specified time frame, there is no incentive to come to an agreement to extend the decision period.

5.6 Some respondents also had concerns that the immunity from prosecution for operating an unlicensed caravan site remains. This was seen as a particular problem when a licence holder provides requested information but it is not acceptable to the local authority. Equally, the site may simply not comply with the licensing conditions. Given that no site licence exists, no site licence conditions can be applied, no enforcement powers are available to the local authority and the site licence holder can operate with impunity. This means that a local authority can only take enforcement action if it first issues a licence, but the holding of a recently issued site licence could provide a line of legal defence argument if the local authority then took enforcement action.

5.7 Although some respondents were critical of the proposals, others did see advantages in the changes. These included:

- Ensuring that an applicant has a clear incentive to provide any requested information in a timely manner, since it would no longer be in the interests of an 'unscrupulous' applicant to stall the provision of information as it would simply delay the consideration of their licence application; and
- Relieving the pressure on sites if works have to be done to meet standards.

Question 13:

What do you view as the bases on which a local authority can refuse to issue a licence?

5.8 Turning at Question 13 to the basis on which a local authority should be able to refuse a licence, some respondents stated that once the standard set of application and Fit and Proper criteria had been met

¹³ Paragraph 4.22 of the consultation document reads as follows:

"It is proposed to amend this provision to require the licensing authority to notify the applicant of the approval or decline of the licence as soon as practicable after the decision has been made, unless the parties agree between them in writing to extend the period the local authority has in which to reach their decision".

and planning permission obtained, it should be possible to issue a licence in all cases. Any issues should be resolved through negotiation between the park owner and the local authority and refusal of a licence should be a last resort.

- 5.9 Other respondents suggested specific circumstances under which a licence could reasonably be refused. These circumstances generally reflected respondents' earlier suggestions as to other reasons why a local authority should be able to refuse a licence (see analysis of comments made at Question 9, pp. 20-21 of this report). Again, the focus was very much on appropriate planning consents being obtained and complied with, requested information being supplied, the Fit and Proper Person criteria having been satisfied by all relevant persons and infrastructure complying with the relevant standards. Some respondents again suggested that non-compliance with, or breaches of previously held or existing licences, should also be taken into account.

Summary of Views on the Issue of a Site Licence

- Many of those who commented had concerns about the proposed changes to the current time limits awarded to a local authority to issue a site licence. Some respondents (generally commenting from an industry perspective) stated their basic opposition to the proposed changes, often going on to suggest that the current time limits should remain in place. It was suggested that, for straightforward applications it is reasonable to expect a time limit to be imposed.
- Other respondents, including some local authorities, were concerned that the current proposals lack clarity and detail and, for example, there is no consideration given to the quality or acceptability of information provided by the applicant on request from the local authority. Although some respondents were critical of the proposals, others did see advantages in the changes, including ensuring that an applicant has a clear incentive to provide any requested information in a timely manner.
- Some respondents stated that once the standard set of application and Fit and Proper criteria had been met and planning permission obtained, it should be possible to issue a licence in all cases. Others suggested specific circumstances under which a licence could reasonably be refused – for example if appropriate planning permissions were not in place on the applicant for the licence had not passed the Fit and Proper Person Test.

6. PROPOSAL 5 – ENFORCEMENT OF A SITE LICENCE

- 6.1 Proposal 5 considers the enforcement of a site licence and aims to give local authorities more flexibility in dealing with any breaches of licence conditions. The focus of the proposed regime is very much on allowing local authorities to deal with the failings of unlicensed or mismanaged sites, but without impact on sites that are well maintained and of a good standard.
- 6.2 Although local authorities currently have the power to inspect sites, for specific licence conditions, they are not required to do so either prior to the grant of a licence or at any point after a licence is granted. Proposal 5 aims to require the local authority to undertake a site inspection, with the frequency of the visits determined by the local authority as they see fit. Other elements to be included within the proposed new enforcement regime are:
- Increasing fines for non-compliance up to a maximum of £50,000;
 - Giving local authorities the power to serve a Statutory Improvement Notice on the holder of a site licence;
 - Allowing local authorities to revoke a site licence when other routes had not had the desired effect;
 - Enabling local authorities to make an application to the court for a Management order to take over the running of a site; and
 - Allowing local authorities to impose a Penalty Notice which would suspend pitch fee payments if the licence holder failed to meet licensing conditions.

Question 14:

What key issues do you believe that the introduction of (the above) enforcement tools would address?

- 6.3 Question 14 asked respondents to comment on the key issues that the introduction of enforcement tools could address. Both within their specific comments at Questions 14 to 17, as well as within other general comments made as part of their responses, a number of respondents stressed that effective enforcement will be critical to the success of any new licensing regime. Some respondents also suggested that the current enforcement framework – both in terms of its content and critically how it has applied – is insufficient and has allowed ‘rogue operators’ to remain largely unchallenged. There was a very clear consensus that change is required.
- 6.4 For some respondents this was not simply about the powers that are available to local authorities, but also the approach taken by the licensing authority and other statutory services (such as the police and fire services). A number of respondents – coming from both an industry and a resident perspective - felt that insufficient resources have been directed towards enforcement activity in the past and that a

more consistent and robust application of available enforcement powers will be required if real change is to be achieved.

- 6.5 One industry-focussed respondent suggested that any changes must be supported by an education programme that ensures all parties (purchasers, sellers, park owners, the police and local authorities):
- Have greater awareness about, and knowledge of, their rights and responsibilities; and
 - Are able to share relevant information between them and are part of a multi-agency approach to resolving the problems caused by a tiny minority.
- 6.6 Local authority respondents were amongst those suggesting that the changes proposed would give them more effective and 'useable' enforcement powers, with some suggesting that their current powers do not allow them to take appropriate and proportionate action to ensure compliance with licence conditions. Increasing the options available without having to revert to the Procurator Fiscal was generally seen as offering a possible solution to some of the current obstacles to effective enforcement. Addressing the perceived weakness of the licensing regime was also seen as being a positive development.
- 6.7 Although discussed further in subsequent questions (Question 16 in particular), among the specific issues that would be addressed or improvements that would result from the introduction of the new enforcement powers, respondents identified the following:
- Residents, including those who are vulnerable, would be afforded greater protection from 'rogue' operators. These 'rogue' operators may leave the sector rather than risk action being taken against them. This was raised by Individual and Resident Group respondents in particular;
 - Sites subject to licensing would receive (regular) inspections under timescales set according to perceived risk of non-compliance with licensing conditions. Local Authority respondents were most likely to see this as beneficial;
 - Failure to comply with formal notices to require works to be done would become an offence and able to be considered as part of the Fit and Proper Person Test;
 - The proposed fines will bring this licensing regime into line with that for offences under HMO licensing and landlord registration; and
 - The management order is a good 'back-up' to protect residents.

- 6.8. However, some concerns were also raised, and in particular that the enforcement tools do not address the immunity from prosecution for operating an unlicensed caravan site. This was seen as a particular problem where the licence holder provides the requested information but it is unacceptable to the local authority, or the site simply does not or will not comply with the licensing conditions. As already noted above (see paragraph 5.5), the local authority can only take enforcement action if it first issues a licence, no matter how unacceptable the applicant or site.

Question 15:

Do you think that local authorities should have the power to
(a) Revoke a site licence with or without application to the courts in certain circumstances? Or,
(b) Consider the alternative options managed through the licence conditions.

- 6.9 Question 15 asked respondents whether local authorities should have the power to revoke a site licence with or without application to the courts in certain circumstances or whether they should consider alternative options managed through the licence conditions. The balance of opinion is set out in the table below, although the figures do need to be viewed with some caution. Some respondents interpreted the three options proposed (without application to the court, only with application to the court and through licence conditions) as mutually exclusive, whilst others did not.
- 6.10 Most respondents, including standard text respondents, favoured local authorities having the power to revoke a site licence without application to the courts. Local authority and Resident Groups or Resident Action Group respondents tended to favour this option, whilst Industry Bodies and Site Owners tended to favour application to a court being required.
- 6.11 Analysis of further comments made suggests that those opposing local authorities having the power to revoke a site licence without application to the courts see this as being a very significant power, with misapplication having very considerable and potentially irreversible consequences. Respondents who took this view often suggested that application to the court would help ensure that due process, fairness and transparency underpinned the licensing authorities' use of its enforcement powers.
- 6.12 One respondent also highlighted that despite due diligence, a park owner may find themselves 'guilty' of a breach of licensing conditions despite having not contributed to the offence. Examples cited included a resident's actions placing the park owner in breach of his or her site licence conditions. Given the many and varied issues that could surround the potential revocation of a site licence, this respondent considered the process must be dealt with through the courts.

Table 18
Question 15 - Total Responses

	Without application to the courts			Only with application to the courts			Through the licence conditions		
	Yes	No	N/A	Yes	No	N/A	Yes	No	N/A
Group	19	9	25	11	14	28	12	11	30
Individual	4	9	8	8	4	9	4	7	10
Standard text	55	0	0	0	55	0	6	0	49
Total	78	18	33	19	73	37	22	18	89

Table 19
Question 15 - Group Responses by Type of Respondent

	Without application to the courts			Only with application to the courts			Through the licence conditions		
	Yes	No	N/A	Yes	No	N/A	Yes	No	N/A
Industry Bodies	0	2	2	2	0	2	0	0	4
Local Authorities	10	2	1	4	7	2	6	4	3
Others	4	1	4	1	4	4	2	3	4
Resident Groups or Resident Action Groups	5	0	1	0	3	3	3	1	2
Site Owners	0	4	17	4	0	17	1	3	17
Total	19	9	25	11	14	28	12	11	30

- 6.13 However, respondents who supported local authorities being able to revoke a site licence without application to the courts were often concerned that site owners might use the court process as a 'delaying tactic' and might choose to fight every case on technical points of law. Some respondents also pointed out that the granting of these powers would put the arrangements for caravan licensing on a par with those which already apply to the licensing of Houses in Multiple Occupation (HMOs). Some respondents also pointed out that site owners would and should have a right of appeal to the court to have a local authority's decision overturned.
- 6.14 Finally at Question 15, those that offered support for the use of alternative arrangements through management conditions sometimes suggested this was their preferred option, whilst others suggested that it should be an option that sits alongside powers to revoke a site licence. Those that supported the potential use of management conditions often suggested it offered 'one more possible option' and that a range of options that allowed local authorities to respond on a case by case basis would be helpful.
- 6.15 Some respondents highlighted problems, however, which might result from the use of management orders. For example, it was suggested that local authority staff may not have the necessary skills and experience to manage a site and that the necessary financial arrangements to allow them to do so may not be in place. One Individual respondent also suggested that Council management costs might be high and that this would impact directly on residents of the site.

Question 16:

Views are sought on the applicability of each of the enforcement tools identified.

- (a) Increased Fine;**
- (b) Statutory Improvement Notice;**
- (c) Revocation of a Site Licence;**
- (d) Management Order**
- (e) Penalty Notice**

- 6.16 The consultation document then went on to ask respondents for their views on the applicability of the five enforcement tools that had been identified: Increased Fine; Statutory Improvement Notice; Revocation of a Site Licence; Management Order; and Penalty Notice. Views expressed on each will be considered in turn below.

Increased Fine

- 6.17 The proposal was that a fine of up to a maximum of £50,000 could be imposed on a site owner convicted of non-compliance. Most respondents either stated their specific agreement with the maximum fine of £50,000 (77 respondents) or made a comment in general support of increasing fines to a level sufficient to increase compliance (8 respondents).
- 6.18 Only a few respondents either said they disagreed with increased fines (2 respondents) or that the £50,000 maximum was too high (1 respondent). However, a small number of respondents suggested that the fines must be proportionate to the gravity of the offence (3 respondents) or related to the size of the site (2 respondents).

Statutory Improvement Notice

- 6.19 The proposed new power would give a local authority the ability to serve a formal Improvement Notice on the holder of the site licence, which would require action to be taken in order to prevent or remedy a breach of licence conditions. It would be an offence to fail to comply with an Improvement Notice.
- 6.20 Again, while a few respondents expressed clear disagreement with this proposal, most respondents who commented at this question expressed support for Statutory Improvement Notices, which some respondents suggested would be a vital tool for local authorities seeking to improve standards on badly maintained or managed sites. Other positive features of Statutory Improvement Notices identified by respondents included that a local authority would be able to evidence its attempts to resolve issues with the site operator without resorting to court action. This can demonstrate a proportionate approach should the matter not have been resolved and it does proceed to court action or even revocation of a licence.
- 6.21 Some respondents (including some of those who expressed broad support for the introduction of the Notices), did raise issues or make specific suggestions as to how the Notices should operate. Points raised included the following:
- Local authorities will need to be pro-active with regard to these Notices if owners are not to be able to use them as part of a 'delaying tactic';
 - The involvement of an independent 'arbiter' – possibly a trade organisation - should be required;
 - Local authorities should be prohibited from going straight to prosecution and should be required to serve a notice of remedy first and give owners the chance to comply;

- The Statutory Improvement Notice would need to be served on both the site owner and the site – this would remove the incentive to change company name or licence holder;
- A suitable level of fine for non-compliance must be identified and specified. It should be of similar magnitude to that for operating without a licence to ensure there is sufficient deterrent for failure to comply with a notice. This is important where large sites are concerned and significant investment in infrastructure may be required to comply;
- There should be a minimum period to comply by default in order to accommodate an appeals mechanism. Both 14 and 21 days were suggested as the minimum period. Consideration should be given to whether an appeal will suspend the notice and to the provision of a ‘non-suspension’ clause;
- Local authorities should require authority from a court before being able to do works either in default or in an emergency. However, there should also be a way for local authorities to act immediately in response to imminent danger to the health and safety of individuals;
- Funding of works in default of a statutory notice is currently a problem for many local authorities, with concern over the ability to recover expenses. Pursuing the ‘polluter pays’ principle, local authorities should be able to recover their reasonable costs and this must be legislated for.
- To reduce the risk of local authorities being left to cover costs of work stipulated in an Improvement Notice by not then carried out by the licence holder, the local authority should have the power to impose a charging order on the property. This could be registered against title deeds for the property to reduce the risk of non-payment in the event of a company or partnership changing its name or identity;
- Legislation should include a requirement for local authorities’ costs and expenses to be ‘reasonable’ and transparently presented;
- It should be established that local authorities should not be able to reclaim costs from park owners where their costs have been incurred as a result of unjustified, vexatious complaints, possibly from residents or due to local authority incompetence; and
- In the interests of fairness, there should also be a mechanism for challenge or appeal.

6.22 As noted earlier, a small number of respondents disagreed with the proposed change, considering it to be a blunt and disproportionate instrument. It was also suggested that existing powers under the 1960

Act (Act 9 (3)) adequately cover this issue, but are not used by local authorities, and that this proposal is 're-inventing the wheel'.

Revocation of a Site Licence

- 6.23 The revocation of a Site Licence is proposed when other routes of enforcement activity have not had the required impact. Again those respondents that commented tended to express support, although often with certain reservations or caveats. Most frequently, respondents stressed that the revocation of a site licence must only be used as a last resort and that the considerable implications for both site owners and residents must be taken into account. Some respondents suggested that other approaches, including changes in management or an 'enforced take-over', would offer a more constructive way forward.
- 6.24 Further points made about the revocation of Site Licences included the following:
- Issues around the ownership of the land would need to be resolved. Once a licence has been revoked, the licence holder should not be able to return to the site and family members, partners, fellow directors or linked companies should not be allowed to assume responsibility for the site. The local authority should attain control with ownership of the land by compulsory purchase, funded perhaps by government funding using an extension of the Land Reform Act;
 - It is essential therefore that costs are recoverable through the pitch fee. Revocation would only work if pitch fees and all other sources of income were diverted away from the now, ex-licence holder; and
 - Revocation could also include conviction for operating a site without a licence. This will encourage operators of multiple sites to ensure all are correctly licensed and create awareness that localised poor practice has the potential to adversely affect the rest of the business.

Management Order

- 6.25 This proposal would enable local authorities to make an application to the courts for a Management Order to take over running of a site. If the site licence holder is deemed not fit and proper or has been convicted of a breach of licence conditions, depending on the severity of the circumstances the licensing authority could consider three options: 1) order that a managing agent is appointed to manage the site; 2) remove the site owner's right for contact with the residents, or 3) apply to the Courts for a Management Order to take over the running of the site.
- 6.26 Those respondents that commented tended to agree with the proposals, although only a small proportion of all respondents went on to make substantive further comments and some referred back to their

comments made at Question 15 (see analysis presented at paras 6.9-6.15 above). Additional points made at Question 16 included the following:

- The introduction of management orders would ensure that residents were not left without a manager in place. This might alleviate some of the concerns of local authorities which considered enforcement action to be necessary;
- Where residential parks are mortgaged, failure to pay the mortgage interest would result in the park going into administration or some similar insolvency procedure. The effect of a management order may be to force the sale of the park. Could this be considered to contravene park owners' human rights?
- If the use of management orders were to go ahead it would need to be considered in the light of plans for park owners' 'fit and proper' status. If a park owner's 'fit and proper' status were to be called into question this will undermine their status across all parks in that ownership. Therefore in addition to the proposed measures, there should be a duty on local authorities to identify other parks in that ownership;
- There are liable to be significant funding implications when such a situation arises. Whilst some may come from pitch fees (for which a related provision is required), this may be insufficient to deal with legacy or backlog operational, infrastructure or maintenance issues. Consideration should be given as to how funds belonging to the site licence holder might be accessed to allow improvements to be undertaken to bring the site back into compliance with the site licence conditions; and
- Clarity is required on the situation where ownership and site licence holder are different bodies. Does operation of the site default to the site owner and would this always be desirable? It could in some circumstances be worked to a site owner's benefit, particularly where owner and operator are two related organisations.

Penalty Notice

- 6.27 The proposed Penalty Notice would allow a local authority to impose a suspension of pitch fee payments should the site owner fail to apply for a site licence and meet the licensing conditions within a set period of time. This would continue for the period to which the penalty notice is applied and/or the issue resolved and the site licenced.
- 6.28 Most respondents who commented on Penalty Notices offered their support for the basic principle, sometimes commenting that it would be a useful addition to the enforcement tools available to local authorities.

Amongst the further comments made by those who saw Penalty Notices as having merit were the following:

- Penalty Notices could offer a better alternative to revocation of site licences and should also apply where a site has a licence but fails to address breaches of licence conditions;
- There could be implications for residents who may be under a lawful agreement to pay the site owner the agreed fees. The Notice would require the release of residents from these payments and ensure that they would not be liable to make back payments to the site owner when the matter is resolved; and
- A variation in favour of the local authority (or their appointees) is needed to provide a funding stream to support the operation of the site in the event of a Management Order being required.

6.29 Not all respondents agreed with the proposal for the introduction of Penalty Notices. Along with calling for greater detail as to how the Penalty Notice system would be expected to work, among the specific questions were posed by those who disagreed. For example:

- What precisely would constitute ‘failing to apply for a site licence’?;
- What would happen if compliance with site licence conditions was rendered impracticable; if for example, despite the park owner’s best efforts, a resident’s actions placed the park owner in breach of site licence conditions?
- Who would determine what ‘a set period of time’ should be and upon what criteria would that decision be made?

Question 17:

Do you think there should be a minimum inspection interval? If so, should it be statutory?

6.30 The final question under Proposal 5 asked respondents whether they agreed with a minimum inspection interval, and if so whether it should be statutory. Most respondents (87 out of the 99 that answered this question) agreed that there should be a minimum inspection interval, with most then also going on to agree that it should be a statutory minimum (81 out of the 89 that answered this question). Half of those disagreeing with a minimum inspection interval were groups and half were individual respondents.

Table 20
Question 17 - Total Responses

	Minimum Inspection Interval			Should it be statutory		
	Yes	No	N/A	Yes	No	N/A
Group	24	6	23	17	7	29
Individual	7	6	8	8	1	12
Standard text	55	0	0	55	0	0
Total	86	12	31	80	8	41

Table 21
Question 17 –Group Responses by Type of Respondent

	Minimum Inspection Interval			Should it be statutory		
	Yes	No	N/A	Yes	No	N/A
Industry Bodies	0	2	2	0	0	4
Local Authorities	11	2	0	8	5	0
Others	5	0	4	3	1	5
Resident Groups or Resident Action Groups	6	0	0	5	0	1
Site Owners	2	2	17	1	1	19
Total	24	6	23	17	7	29

- 6.31 Those respondents who disagreed with a minimum inspection period generally suggested that inspections should be carried out as required and/or that the interval between inspections should be based on a transparent risk approach, prioritising sites with poor compliance and a history of justified complaints. It was also suggested that to set a mandatory minimum inspection interval would, in practice, contradict the sensible proposal that visits should be determined by the local authority following a transparent risk-based assessment and hence the frequency of site inspections must not be prescribed in law.
- 6.32 The resource implications of requiring local authorities to carry out potentially unnecessary inspections were also raised and, on a connected point, it was suggested that at-fault businesses should rightly pay for local authorities' enforcement work. A specific suggestion made was that there may be the opportunity to achieve improved licensing work and reduce costs, through the Primary Authority Scheme, if it is to operate in Scotland through the Enterprise and Regulatory Reform Bill, published on 25 May 2012.
- 6.33 Those respondents who supported statutory minimum inspection periods often suggested that their introduction would be the best way to ensure that inspections were actually carried out and sufficient local

authority resources made available to the inspection function. However, respondents who supported a statutory minimum often suggested that a risk-based approach to inspection should trigger earlier or additional inspections as and when required.

- 6.34 Irrespective of whether they supported a statutory minimum inspection period or not, those respondents who made further comment very often agreed that the priority should be to focus attention and inspection activity on poorly performing sites. Some respondents also called for national standards and guidance to support consistent practice across Scotland.

Summary of Views on Enforcement of a Site Licence

- A number of respondents stressed that effective enforcement will be critical to the success of any new licensing regime and some also suggested that the current enforcement framework – both in terms of its content and critically how it has applied – is insufficient and has allowed ‘rogue operators’ to remain largely unchallenged. There was a very clear consensus that change is required, with Local Authority respondents amongst those suggesting that the changes proposed would give them more effective and ‘useable’ enforcement powers.
- Most respondents, including standard text respondents, favoured local authorities having the power to revoke a site licence without application to the courts. Local Authority and Resident Groups or Resident Action Group respondents tended to favour this option, whilst Industry Bodies and Site Owners tended to favour application to a court being required. Respondents who took this view often suggested that application to the court would help ensure that due process, fairness and transparency underpinned the licensing authorities’ use of its enforcement powers. However, respondents who supported local authorities being able to revoke a site licence without application to the courts were often concerned that site owners might use the court process as a ‘delaying tactic’.
- Those that offered support for the use of alternative arrangements through management conditions sometimes suggested this was their preferred option, whilst others suggested that it should be an option that sits alongside powers to revoke a site licence. Those that supported the potential use of management conditions often suggested it offered ‘one more possible option’. However, it was suggested that local authority staff may not have the necessary skills and experience to manage a site.
- There was strong support for the proposal to increase fines for non-compliance with licence conditions up to a maximum of £50,000. Most respondents who commented also supported the introduction of Statutory Improvement Notices and enabling giving Local Authorities to make an application to the court for a Management Order. There was also support

for giving Local Authorities the powers to revoke a Site Licence, although those respondents that commented often had reservations or caveated their support. Most frequently, respondents stressed that the revocation of a site licence must only be used as a last resort and that the considerable implications for both site owners and residents must be taken into account.

- Most respondents who commented on Penalty Notices offered their support for the basic principle, sometimes commenting that it would be a useful addition to the enforcement tools available to local authorities. However, some respondents did have reservations and were keen to have further information as to how a penalty notice system would work in practice.
- The final question under Proposal 5 asked respondents whether they agreed with a minimum inspection interval, and if so whether it should be statutory. Most respondents agreed that there should be a minimum inspection interval, with most then also going on to agree that it should be a statutory minimum. Those respondents who disagreed with a minimum inspection period generally suggested that inspections should be carried out as required and/or that the interval between inspections should be based on a transparent risk-based approach, prioritizing sites with poor compliance and a history of justified complaints.

7. PROPOSAL 6 – ABILITY OF THE LICENSING AUTHORITY TO CHARGE A FEE

7.1 The consultation document recognises that an enhanced licensing regime will have cost implications for local authorities. In response, and to bring Caravan Licensing in line with other licensing regimes, Proposal 6 suggests entitling local authorities to charge fees to cover their costs in the on-going management of licences. Fees could be charged on application for a site licence and at the renewal stage.

Question 18:

Do you agree that local authorities should be given the power to charge a fee in relation to

- (a) An application for a site licence
- (b) At the licence renewal stage for administration of the licence

7.2 Again, a clear majority of respondents who answered this question were in agreement with the proposal – with 90 out of 99 supporting charges on application for a licence and 85 out of 97 supporting charges at the renewal stage. Those agreeing included all Local Authority and Resident Group and Resident Action Group respondents.

Table 22
Question 18 - Total Responses

	For an application for a Site Licence			At the Renewal Stage		
	Yes	No	N/A	Yes	No	N/A
Group	26	4	23	22	6	25
Individual	8	5	8	7	6	8
Standard text	55	0	0	55	0	0
Total	89	9	31	84	12	33

Table 23
Question 18 - Group Responses by Type of Respondent

	For an application for a Site Licence			At the Renewal Stage		
	Yes	No	N/A	Yes	No	N/A
Industry Bodies	0	2	2	0	2	2
Local Authorities	13	0	0	13	0	0
Others	4	1	4	4	1	4
Resident Groups or Resident Action Groups	6	0	0	4	0	2
Site Owners	3	1	17	1	3	17
Total	26	4	23	22	6	25

7.3 Respondents tended to make similar arguments either in support of charging fees at both stages, or of charging fees at neither application nor renewal. Those that supported the principle of charging tended to focus their comments on similarity with other licensing regimes. Some respondents also suggested that there should be charges associated with any additional work required, for example when a local authority has to carry out an additional inspection as a result of non-compliance on the part of a licence applicant or holder.

7.4 Those that disagreed with fees being chargeable – at application, renewal or both stages – generally focussed on additional costs being imposed on reputable and well-established businesses for what was seen as an unnecessary change. In essence, the fundamental objection remained to the licensing system and hence by extension to charges being imposed. Specific further points made included that:

- Well-established and well-run parks may have been operating for years, if not decades, without causing their local authority to incur any costs associated with the park – these parks would effectively suffer a financial penalty if these proposals were to be introduced; and
- The ‘polluter pays’ principle should apply to site licensing – site licence charges should be on a cost-recovery basis and ring-fenced so that reputable park operators do not pay for the work to ensure licence compliance by ‘rogue’ operators;
- *If* fees are introduced they must be proportionate to the size of the park and the work the local authority has to undertake to administer the licence.

Question 19:

Do you agree that local authorities should have the power to exempt certain sites for licencing fees? If 'yes' please provide suggestions.

7.5 Most respondents (77 out of the 99 respondents who answered this question) disagreed that local authorities should have the power to exempt certain sites from licensing fees. However, a majority of group respondents, and including a majority of local authorities, thought that local authorities should be given these powers.

Table 24
Question 19 - Total Responses

	Yes	No	Not answered
Group	16	13	24
Individual	4	8	9
Standard text	0	55	0
Total	20	76	33

Table 25
Question 19 - Group Responses by Type of Respondent

	Yes	No	Not answered
Industry Bodies	2	0	2
Local Authorities	8	5	0
Others	3	1	5
Resident Groups or Resident Action Groups	2	4	0
Site Owners	1	3	17
Total	16	13	24

7.6 Limited further comments were made in response to this question, although those supporting giving local authorities the powers to exempt certain sites sometimes referred to non-commercial or small touring sites as possibly being exempt from charges. A small number of respondents suggested that local authority and/or Gypsies/Travellers sites should be exempt. Respondents who did not want local authorities to be given these powers tended to refer to consistency and fairness.

**Question 20:
Do you think that site owners should be able to recover licensing costs through pitch fees? Please give reasons for your response.**

7.7 Finally on the subject of licensing costs, respondents were asked if they thought site owners should be able to recover licensing costs through pitch fees. Most respondents (68 out of the 93 that answered this question) thought they should not. However, a clear majority of group respondents did think site owners should be able to recover their licensing costs.

**Table 26
Question 20 - Total Responses**

	Yes	No	Not answered
Group	18	7	28
Individual	7	5	9
Standard text	0	55	0
Total	25	67	37

**Table 27
Question 20 - Group Responses by Type of Respondent**

Industry Bodies	2	0	2
Local Authorities	9	2	2
Others	3	1	5
Resident Groups or Resident Action Groups	0	4	2
Site Owners	4	0	17
Total	18	7	28

7.8 Differences of opinion on this issue appeared to stem from how respondents viewed the relationship between running costs and pitch fees. Respondents who suggested that licensing costs should be recoverable through pitch fees often noted that licensing costs would form part of any park's legitimate running costs and hence would be eligible for consideration in the pitch fee review process. It was also noted that the proposals aim to improve standards for the benefit of residents and therefore costs can quite reasonably be passed on. However, a suggested condition was that only standard licence costs should be recoverable and additional costs should not be passed on to residents when they had been incurred as a result of no-compliance.

7.9 Those who suggested that licensing costs should not be recoverable also tended to make the same basic point that licence fees would be part of the basic running costs of a park; however these respondents

suggested that this meant they should not be recoverable through pitch fees.

Summary of Views on the Ability of the Licensing Authority to Charge a Fee

- A clear majority of respondents who answered this question were in agreement with entitling local authorities to charge on application for a licence and at the renewal stage. Those that supported the principle of charging tended to focus their comments on similarity with other licensing regimes. Those that disagreed with fees being chargeable – at application, renewal or both stages – generally focused on additional costs being imposed on reputable and well-established businesses for what was seen as an unnecessary change.
- The majority of respondents thought that site owners should not be able to recover these costs through pitch fees, although a clear majority of group respondents thought they should. Differences of opinion on this issue appeared to stem from how respondents viewed the relationship between running costs and pitch fees. Respondents who suggested that licensing costs should be recoverable through pitch fees often noted that licensing costs would form part of any park's legitimate running costs and hence would be eligible for consideration in the pitch fee review process. Those who suggested that licensing costs should not be recoverable suggested that this meant they should not be recoverable through pitch fees.
- Most respondents disagreed that local authorities should have the power to exempt certain sites from licensing fees. However, a majority of group respondents, including a majority of local authorities, thought that local authorities should be given these powers.

8. ADDITIONAL CONSIDERATIONS

8.1 The final part of the proposals asked respondents to consider whether the proposed reforms should apply to all licensable sites as governed by the 1960 Act. The types of site to which the licensing proposals could be applied are:

- Permanent Residential Sites;
- Protected Sites - in practical terms protected sites are residential sites, privately owned Gypsies/Travellers sites and mixed use sites (holiday and residential) where the homes are protected under the Mobile Homes Act 1983. Protected sites do not include sites which are used exclusively for holiday use or can only be used at certain times of the year; and
- Holiday sites – including with restricted occupancy which are used only for holidays.

Question 21:

Do you think all of the above types of sites should remain within the scope of the reformed licencing regime?

Question 22:

If you think any particular type of site should be excluded from the new regime please give your reasons.

8.2 The majority of respondents (84 out of the 96 that answered this question) considered that all types of sites should remain within the scope of the reformed licensing regime. Those respondents who disagreed included both group and individual respondents. The group respondents who disagreed were of no particular type.

8.3 However, it should be noted that (as at Question 11) a number of respondents who did not submit their views using the standard submission commented that certain types of sites should fall outwith the scope of the reformed licensing regime. As a result, the figures for standard responses at Question 21 (as set out in the table below) are likely to under-represent the number of respondents who disagreed with the regime applying to all types of sites.

Table 28
Question 21 - Total Responses

	Yes	No	Not answered
Group	20	8	25
Individual	9	4	8
Standard text	55	0	0
Total	84	12	33

Table 29
Question 21 - Group Responses by Type of Respondent

	Yes	No	Not answered
Industry Bodies	0	2	2
Local Authorities	11	1	1
Others	4	1	4
Resident Groups or Resident Action Groups	4	2	0
Site Owners	1	2	18
Total	20	8	25

- 8.3 Most of the respondents who were looking for certain types of sites to be exempted wished to see the exemption applied to holiday and touring sites. Respondents seeking this exclusion included Site Owners (of both holiday and park home sites), Industry Bodies and some Individual respondents. In explanation, one respondent expressed a common view that the proposals within the consultation document are aimed at improving standards for permanent residents of caravan sites and that no evidence has been presented to suggest that the welfare of occupants of holiday sites is at risk under the current system of licensing.
- 8.4 Other arguments made in favour of excluding these sites included the following:
- Many holiday sites are small operations which operate on small margins. To apply a regulatory regime designed to rid residential parks of the handful of notorious, criminal park owners is entirely unreasonable; and
 - Including touring only sites would particularly fall foul of the better regulation principles of proportionality and targeted focus.
- 8.5 Concerns were also expressed that the current proposals are not accompanied by an economic impact assessment and that the financial consequences of the proposed changes for holiday and touring park businesses, and by extension Scottish tourism more widely, have not been fully considered. One respondent wished particular attention to be given to how the proposals could impact on small and medium sized holiday parks. Other issues raised by respondents who wanted the

Scottish Government to consider the possible impact of the proposals on the Scottish tourism industry included the following:

- Holiday parks make an invaluable contribution to the domestic tourism economy and that role should not be threatened;
- Holiday park owners already have every incentive to ensure their parks remain in a good state of repair etc. The holiday park business is very competitive and market forces ensure this as customers are free to choose where they take their holidays;
- The British Graded Holiday Parks Scheme, operated by Visit Scotland, provides additional reassurance to holiday and touring park customers. This quality grading scheme assesses parks' facilities and services; and
- Some rural businesses have diversified to include a small caravan site as part of the wider farm or estate business. The income obtained through means of diversification such as this is essential to ensuring viability of the central business.

8.6 Some respondents also commented on how the proposed licensing regime could impact on mixed sites. For example, one respondent suggested that where holiday/touring and residential pitches are covered by the same licence, there is no justification for any changes impacting directly or indirectly on the holiday aspects of the business. It was also noted that some holiday sites may have a very small number of residential pitches providing accommodation for park managers or staff and that it would not make sense to consider these to be mixed use sites from a licensing perspective.

8.7 Finally, a small number of respondents suggested that Traveller/Gypsy sites, and/or sites run by the local authority, should be excluded from the licensing regime.

Summary of Views on Additional Considerations

- The majority of respondents that answered the specific question about which types of sites should remain within the scope of the reformed licensing regime considered that all types of sites (Permanent Residential, Protected and Holiday Sites) should be covered under the new licensing regime. However, a number of respondents – including Site Owners and Industry Bodies made comments which clearly stated that holiday parks should be excluded.
- Respondents who wished to see holiday sites excluded often suggested that the proposals are aimed at improving standards for permanent residents and no evidence has been presented to suggest that the welfare of holiday site occupants is at risk under the current system. The financial consequences of the proposals for holiday and touring park businesses, and by extension Scottish tourism more widely, were also raised.

Consultation Respondents

Group Respondents

- Aberdeenshire Council
- Aberdeen City Council
- Angus Council
- Annsmuir Residents Association
- Ballater Community Enterprise Ltd
- British Holiday & Home Parks Association
- Chief Fire Officers Association
- Comhairle Nan Eilean Siar
- Consumer Scotland
- Craigtoun Meadows Holiday Park
- Dunroamin Caravan Park
- East Ayrshire Council
- Federation of Small Businesses
- Fife Council
- Fife Fire and Rescue Service
- Highland Council
- Independent Park Home Advisory Service and National Association for Park Home Residents
- Meadowhead Ltd
- Midlothian Council
- Millhouse Park Residents Association
- National Association for Park Home Residents
- National Caravan Council
- Park Home Legislation Action Group
- Parkdean Holiday Ltd
- Riverview Park Residents Association
- Scottish Land and Estates
- Scottish Water
- SLAB project, Moray and Nairn CABS
- South Ayrshire Council
- Springwood Estate
- Swallowwell Holiday Group
- The Moray Council
- Visit Scotland
- West Lothian Council

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