IN THE MATTER OF THE MOBILE HOMES ACT 1983

AND IN THE MATTER OF SECTION 318 OF THE HOUSING AND REGENERATION ACT 2008

ADVICE

TABLE OF CONTENTS

INTRODUCTION...........................................................................................................................................2
STATUTORY BACKGROUND...................................................................................................................5
JUDICIAL CONSIDERATION OF THE POLICY UNDERLYING THE STATUTORY SCHEME..............................13
THE UNINTENDED CONSEQUENCES OF THE HA 2004........................................................................18
ALTERNATIVE VIEW OF THE EFFECT OF THE HA 2004.....................................................................20
POSITION WHERE DISTRICT COUNCIL OR OTHER PARTY MANAGES THE SITE.................................29
CONSEQUENCES OF THE MHA 1983 APPLYING TO COUNTY COUNCILS...........................................32
WHAT CAN A COUNTY COUNCIL DO TO MINIMISE THE NEGATIVE CONSEQUENCES OF THE AMENDED MHA 1983?.........................................................................................43
IMPLEMENTATION OF THE AMENDED MHA 1983.............................................................................46
UNIFORM PITCH AGREEMENTS............................................................................................................49
CONCLUSIONS........................................................................................................................................51
APPENDIX - RELEVANT STATUTORY PROVISIONS WITH AMENDMENTS SHOWN...........................52
INTRODUCTION

My Instructions

1. I am instructed to advise Kent County Council and a number of other county councils identified in my instructions in relation to the forthcoming amendments to the Mobile Homes Act 1983 ("MHA 1983") that will take effect on the coming into force of section 318 of the Housing and Regeneration Act 2008 ("HRA 2008").

2. Section 318 of HRA 2008 will omit certain words from the definition of "protected site" in section 5(1) of the MHA 1983. As a result of this omission "land occupied by a local authority as a caravan site providing accommodation for gipsies" will no longer be excluded from the definition of "protected site".

3. Persons entitled under an agreement to station a mobile home on land forming part of a "protected site" enjoy significant protections and advantages under the MHA 1983.

4. It is proposed that section 318 of HRA 2008 will come into force on 30 April 2011 under the the Housing and Regeneration Act 2008 (Commencement No. 8 and Transitional, Transitory and Saving Provisions) Order 2011\(^1\).

5. At the same time as section 318 of HRA 2008 comes into force amendments to Schedule 1 to the MHA 1983 will take effect under the Mobile Homes Act 1983 (Amendment Of Schedule 1 And Consequential Amendments) (England) Order 2011. Schedule 1 of the MHA 1983 contains terms that are implied into agreements that are subject to the MHA 1983.

\(^1\) Draft only at date of writing
Effect of the Housing Act 2004

6. One of the issues that I must consider is whether land occupied by a county council as a caravan site providing accommodation for gipsies has been a “protected site” under the MHA 1983 since 18 January 2005 when section 209 of the Housing Act 2004 (“HA 2004”) came into force.

7. At the time the HA 2004 was passed it was not generally thought or realised that the amendments could bring county council gipsy and traveller sites within the scheme of the MHA 1983.

8. It is now the government’s view that the MHA 1983 has applied to agreements to occupy pitches on county council gipsy and traveller sites since 18 January 2005 and the transitional provisions that are being introduced to give effect to section 318 of the HRA 2008 and amend Schedule 1 of the MHA 1983 reflect this view².

9. As I will explain in more detail, if the MHA 1983 has applied to county council gipsy sites since 18 January 2005 then there are a number of adverse consequences for county councils including that:
   a. The express terms in agreements granted since 18 January 2005 could be unenforceable;
   b. Payments made for increases to pitch fees since 18 January 2005 could be repayable to the occupiers of the pitch.

10. However, if the MHA 1983 will only apply to county council gipsy sites from 30 April 2011 then county councils may need to implement the legislative changes in accordance with the Housing and Regeneration Act 2008 (Commencement No. 8 and Transitional, Transitory and Saving Provisions) Order 2011³.

---

² See the draft explanatory memorandum to The Housing And Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) Order 2011
³ See paragraphs 99-101 and 104 below
11. It will therefore necessary for me to consider whether or not the MHA 1983 has applied to county councils since 18 January 2005.
STATUTORY BACKGROUND

12. In order for the reader to understand the background to the issues that arise from the amendment of the MHA 1983 it is necessary to make reference to a number of statutes starting with the Caravan Sites and Control of Development Act 1960 (“CSCDA 1960”).

13. I am not going to include extensive quotation from those statutes but have prepared an annex to this advice which sets out the relevant provisions and shows, by coloured alterations, the various repeals, amendments and substitutions that had been made to them as at 26 August 1968\(^4\), 20 May 1983\(^5\) and 30 April 2011.

Caravan Sites and Control of Development Act 1960

14. This Act contains provisions by which caravan sites must be licensed. The licence has to be obtained from the “local authority” in whose area the land is situated (see section 3(1)).

15. The definition of “local authority” for the purpose of Part 1 of the CSCDA 1960 is contained in section 29. The definition has been amended over time but the significant point is that the definition has always included district councils and excluded county councils. This is because county councils and district councils have overlapping areas and provision needed to be made as to which authority the application for a caravan site licence should be made.

16. Schedule 1 of the CSCDA 1960 contains a number of circumstances where a site licence is not required. Paragraph 11 provides that a site licence is not required “for the use as a caravan site of land occupied by the local authority in whose area the land is situated”. The definition of “local authority” in section 29 means that this exemption applies to district councils but not to county councils. The effect

---

\(^4\) The date the Caravan Sites Act 1968 came into force

\(^5\) The date the MHA 1983 came into force
of paragraph 11 was therefore that a district council does not need to make an application to itself for a site licence.

17. A power was granted to local authorities by section 24(1) of CSCDA 1960 to provide sites where caravans may be bought, whether for holidays or other temporary purposes or for use as permanent residences and to manage the sites or lease them to some other person.

18. The definition of “local authority” for the purpose of section 24 includes county councils (see section 24(8)).

19. Thus the position under the CSCDA 1960 when enacted was that a county council had a power to provide a caravan site but required a licence from the relevant district council to do so.

**Caravan Sites Act 1968**

20. The Caravan Sites Act 1968 (“CSA 1968”) did two things. Part I contained provisions for the protection of residential occupiers of caravans. The protections included a minimum length of notice period (section 2) and prohibitions against eviction without court proceedings and harassment (section 3).

21. Part I only applies to agreements to station a caravan on a “protected site” (section 1(1)). A “protected site” was defined as being land which required a site licence under the CSCDA 1960 or would require a site licence if paragraph 11 of Schedule 1 to that Act were omitted (section 1(2)).

22. When enacted a caravan site occupied by a county council would be a “protected site” within the meaning of section 1(2) CSA 1968 because the county council, not being a “local authority” within section 29 of the CSCDA 1960, would not fall within paragraph 11 of Schedule 1 to the CSCDA 1960 and so required a site licence.
23. Part II of the CSA 1968 imposed a duty on local authorities, including county councils and district councils, to exercise their powers under section 24 of the CSCDA 1960 to provide adequate accommodation for gipsies residing in or resorting to their area (section 6).

24. A significant feature of Part II of the CSA 1968 is the manner in which it apportioned this duty as between county councils and district councils (see sections 7-8). The county council was responsible for determining what sites were to be provided and acquiring or appropriating the necessary land. The district council was responsible for providing the services and facilities on the land.

**Mobile Homes Act 1975**

25. The Mobile Homes Act 1975 ("the MHA 1975") provided an increased measure of protection for residential occupiers of mobile homes on a "protected site". The MHA 1975 required the occupier to be provided with a written agreement (section 1(1)), for the agreement to have a minimum duration (section 2) and for certain terms to be incorporated into the agreement (section 3).

26. The definition of a "protected site" under the MHA 1975 meant "any land in respect of which a site licence is required under Part 1 of the Act of 1960".

**Amendment to the CSCDA 1960**

27. The next significant enactment is an amendment made to Schedule 1 of the CSCDA 1960 by section 176 of the Local Government, Planning and Land Act 1980. Section 176 has the heading, "Site licences: exemption for sites provided for gipsies by county councils or regional councils" and inserts as paragraph 11A into Schedule 1 the following exception to the requirement to obtain a site licence:
"A site licence shall not be required for the use of land occupied by a county council, or in Scotland a regional council, as a caravan site providing accommodation for gypsies”

28. It will be recalled that where land required a caravan site licence the site would be a “protected site” for the purposes of the CSA 1968 (with the consequence that those entitled to station caravans on the protected site enjoyed certain statutory protections). The effect of the new paragraph 11A was therefore twofold:
   a. land occupied by county councils as a caravan site providing accommodation for gypsies no longer required a site licence; and
   b. sites occupied by county councils as a caravan site providing accommodation for gypsies were no longer “protected sites” within the meaning of the CSA 1968 (see *Stoke on Trent v Frost (1991) 24 HLR 290*).

**Mobile Homes Act 1983**

29. The MHA 1983 replaced the Mobile Homes Act 1975 and significantly improved the statutory protection for the residential occupiers of caravans.

30. The MHA 1983 applies where a person has an agreement to station a mobile home on land forming part of a “protected site” and the person occupies the mobile home as his only or main residence (section 1(1) MHA 1983).

31. “Protected site” in the MHA 1983 has a different (but connected) meaning from that in the CSA 1968. Section 5(1) of the MHA 1983 when enacted provided that:

   ““protected site” does not include any land occupied by a local authority as a caravan site providing accommodation for gypsies or, in Scotland, for persons to whom section 24(8A) of the Caravan Sites and Control of Development Act 1960 applies but, subject to that, has the same meaning as in Part I of the Caravan Sites Act 1968.”

---

6 The expression “mobile homes” in the MHA 1983 means the same as “caravan” in Part I of CSCDA 1960
32. At the time the MHA 1983 was passed a site occupied by a county council for the purpose of providing accommodation for gipsies would not have fallen into this definition of “protected site”. There were two possible routes to this result. The first possible route is that following the insertion of paragraph 11A into Schedule 1 to the CSCDA 1960 land occupied by a county council did not require a licence and so would not have been a “protected site” within the meaning of the expression “protected site” in the CSA 1968 (see Stoke on Trent v Frost).

33. The second possible route is that the site was excluded from the definition of a “protected site” because it was, “land occupied by a local authority as a caravan site providing accommodation for gipsies”. However, the problem with this route is that the expression “local authority” in the MHA 1983 has the same meaning as in Part I of the CSCDA 1960 (see section 5(1) of the MHA 1983). It will be recalled that the meaning of expression “local authority” in section 29 of the CSCDA 1960 does not include a county council (see section 29).

34. In Stoke on Trent v Frost both Glidewell LJ and Dillon LJ expressed the obiter view that a site occupied by a county council for the purpose of providing accommodation for gipsies would be a “protected site” under the MHA 1983. Dillon LJ gave his reason for this (at p297) as being:

“That seems to follow not so much from the definition of local authority in section 5 of the 1983 Act, which gives the word the same meaning as in Part I of the 1960 Act, as from the amendment made by the 1980 Act which took caravan sites provided by county councils for the protection of gipsies out of the definition of “protected site” in the 1968 Act.”
Criminal Justice and Public Order Act 1994

35. The duty on local authorities to make provision of caravan sites for gipsies under Part II of the CSA 1968 was repealed by the Criminal Justice and Public Order Act 1994. Whilst the duty to provide accommodation for gipsies was repealed the Criminal Justice and Public Order Act 1994 also amended section 24 of the CSCDA 1960 to confirm that local authorities retained a power to provide accommodation for gipsies under this provision.

Housing Act 2004

36. With the coming into force of the Human Rights Act 1998 the lack of statutory protection enjoyed by gipsies as compared with other residential occupiers of mobile homes came under increasing scrutiny and was subject to an adverse decision by the European Court of Human Rights in Connors v UK (2004) 40 EHRR 189. This latter decision has resulted in the amendments introduced by the HA 2004 and the HRA 2008.

37. The amendments introduced by the HA 2004 came into force on 18 January 2005. For the purposes of this advice the most significant provision was section 209(1) HA 2004 which amended the definition of a “protected site” in section 1(2) of the CSA 1968 so that reference was made to both paragraph 11 and 11A of Schedule 1 to the CSCDA 1960. This amendment brought county council occupied gipsy sites within the definition of “protected sites” for the purposes of the CSA 1968 and reversed the decision in Stoke on Trent v Frost.

38. I will consider the unintended consequences of this amendment shortly.
Housing and Regeneration Act 2008

39. As already explained section 318 of the HRA 2008 amends the MHA 1983 so that the expression "protected site" has the same meaning in both the CSA 1968 and the MHA 1983.

Amendments to the Implied Terms in Schedule 1 of the MHA 1983

40. The Department of Communities and Local Government recognised in its consultation paper that a number of the terms that are implied into agreements subject to the MHA 1983 by section 2 could have adverse impacts for local authority sites provided for gypsies\(^7\).

41. Section 2A of the MHA 1983 permits the implied terms imposed under Schedule 1 to be amended so as to make different provision with respect to different cases. However, only the first order made under that power\(^8\) could have retrospective effect (see section 2(4) MHA 1983).

42. It is proposed that the implied terms will be amended by the Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) Order 2011. The amended version of Schedule 1 will consist of 4 Chapters. The existing implied terms will be retained in Chapter 2. The terms applicable to "local authority gypsy and traveller sites" and "county council gypsy and traveller sites" are found in Chapter 3 and Chapter 4. Chapter 3 applies to agreements for "transit pitches". Chapter 4 applies to other pitches. A pitch is a "transit pitch" if under the terms of the agreement a person is entitled to station a mobile home on it for a fixed period of up to 3 months. A pitch which is not a "transit pitch" will be known as a "permanent pitch".

---

\(^7\) "Implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller site", September 2008

\(^8\) The Mobile Homes Act (Amendment of Schedule 1) (England) Order 2006 (SI 2006/1755)
Transitional Provisions

43. Section 318 of the HRA 2008 will be brought into force by the Housing and Regeneration Act 2008 (Commencement No. 8 and Transitional, Transitory and Saving Provisions) Order 2011 on 30 April 2011.

44. The order has two significant provisions:
   a. By article 4 the MHA 1983 Act will apply to existing local authority agreements as it would to a local authority agreement made after the coming into force of the Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011;
   b. By article 6, in relation to any existing local authority agreement in respect of a pitch which by virtue of the order becomes a permanent pitch, a local authority must, within 28 days of the commencement date of the order, give a written statement to the other party to the agreement.

45. The expression “local authority” in the order has the same meaning as in the MHA 1983.

Residential Property Tribunals

46. Finally, it should be noted that from 30 April 2011 under the proposed Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011 the jurisdiction of the court under the MHA 1983 will be conferred on residential property tribunals. The court will retain jurisdiction in respect of the termination of agreements by the owner.
JUDICIAL CONSIDERATION OF THE POLICY UNDERLYING
THE STATUTORY SCHEME

47. Having set out the statutory background in detail it is worth referring to judicial views as to Parliament’s intentions behind the scheme and the reasons for excluding gipsies from statutory protection.

48. Greenwich v Powell [1989] 1 AC 995 concerned the meaning of “gipsy” under the CSA 1968 but Lord Bridge set out the policy behind the various statutes and at p1008 said:

“For present purposes, the all-important change effected by the Act of 1983, as compared with the Act of 1975, is to extend the 1983 security of tenure to caravans stationed on all local authority sites except gipsy sites. This change is effected by the definition in section 5(1) of the Act of 1983 which reads:

"protected site\' does not include any land occupied by a local authority as a caravan site providing accommodation for gipsies ... but, subject to that, has the same meaning as in Part I of the Caravan Sites Act 1968."

49. Later at p1011 he said:

“It was only when the Act of 1983 came into force that it became important to distinguish between local authority sites "providing accommodation for gipsies" and other local authority sites, because it was then for the first time that the crucial distinction between the security of tenure enjoyed by caravan residents on the two classes of site was introduced. The Bill which became the Act of 1983 was a Government Bill and it would be quite unrealistic not to recognise that the distinction
between the two classes of site made in the statute must have been made with full knowledge of the policy which had been followed since 1970 with regard to the performance by local authorities of their duty under section 5 of the Act of 1968. That policy, whilst technically inadmissible as an aid to the construction of the definition of "gipsies" in section 16 of the Act of 1968, is, in my opinion, fully cognizable as a powerful pointer to the intention of the legislature in excluding local authority sites "providing accommodation for gipsies" from the definition of "protected site" in the Act of 1983."

50. Finally at p1013 he concluded:

"These considerations confirm me in the opinion that, even if there is an ambiguity in the definition of "gipsies" in section 16 of the Act of 1968, the intention of the legislature in the Act of 1983 was clearly to exclude from the definition of "protected site" sites such as that at Thistlebrook provided by local authorities in discharge of their duty under section 6 of the Act of 1968 to accommodate those whom they bona fide believe to be gipsies because they are nomadic for part of the year, notwithstanding that they may establish a permanent residence on the site by returning from year to year."

51. In Somerset County Council v Isaacs [2002] EWHC 1014 (Admin) it was contended that the summary eviction of Mr Isaacs infringed article 8 of the ECHR and that the protection afforded to gipsies on local authority sites, when compared to that enjoyed by other occupiers of caravan sites infringed article 14 of the ECHR.

52. At paragraph 37 of his judgment the judge set out a lengthy explanation of the policy underlying the statutory framework from the evidence of Duncan Campbell, of the Department for Transport, Local Government the Regions, on
the aims of the legislation. The judge relied on that explanation at paragraph 38 when finding that Article 8 was not infringed. Mr Campbell’s evidence was as follows:

"The aims of the two statutory frameworks

24. As the brief summary of legislative history set out above indicates, the specific statutory provisions of which the Defendant complains form part of two separate statutory frameworks: one which applies to local authority Gypsy caravan sites, and another for all other residential caravan sites operated by local authorities and private owners.

25. With Part I of the 1968 Act, and with the 1975 and 1983 Acts, Parliament sought to address specific problems of commercial exploitation experienced by occupiers of private sites. There has never been any evidence to suggest that such problems extend to local authority Gypsy sites, and accordingly those legislative provisions that are directed at those problems have not been not extended to such sites. The problems faced by Gypsies were wholly different, relating primarily to the acute shortage of sites available to meet their particular accommodation needs. The said problems were addressed by Part II of the 1968 Act, and supplemented by the departmental guidance circulars issued to local authorities. By 1994, the scheme of Part II of the 1968 Act was found to have served its purpose as far as it could reasonably be expected to do. There was now a substantial and valuable supply of Gypsy caravan sites provided and operated by local authorities. The emphasis of Government policy has now changed to one of encouraging Gypsies themselves to add to that existing supply. Nevertheless existing local authority supply remains an essential component of the Government’s strategy of securing an adequate level of accommodation for Gypsies. The policy of the 1994 Act is to maintain and safeguard that distinct source of supply.

26. Thus, I draw particular attention to the fact that the statutory protection afforded by Part I of the 1968 Act and the 1975 and 1983 Acts has been and still is available to Gypsies if they choose to reside at sites
other than those provided by local authorities specifically for Gypsies. In general, the key difference between such sites has been the greater flexibility, which is usually available on local authority Gypsy sites, in order to accommodate the nomadic lifestyle of occupiers. This may allow Gypsies to remain on a site on a short-term basis, or to retain a site for 12 months of the year, while paying a reduced rent as a retainer during the few months of while they may be travelling in search of seasonal work. Other local authority sites and private sites, in general, are aimed at longer-term residential occupiers, without the need for such flexibility because they are not pursuing a nomadic lifestyle.

27. Nevertheless, there are of course a number of Gypsies who occupy sites on a long-term basis, and other mobile home residents who do not consider themselves to be Gypsies, but who prefer to occupy private sites on a more short-term basis. The aim of the separate statutory frameworks is to ensure diversity of provision to meet the varying needs of different individuals and families; it is not to classify or categorise individuals or families. Accordingly, Gypsies seeking to settle on a more permanent site may occupy private or local authority (non-Gypsy) sites and benefit from the scheme put in place by Part 1 of the 1968 Act and the 1983 Act. This diversity of public and private site provision reflects that which is available in housing generally.

28. The separate statutory framework allows for flexibility in meeting the accommodation needs of Gypsies. It appears that the Defendant is effectively arguing in these proceedings in favour of a single statutory framework applicable to all caravan sites, including local authority Gypsy sites. In my view, such a single statutory framework would be detrimental to the interests of Gypsies throughout the country. If the security of tenure provisions of that framework applied equally to local authority Gypsy sites, it would undermine the flexibility that such sites provide in catering for the varied lifestyles of Gypsies. Some may move from site to site on a regular basis, while others may be more permanently based on a site,
possibly travelling for a few months each year to take on seasonal work. If each Gypsy were able to rely on security of tenure then every site, whatever its designation, could potentially become a permanent site with no scope to accommodate short-term occupiers. Furthermore, if there were no longer a distinction in the statutory framework allowing flexibility for the provision of Gypsy sites, then there would be nothing to prevent any person residing in a mobile home seeking to occupy a Gypsy site, whether or not they pursue a nomadic lifestyle. Inevitably, fewer sites, if any, could be made available specifically for Gypsies pursuing a nomadic lifestyle.

32. Experience suggests that local authorities would face difficulties in managing sites of eviction were subject to broad discretionary powers of the courts to suspend or attach conditions to orders. There is a balance to be struck between the latter and the merits of flexibility (already mentioned) that such sites offer in catering for the varying accommodation needs of Gypsies. To this (and in favour of the existing position) must be added the fact that in reaching decisions about evictions local authorities, as responsible bodies, need to take into account the range of obligations and considerations outlined in paragraph 29 above. These amount to significant safeguards against unscrupulous or unjustified evictions. Furthermore local authority decisions in relation to eviction are open to challenge by way of judicial review."
THE UNINTENDED CONSEQUENCES OF THE HA 2004
AMENDMENTS

Argument that MHA 1983 applied to county council gipsy sites since 18 January 2005

53. A question that now confronts county councils is whether land occupied by a county council as a caravan site providing accommodation for gipsies has been a “protected site” for the purpose of the MHA 1983 since section 209 of the HA 2004 came into force.

54. As explained above it is now the government’s view that county council gipsy sites did become subject to the MHA 1983 on 18 January 2005. The reasoning that leads to this conclusion is as follows:

a. Prior to the HA 2004 caravan sites occupied by county councils to provide accommodation for gipsies were excluded from the MHA 1983 protection as they were not “protected sites”. This was because following the insertion of paragraph 11A into Schedule 1 to the CSCDA 1960 land occupied by a county council to provide accommodation to gipsies did not require a site licence and so would not have been a “protected site” within the meaning of the expression “protected site” in the CSA 1968 (see per Dillon LJ in Stoke on Trent v Frost at paragraph 34 above);

b. Once the HA 2004 amended the definition of “protected sites” in the CSA 1968 sites occupied by county councils to provide gipsy accommodation were “protected sites” under the CSA 1968 and so they also became “protected sites” under the MHA 1983;

c. A county council gipsy site does not avoid being a “protected site” within the meaning of the MHA 1983 through the exception provided by the words, “does not include any land occupied by a local authority as a caravan site providing accommodation for gipsies or, in Scotland, for persons to whom
section 24(8A) of the Caravan Sites and Control of Development Act 1960 applies" because the definition of "local authority" in the MHA 1983 is the same as that in Part I of the CSCDA 1960 and the definition in section 29 of the CSCDA 1960 does not include county councils;

d. Therefore caravan sites occupied by county council to provide accommodation for gipsies have been subject to the MHA 1983 since 18 January 2005.

55. This was not an intended effect of section 209 HA 2004. The explanatory note in respect of section 209 reads as follows:

"Section 209 amends section 1 of the Caravan Sites Act 1968 to extend the meaning of 'protected site' to include sites owned by County Councils providing accommodation for Gypsies. This will mean that sections 2-4 of the Caravan Sites Act 1968 will apply to these sites and the occupiers of them, i.e. the requirement for minimum length of notice in section 2, the protection from unlawful eviction and harassment contained in section 3, and provision for the suspension of eviction orders in section 4. The change does not have any retrospective effect, i.e. it does not affect any notice given or proceedings begun before section 209 comes into force, or conduct occurring before that date."

ALTERNATIVE VIEW OF THE EFFECT OF THE HA 2004

56. There is, however, an alternative view to the effect of the HA 2004. There are two separate points to consider:

a. Whether the definition of the “protected site” in the MHA 1983 should be construed as referring to the CSA 1968 definition of “protected site” in as amended by the HA 2004;

b. Whether “local authority” in the definition of “protected site” is capable of being construed to mean “local authority” with the meaning of section 24(8) of the CSCDA 1960 and so includes a county council.

Does section 5(1) of the MHA 1983 refer to the CSA 1968 definition of “protected site” as amended by the HA 2004?

57. The question is whether when the MHA 1983 was passed the reference in section 5(1) to Part I of the CSA 1968 was intended to include a reference to that act as amended by any subsequent enactment.

58. If it does not then section 5(1) of the MHA 1983 only refers to the definition of “protected site” under section 1(2) the CSA 1968 as at the date the MHA 1983 came into force. On this basis a county council caravan site for gipsies would not be a “protected site” even after the HA 2004 came into force (see Stoke on Trent v Frost).

59. At the time the MHA 1983 was passed the Interpretation Act 1978 was in force. In the White Paper that preceded the Interpretation Act 1978 clause 20(2) was explained as follows:
"8. The great majority of Acts of Parliament contain references of some kind to other existing enactments, which, or some of which, have been amended by intervening legislation. This raises the theoretical question whether the reference is intended to denote the enactment in the form in which it was originally passed or in the form in which it stands at the time of the reference. The intention is almost invariably the latter. Where it is not, words are added to make that clear

... Nevertheless the practice has grown up, no doubt to be on the safe side, of including in Acts which contain such references a clause to the effect that they are to be construed as referring to the enactments in question as amended by subsequent Acts. On an approximate estimate such a clause now appears in two out of every three Acts. Although the general purpose is the same, these clause differ from each other in detail, ranging from the simplest form – "Any reference in this Act to any enactment is a reference to that enactment as amended by any subsequent enactment" to the full treatment- "Unless the context otherwise requires, any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including this Act".

Apart from the expenditure of paper and ink upon clauses, the need for which is at best doubtful, these provisions are disturbing because it is seldom self-evident why the clause appears in different forms in different Acts, and does not appear at all in others.

We recommend accordingly that the consolidation should include a clause designed to eliminate these recurrent ad hoc clauses. Effect to the recommendation is given in clause 20(2) of the draft Bill" [emphasis added]
60. Section 20(2) of the Interpretation Act 1978 is in the following form:

"Where an Act refers to an enactment, the reference, unless the contrary intention appears, is a reference to that enactment as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including any other provision of that Act."

61. The provision is ambiguous in that it does not state whether the intention is that the “reference to that enactment as amended” is fixed at the date of the Act that refers to it or also applies to subsequent amendments of the Act referred to.

62. The authors of Bennion on Statutory Interpretation at Section 83 have the following to say about section 20(2) as it relates to the issue of subsequent amendments,

"The biggest difficulty concerns subsequent amendments... It will be seen that s 20(2) is ambiguous on this very difficult point. It might be thought that since the Law Commissioners were inserting a new provision into the Interpretation Act they would have made sure that it was not ambiguous. As para 8 of the White Paper cited above shows, the provision had been used many times previously. There was no excuse for getting it wrong.

63. The authors then refer to the case of Willows v Lewis (Inspector of Taxes) [1982] STC 141 which concerned section 540(3) of the Income and Corporation Taxes Act 1970 which was in the following terms:

"Any reference in this Act to any other enactment shall, except as the context otherwise requires, be construed as a reference to that enactment as amended or applied by or under any other enactment, including this Act."
64. Nourse J. held in Willows v Lewis (Inspector of Taxes) that these words were not sufficient for a subsequent amendment to the Act referred to be included in the reference to that Act. He said at p147:

"That view involves reading the words "that enactment as amended...by...any other enactment" as including amendments made under any future enactment, whenever passed. In my judgment that is to give to s540(3) a width of application which wording at the best equivocal can not bear, particularly in a taxing statute. The words are equally, and I would say more naturally, capable of referring only to amendments made on or before the passing of the 1970 Act itself and I find it impossible to say that they go, or were intended to go, further than that."

65. I have been unable to find any case in which section 20(2) of the Interpretation Act 1978 itself has been considered.

66. In my view, the reasoning of Nourse J. in Willows v Lewis (Inspector of Taxes) is persuasive when applied to the Interpretation Act 1978, even though it is not a taxing statute.

67. A further argument is that when passing the MHA 1983 Parliament did not intend reference to the definition of "protected site" in the CSA 1968 to be affected by future amendments to that term. Two points can be made:

a. The definition in the CSA 1968 is not adopted by the MHA 1983 but is used as part of a distinct definition of "protected site" that applies only to the MHA 1983. Although the MHA 1983 and the CSA 1968 are part of a linked statutory scheme it does not follow that Parliament would have intended changes to the CSA 1968 definition to affect the MHA 1983 definition;
b. given that Nourse J.'s view of the wording of section 540(3) was known when the MHA 1983 was passed Parliament should be treated as intending that subsequent amendments to the CSA 1968 would not effect the MHA 1983 unless the amending Act so provided (see *Bennion on Statutory Interpretation* at p513-514).

**Can “local authority” in section 5(1) of the MHA 1983 be construed to have the same meaning as in section 24(8) of the CSCDA 1960?**

68. If the expression “local authority” in the definition of a “protected site” in the MHA 1983 could be construed as referring to the meaning of “local authority” contained in section 24(8) of the CSCDA 1960 then caravan sites occupied by county councils to provide accommodation for gipsies would not have become subject to the MHA 1983 as a result of the HA 2004.

69. There are two ways to argue that reference to section 24(8) is permissible:

a. the MHA 1983 provides that “local authority” has the same meaning as in Part I of the Caravan Sites and Control of Development Act 1960”. The definition of “local authority” in section 24(8) of the CSCDA 1960 is a meaning in Part I of the CSCSA 1960 given to the expression “local authority” and so is an available definition when construing the meaning of a “protected site” in the MHA 1983;

b. the definition of “local authority” in the MHA 1983 is one that applies unless “the context otherwise requires” and “local authority” should be construed as referring to the definition in section 24(8) of the CSCDA 1960 as the context otherwise requires.

70. These argument can be supported by the fact that the reference to “local authority” in the definition of “protected site” in section 5(1) is directed to the
power for local authorities to provide caravan sites contained in section 24 CSCDA 1983. This can be seen from:

a. the wording “providing accommodation for gipsies” in section 5(1) of the MHA 1983. This appears to be a reference to the duty of certain local authorities, “to exercise their powers under section 24 of the [CSCDA 1960] so far as may be necessary to provide adequate accommodation for gipsies” in section 6 of the CSA 1968. Parliament therefore appears to have had in mind the class of local authorities that were under the duty the exercise their power under section 24 of the CSCDA 1960. That class included county councils. The wording could also be a reference to paragraph 11A of Schedule 1 to the CSCDA 1960 in which case the argument is even stronger as that provision only applies to county council and (in Scotland) regional councils;

b. the reference to section 24(8A) in the case of Scotland. Section 24(8A) applies “to persons of nomadic habit of life, whatever their race or origin” and was introduced with a new section 24(8) CSCDA 1960 for Scotland by section 13 of the Local Government and Planning (Scotland) Act 1982. The new section 24(8) conferred on regional councils power to provide accommodation for persons to whom section 24(8A) applied. The argument based on section 24(8A) is not as helpful as regional councils were within the version of section 29 of the CSCDA 1960 as amended by the Local Government (Scotland) Act 1973.

71. The arguments against the view that “local authority” can be construed by reference to section 24(8) of the CSCDA 1960 are that:

a. The more natural meaning of the phrase “has the same meaning as in Part I of the Caravan Sites and Control of Development Act 1960” is that it is a reference to the meaning is given in Part I by section 29 CSCDA 1960;
b. The expression “local authority” is only used in one place in the MHA 1983, in the definition of “protected site”. It would be odd if the “context otherwise requires” is the only instance of use;

c. At the time of its passing the context did not “otherwise require” because at that time county council occupied sites to provide accommodation for gipsies were not within the 1968 definition of “protected site”.

72. It might be argued that the effect of the HA 2004 was that there was an implied amendment of the MHA 1983 so that the expression “local authority” could be read differently after the passing of the HA 2004 but I do not think that the HA 2004 is sufficiently inconsistent with the MHA 1983 for an implied amendment to have taken place (see Bemmion at section 80).

73. I do not therefore consider this argument to be as strong as the argument that a subsequent amendment to the CSA 1968 does not effect the MHA 1983.

Caselaw

74. I have already referred to the case of Stoke on Trent v Frost in which the court considered that county council caravan sites providing accommodation for gipsies were not protected sites under the MHA 1983 (see paragraph 34 above).

75. In Somerset County Council v Isaacs it was assumed that section 2 of the CSA 1968 did apply⁹ to county council sites for gipsies (see paragraph 3) and Stanley Burnton J proceeded on the basis that the reason the MHA 1983 did not apply was that, “any land occupied by a local authority as a caravan site providing accommodation for gipsies” was excluded from being a protected site for the purposes of the MHA 1983 (see paragraph 12).

⁹ Stoke on Trent v Frost was not cited
76. I do not think these decisions would ultimately have very much influence on the question of whether or not the MHA 1983 has applied to county council gipsy sites from 18 January 2005 because:

a. In *Stoke on Trent v Frost* the observations were obiter only;

b. *Somerset County Council v Isaacs* is a first instance decision and *Stoke on Trent v Frost* was not cited;

c. In each case a site licence was not required at the time of the decision for a county council gipsy site and so it could not have been within the MHA 1983;

d. the question of whether a county council was a “local authority” does not seem to have been addressed in detail.

e. The cases do not consider the effect of a subsequent amendment to an Act which is referred to in another Act.

77. The policy behind the statutory scheme as explained in *Greenwich v Powell* and *Somerset County Council v Isaacs* is also broadly helpful to the view that Parliament would have intended to exclude county council gipsy sites from protection under the MHA 1983.

**Conclusion on whether MHA 1983 applied from 18 January 2005**

78. There are serious and credible arguments that the MHA 1983 did not apply to county council sites after the HA 2004 came into force. The arguments are finely balanced with the arguments in support of the view that the act does apply.
79. On balance I think the argument that the subsequent amendment of the CSA 1968 does not affect the MHA 1983 is correct and the argument that "local authority" should be construed by reference to section 24(8) is incorrect.
POSITION WHERE DISTRICT COUNCIL OR OTHER PARTY MANAGES THE SITE

80. I have been asked to consider how the MHA 1983 would apply in three scenarios where the caravan site is owned by the county council but is managed by a third party. This turns on the meaning to be given to the word “occupied” in the definition of “protected site” in section 5(1) of the MHA 1983.

Meaning of “Occupied”

81. The meaning of the concept of “occupation” varies according to the subject matter (see Graysim Holdings Ltd v P & O Property Holdings Ltd [1996] 1 AC 329 at p334 per Lord Nicholls). In the context of personal injury to persons visiting land “the occupier” is usually the person with control of the land rather than ownership of it (see Hartwell v Grayson Rollo and Clover Docks Ltd [1947 KB 901 at p917 per Roxburgh J.).

82. The definition of “occupier” in section 1(3) of the CSCDA 1960, however, is based on ownership rather than control of the land. The “occupier” under the CSCDA 1960 is:

   “the person who, by virtue of an estate or interest therein held by him, is entitled to possession thereof or would be so entitled but for the rights of any other person under any licence granted in respect of the land”

83. An important question therefore is whether in the use of word “occupied” in section 5(1) of the MHA 1983 refers back to the definition of “occupier” in section 1(3) of the CSCDA 1960. The reason for thinking that it does is that the definition of a “protected site” in section 5(1) of the MHA 1983 is linked to that in section 1(2) of the CSA 1968. This in turn brings into the definition of
“protected site” paragraph 11 of Schedule 1 to the CSCDA 1960 and the expression “a caravan site of land occupied by the local authority in whose area the land is situated”. In *Stoke on Trent v Frost* the Court of Appeal held that the CSCDA 1960 definition of the noun “occupier” applied to the verb “occupied” in paragraph 11 of that Act (see p294).

84. A further factor in support of the argument that the word “occupied” is governed by the CSCDA 1960 definition of “occupier” is that in the MHA 1983 the same definition is used to define the “owner” of the site (see section 5(1)). There is sense in assimilating the question of who is in “occupation” of the site for the purpose of the definition of “protected site” with the question of who is “the owner” of the site.

85. If Parliament did not intend the word “occupied” in section 5(1) MHA 1983 to have the same meaning as “occupied” in paragraph 11 of Schedule 1 to the CSCDA 1960 there would be a risk of disputes about whether the land was occupied by the local authority (e.g. where the local authority owner had contracted out the provision of services and facilities on the site) in which case local authorities providing accommodation for gipsies might not obtain the exemption from the MHA 1983 that Parliament intended.

86. I therefore think that the better view is that “occupied” in section 5(1) of the MHA 1983 is to be construed by reference to the definition of “occupier” in section 1(3) of the CSCDA 1980.

**Three Scenarios**

87. The first scenario I am asked to advise on is where the land is owned by the county council but the site is managed by the district council exercising its powers under section 24 of the CSCDA 1960 (i.e. the arrangement envisaged by section 7
of the CSA 1968). In this scenario I do not think that the fact that the site is managed by the district council makes a difference because I think that the word "occupied" in the MHA 1983 definition of "protected site" refers to ownership rather than control. However, if I am wrong about that I think the district council would be in occupation and so the site would not be a "protected site" even after the HA 2004 amendments came into force.

88. The second scenario is where the land is owned by the county council and is managed by the district council pursuant to a contract with the county council. In this case the contract may provide for the county council to retain an element of control of the site but in some contexts where "occupation" is based on control more than one person can be "an occupier" (see e.g. Fisher v CHT Ltd [1965] 1 WLR 1093). I do not think that the circumstances of there being a contract between the district council and the county council would alter the outcome from the first scenario.

89. The third scenario is where the site is owned by a county council but is managed by a third party (such as the National Gypsy Council). In this case the point is that the site may not be in the control of a "local authority". However, I think that control by a third party which is not a county council is unlikely to affect the position because I think that:

a. "occupied" refers to ownership and so the "occupier" will still be the county council; and

b. although it is reasonably arguable, I think the better view is that a county council is not a "local authority" for the purpose the definition of "protected site".

---

89 cf: the position under Part II of the Landlord and Tenant Act 1954
CONSEQUENCES OF THE MHA 1983 APPLYING TO COUNTY COUNCILS

90. There are a number of consequences of the MHA 1983 applying. Some of these consequences will depend on whether the MHA 1983 applies from 18 January 2005 or 30 April 2011.

91. I will consider the following topics in this section:
   a. The requirement to provide a written statement to the occupier of the pitch;
   b. The implied terms that apply to MHA 1983 agreements;
   c. The succession provision in the MHA 1983

Written Statements

92. Section 1(2) of the MHA 1983 requires that the “the owner” of the site must provide the occupier of the pitch with a written statements which:

   "(a) specifies the names and addresses of the parties and the date of commencement of the agreement;
   (b) includes particulars of the land on which the occupier is entitled to station the mobile home sufficient to identify it;
   (c) sets out the express terms of the agreement;
   (d) sets out the terms implied by section 2(1) of the [MHA 1983]; and
   (e) complies with such other requirements as may be prescribed by regulations made by the Secretary of State."
When must the owner give the written statement?

93. Section 1 of the MHA 1983 was substituted by section 206 of the HA 2004 from 18 January 2005.

94. If the MHA 1983 applied to county council gipsy sites from 18 January 2005 then there are three cases to consider:

a. In respect of agreements that were made before 18 January 2005 the original version of section 1 of the MHA 1983 would have applied (see section 206(4) HA 2004). It is difficult to identify an obligation to provide an existing occupier of a pitch with a written statement as neither the three month period from the making of the agreement (see 1(2)) nor the six month period from the Act coming into force (see section 1(3)) are apposite. In my view there would have been no obligation to provided a written statement in these cases:

b. In respect of agreements made between 18 January 2005 and 15 February 2005 the original version of section 1 applied (see section 206(4) HA 2004) and a written statement would have had to be provided within 3 months of the making of an agreement (see section 1(2) MHA 1983);

c. In respect of any agreement made after 15 February 2005 the new version of section 1 of the MHA 1983 would have applied (see section 206(1) and (4) of the HA 2004). In relation to these agreements the written statement had to be provided not later than 28 days before the agreement was made (see section 1(3)(b) MHA 1983 as amended). The period of 28 days can be reduced with the written consent of the occupier (see section 1(4)).

95. If the MHA 1983 will not apply to county council gipsy sites until section 318 of the MRA 2008 comes into force then only after 30 April 2011 will it be necessary to provide a written statement for new agreements. The written statement must be
given not later than 28 days before the agreement is made (see section 1(3)(b) of the MHA 1983 as amended by section 206 of the HA 2004)\textsuperscript{11}.

**Consequences of Failing to Provide a Written Statement**

96. Following the amendment by section 206 of the HA 2004 the consequence of failing to provide a written statement in accordance with sections 1(2) to (4) of the MHA 1983 is that any express terms not contained in such a written statement is unenforceable by the owner of the site (see section 1(5) MHA 1983 as amended).

97. The court has a jurisdiction for the express terms to have full effect upon an application being made to it by either party within 6 months of the written statement having been provided to the occupier of the pitch (see section 2(3) and (3A) MHA 1983 as amended by section 206(2) of the HA 2004).

98. If, therefore, county council sites for gipsies were subject to the MHA 1983 from 18 January 2005 then express terms in agreements granted since 15 February 2005 that date will not be enforceable by the county council if section 1(2) of the MHA 1983 was not complied with. This can be remedied by giving the occupier a written statement and applying to the court for the express terms to have full effect (see section 2(3)(b)). There is an argument that such an order may only be made where the occupier of the pitch has obtained an order requiring the owner to give him a written statement under section 1(6). I think the better view of the reference to section 1(6) in section 2(3)(b) is that it is a reference to the circumstances in which an application under section 1(6) can be made (i.e. where a written statement has not been given in accordance with section 1(2) to (4)) so either party can make an application for the express terms to have full effect where the owner has given a late written statement without being required to do so by a court order.

\textsuperscript{11} There is a transitional provision dealt with at paragraphs 99-101 below that will apply to existing local authority agreements
Transitional Provisions

99. Under article 6(1) of the draft Housing and Regeneration Act 2008 (Commencement No. 8 and Transitional, Transitory and Saving Provisions) Order 2011 local authorities must to provide a written statement to existing occupiers of local authority caravan sites within 28 days of the order coming into force. The expression “local authority” in the order has the same meaning as in the MHA 1983 (see article 1(3)).

100. If county council gipsy sites only fall within the MHA 1983 after 30 April 2011 there is a risk that this provision would be treated as being a case where the “context: other requires” so that “local authority” includes a county council.

101. The consequence of failing to include any express term in the written statement required by article 6 of the draft Housing and Regeneration Act 2008 (Commencement No. 8 and Transitional, Transitory and Saving Provisions) Order 2011 is that the express term will be unenforceable by the local authority (article 6(3)). This is subject to article 6(4) which provides that the other party to the agreement may apply to a tribunal for an order that a written statement is given. Unlike section 2(3) of the MHA 1983, an application may only be made by the other party to the agreement and, since the written statement for the purposes of article 6 is not a written statement within the meaning of section 1 (see article 6(7)) it seems that relief under section 2(3) MHA 1983 is not available if article 6 is not complied with. Thus if a local authority fails to comply with article 6 the express terms of the site agreement will be unenforceable by the local authority unless an application is made under article 6(4) by the other party.
Implied Terms

102. The implied terms of Schedule 1 to the MHA 1983 form part of the agreements to which the MHA 1983 applies by virtue of section 2(1).

Application of the Amendments to Schedule 1

103. When it comes into force the Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) Order 2011 will amend Schedule 1 and the modified terms in Chapter 4 of Schedule 1 will apply to agreements for a permanent pitch on a county council gypsy and traveller site made on or after 30 April 2011 (see the proposed paragraph 1(3) of Chapter 1 to the amended Schedule 1).

104. The amended version of Schedule 1 will also apply to existing local authority agreements as it would to new agreements (see article 4 of the draft Housing and Regeneration Act 2008 (Commencement No. 8 and Transitional, Transitory and Saving Provisions) Order 2011. The expression “local authority” in the order has the same meaning as in the MHA 1983 (see article 1(3)). If county council gipsy sites only fall within the MHA 1983 after 30 April 2011 there it is likely that this provision will be treated as being case where the “context other requires” so that “local authority” includes a county council.

105. I will now consider the terms which will have the most significance for county councils occupying gipsy sites, explaining, where it makes a difference from when the MHA 1983 applied, the nature of that difference.

Duration of Agreement

106. The provisions of Chapter 4 and the unamended Schedule 1 relating to duration are identical. Unless the county council has a limited interest in the land the
agreement will last until determined in accordance with the implied terms of the MHA 1983. Where the owner seeks to have the agreement terminated the court can only make a termination order if it considers that it is reasonable for the agreement to be terminated (see paragraphs 4-6).

107. The effect of this provision will greatly reduce the ability of county councils to recover possession of pitches.

108. The advantage of the MHA 1983 applying is that, as the court must determine the question of reasonableness, there will no longer be any doubt that the statutory code within which the county council’s agreements operate complies with Article 8 of the ECHR (see Connors v UK [2004] ECHR 223, Manchester CC v Pinnock [2010] UKSC 45 and Hounslow LBC v Powell [2011] UKSC 8).

Sale or gift of a mobile home

109. Under paragraph 8 of the unamended version of Schedule 1 the occupier is entitled to sell their mobile home and assign the agreement to a person approved of by the owner, whose approval shall not be unreasonably withheld.

110. Under paragraph 9 of the unamended version of Schedule 1 the occupier is entitled to give their mobile home and assign the agreement to a member of his family approved of by the owner, whose approval shall not be unreasonably withheld.

111. Neither provision is contained in Chapter 4 and so agreements made after 30 April 2011 or to which article 4 of the draft Housing and Regeneration Act 2008 (Commencement No. 8 and Transitional, Transitory and Saving Provisions) Order 2011 applies (see paragraph 104 above) will not be capable of assignment.
112. If paragraph 8 and 9 apply then the negative effects for county councils are that:
   a. A market in county council gypsy and traveller site pitches could be created, with pitches being occupied by those most able to pay rather than those in most need;
   b. Assignment could undermine the county council’s allocation policies;
   c. A decision by a county council to refuse approval for someone to take an assignment of a pitch could result in a challenge as to whether or not the council had unreasonably refused its consent. Such a challenge will be to the tribunal.

113. Although the site owner is entitled to a commission (presently limited to 10%) on the sale and assignment of a mobile home it is possible that county council’s would not regard this as adequate recompense for the loss of control that will result from the pitch agreement being capable to assignment.

Re-siting

114. The implied terms permit the owner of the site to require the occupier to station the mobile home on a different part of the site\(^\text{12}\). An application to the court is necessary to enforce the right.

115. A similar provision will be in Chapter 4 but with the difference that the alternative pitch can be on another protected site. Therefore, where Chapter 4 applies there will still be the possibility of closing an existing site and relocating the occupants to another protected site.

\(^{12}\) Paragraph 10 of the unamended schedule 1.
The Pitch Fee

116. Once the implied terms of the MHA 1983 have effect the pitch fee can only be varied in accordance with the procedure laid down in Schedule 1\(^{13}\) and then only with either:

a. The agreement of the occupier; or

b. On the order of the court or tribunal.

117. The procedure to vary the pitch fee is the same whenever the MHA 1983 first applies to county council gipsy sites.

118. The procedure laid down is that the pitch fee shall be reviewed annually. At least 28 days before the “review date”\(^{14}\) the owner must serve a written notice on the occupier which contains his proposals in respect of the new pitch fee. The occupier may agree the proposed new pitch fee. If the owner does not agree the new pitch fee the owner may apply to the court to determine the fee. The amount of the new pitch fee as determined by the court will be such amount as the court considers it reasonable to be charged having regard to and disregarding the matters specified in Schedule 1\(^{15}\). The matters to which regard must be had include the extent to which the owner has spent money improving the site following consultation with the occupiers. However, there is a presumption that the new pitch fee will increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail price index since the last review date (or, if there has been no previous review, the date when the agreement commenced). The presumption will only be rebutted where it would be

---

\(^{13}\) Paragraphs 16-20 of the unamended schedule 1 and paragraphs 14-18 of Chapter 4 of the amended schedule 1

\(^{14}\) This date is to be specified in the written statement or if no date is specified it shall be the anniversary date of the agreement – see para 29 of the unamended Schedule 1.

\(^{15}\) Mostly concerned with the condition of the site – see para 16 and 17 of the unamended Schedule 1
unreasonable to apply the RPI increase or decrease having regard to the matters the court must have regard to.

119. The extent to which these provisions disadvantage a county council will depend on whether or not it has any existing term in its agreements to vary the pitch fee on which it can no longer rely.

120. If county council sites have been subject to the MHA 1983 since 18 January 2005 then those county councils which have increased pitch fees otherwise than in accordance with the procedure of the MHA 1983 may be subject to claims for repayment of the amount by which the pitch fee has been increased. The basis of the occupiers claim for repayment would probably be that the payment had been made under a mistake of law (see Kleinwort Benson Ltd v Lincoln City Council [1999] 2 AC 349).

121. A county council may well be able to establish a change of position defence to such a claim. The circumstances in which a party might establish a change of position defence will be where “it would be inequitable in all the circumstances to require him to make restitution” (see Lipkin Gorman v Karpnale Ltd [1991] 2 AC 548) per Lord Goff at p579-580). It is difficult to anticipate in this advice all the circumstances that might be put forward by a county council to establish a change of position defence but the courts have applied a generous “but for” test in some cases (see Goff and Jones, The Law of Restitution at 40-008). It seems to me that the good faith of the county council and the unintended consequences of the HA 2004 amendment will be strong factors in the favour of a county council’s change of position defence (see Goff & Jones, The Law of Restitution at 40-014).

122. The county council might also defend a claim for an increase that was agreed with the occupier and did not exceed RPI on the basis that whilst the agreement was
merely unenforceable as against the occupier and so no moneys paid under the agreement are repayable. The owner will not however be able to claim future payments or arrears of the increase.

123. The merits of any particular claim for repayment may be affected if the pitch fee was paid by housing benefit (especially where payment was made directly by the housing benefit authority) as in such a case there would be no unjust enrichment at the expense of the occupier.

Succession

124. In addition to the implied terms referred to above the MHA 1983 permits succession of the agreement (see section 3(3)). As the succession provision is in the body of the statute there is no power to amend it other than by primary legislation.

125. The succession provision will apply from whenever the site becomes a protected site under the MHA 1983.

126. There is no limit on the number of successions that can occur under section 3(3) of the MHA 1983.

127. The succession provisions operate even where there is no spouse or family member residing with the deceased occupier at the time of his death. In such a case the benefit of the agreement passes to the deceased’s estate and, whilst the person or persons entitled to the estate may not occupy the pitch, the benefit of the agreement may be sold by them (see section 3(4) and the implied terms). Where the Chapter 4 terms of Schedule 1 apply however, the agreement may not be sold (as there is no right of assignment under Chapter 4 of Schedule 1). In this case
the owner can terminate the agreement on the ground that the occupier is not occupying the mobile home as his only or main resident (see paragraph 5 of the proposed Chapter 4 and the proposed amendment to section 3(4) in Schedule 2 to the Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) Order 2011).
WHAT CAN A COUNTY COUNCIL DO TO MINIMISE THE
NEGATIVE CONSEQUENCES OF THE AMENDED MHA 1983?

Written Agreements

128. The concern that the county council’s express terms will be unenforceable can be
dealt with by serving written statements. If the MHA 1983 did apply and written
statements were not given then the county council can give written statements
under section 1(2) and apply to the court or tribunal for the terms to have full
effect under section 2(3). This can be done either in respect of all the occupiers
or on a case by case basis as disputes arise.

129. If the MHA 1983 did not apply from 18 January 2005 then written statements
should be given in accordance with article 6 of the Housing and Regeneration Act
2008 (Commencement No. 8 and Transitional, Transitory and Saving Provisions)
Order 2011.

Implied Terms

Duration

130. If the agreement is not already within the scheme of the MHA 1983 then
proceedings started before 30 April 2011 will remain valid after the coming into
force of section 318 of the HRA 2008 (see Article 5(b)(i) of the Housing and
Regeneration Act 2008 (Commencement No. 8 and Transitional, Transitory and
Saving Provisions) Order 2011). A county council may therefore wish to take
action to bring proceedings in respect of its existing site licences before that date.
Assignment

131. The occupier of the pitch has a right to assign the agreement but the county council must approve the assignee. Although that consent can not be unreasonably withheld a county council should bear in mind that the purpose of its consent being required is so that it can be protected from having the pitch used or occupied in an undesirable way or by an undesirable occupier (see *International Drilling Fluids Ltd v Louisville Investments (Uxbridge) Ltd* [1986] Ch 513). It may therefore wish to put in place robust procedures, consistent with the purposes of the MHA 1983, so that it can properly investigate the proposed assignee (e.g. by having a standard questionnaire that the proposed assignee must complete) and satisfy itself that there is no reason for refusing approval to the assignment.

132. The county council may also wish to seek to negotiate express terms with the occupiers as to the circumstances in which its refusal to approve a proposed assignee would be deemed to be reasonable.

Pitch Fees

133. Where the pitch fee has increased since 18 January 2005, in order to avoid disputes about the validity of that increase, a county council should implement a pitch fee review under the implied terms at the first available opportunity.

134. The review date can be established in a written statement served under section 1(2) of the MHA 1983 or article 6(2).

Succession

135. The county council should have procedures in place to bring proceedings to terminate the agreement promptly in a case where there is no family member
entitled to succeed. It will therefore be important for the county council to have reliable procedures in place so that it is aware of who is residing on each pitch.
IMPLEMENTATION OF THE AMENDED MHA 1983

What terms should the county council offer under new agreements?

136. One of the questions I am asked is whether a county council can be challenged for implementing or not implementing the provisions of the modified MHA 1983.

137. Under the terms of the proposed Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) Order 2011) Chapter 4 of Schedule 1 to the MHA 1983 will apply to all new agreements for permanent pitches.

138. In theory a county council could offer express terms that were more generous than the terms in Chapter 4 so that the occupiers under new agreements enjoyed the same advantages as those whose agreements were governed by Chapter 2\(^\text{16}\) but I do not think a successful challenge would be possible if a county council did not offer such advantageous express terms under its new agreements.

139. Following the DCLG consultation the terms in Chapter 4 are regarded as being more suitable to gipsy and traveller sites than those in Chapter 2. The government would have expressly applied the Chapter 4 terms to county council sites if it did not think that the MHA 1983 has applied to such sites since 18 January 2005. It follows that a county council’s decision not to offer express terms equivalent to those in Chapter 2 will be a proportionate means of achieving the aim of providing accommodation for gipsies and travellers.

\(^{16}\) Assuming that it is these provisions that will apply to existing occupiers of the site (see paragraph 104 above)
What should county councils do about existing agreements?

140. The more difficult decision for county councils is what stance they take existing agreements. For the reasons given above there are, in my view, serious and credible arguments that the government’s position, that the MHA 1983 has applied to county council sites since 18 January 2005, is incorrect and, given some of the disadvantages of the MHA 1983 applying from 15 January 2005 some county councils may wish to adopt those arguments.

141. The decision as to the stance to be taken will depend on the county council’s assessment of the relevant risks, costs and benefits. These factors may differ as between county councils but will include the following:

a. it is more likely that occupiers will challenge a stance that is inconsistent with the government’s view of the law than a stance that is consistent with the government’s view of the effect of the HA 2004 because that view is generally more favourable to existing occupiers and will be known to their advisors.

b. the risk of adopting the government’s view of the law is that it may later be argued that county councils should have served written statements under article 6 of the Housing and Regeneration Act 2008 (Commencement No. 8 and Transitional, Transitory and Saving Provisions) Order 2011 and that the express terms can not be enforced by them if they did not do so. However, it may be unlikely that an existing occupier will raise such arguments because if the argument is correct it is likely that the implied terms in Chaper 4 of Schedule 1 to the MHA 1983 will apply to them rather than the terms in Chapter 2;

c. the administrative costs of complying with article 6;

d. The legal costs of having disputes as to when the MHA 1983 first applied;
e. The extent to which the county council has received pitch payments that might be subject to a claim for repayment and which it would wish to argue were properly paid because the MHA 1983 did not apply;

f. The extent to which the county council is confident that it can establish a “change of position” to any claim for repayment of such payments;

g. The extent to which the county council has granted new agreements since 15 February 2005 without serving a written statement under section 1(2) of the MHA 1983 and the potential costs of applying for the express terms to be given full effect by the tribunal;

h. The extent to which the county council has ongoing proceedings for the termination of site licences which would be invalid if the MHA 1983 has applied since 18 January 2005;

i. The extent to which the county council would wish to argue that its existing agreements will be subject to the Chapter 4 implied terms (e.g. so that there is no right to assignment and the occupier can be required to re-site their caravan on another protected site etc.).

142. A county council may wish to obtain declaratory relief from the court as to its position in advance of 30 April 2011 so that, if necessary, it is in a position to give article 6 written statements.
143. I am also asked whether it is desirable for county councils to have a single uniform pitch agreement.

144. The implied terms which apply to the agreement and must be contained in the written statement. The relevant implied terms are determined by the MHA 1983 and different terms may apply to different occupiers.

145. So far as express terms are concerned it is likely to be desirable for good management that so far as possible all occupiers are subject to the same express terms. There may also be scope for complaint if the express terms offered to new occupiers are materially different to those who already have agreements.

146. In particular, the existing residents may, by virtue of the length of time they have already been on the site, be older than the new occupiers. It is also possible that there will have been changes over time to the racial mix of applicants seeking pitches. It is possible therefore that having different express terms might be said to be indirectly discriminatory under section 19 of the Equality Act 2010. However, it would be open to the county council to show that the reason for the difference is a proportionate means of achieving a legitimate aim. A complaint from the existing occupiers can also be avoided by offering them the same express terms as are contained in any new agreements if they are perceived to be more favourable.

147. I am instructed that there have also been discussions between different county councils to operate the same form of agreement. There are likely to be a number of advantages to such an arrangement:

a. It provides a chance to share “best practice”;
b. A common agreement would reduce the burden on individual county councils;

c. With appropriate consultation with interested third parties it gives a better chance of producing a document that existing occupiers would be willing to agree to;

d. Legal advisors for one county council can give more certain advice on the effects of any court decision in respect of another county council’s agreement.
CONCLUSIONS

148. Although this is a lengthy advice there are a number of points worth stating briefly:

a. There are serious and credible arguments that the government’s view that the MHA 1983 has applied to county council since 18 January 2005 is incorrect. The arguments are finely balanced but I prefer the view that the meaning of “protected site” in the MHA 1983 was unaffected by the HA 2004;

b. There are a number of disadvantages to county councils if the government’s view is correct but many of these can be ameliorated or avoided to some extent;

c. If the government’s view is incorrect there is a serious risk that county councils will be under an obligation to give written statements to existing occupiers within 28 days of section 318 of the HRA 2008 coming into force. The consequences for a local authority which fails to do this are serious as the local authority will be unable to enforce its express terms. However, it is probably not in the interests of an existing occupier to raise this argument against a county council because if it is correct they would become subject to less favourable implied terms under the MHA 1983;

d. I do not think that a county council could be challenged for applying different implied terms to new occupiers as this is a consequence of statutory provisions and the terms in Chapter 4 are considered to be more suitable for those living on gypsy and traveller sites.

ZACHARY BREDMEAR
10 MARCH 2011

1 Chancery Lane
0845 634 66 66
26 August 1968

Caravan Sites And Control of Development Act 1960

1 Prohibition of use of land as caravan site without site licence.
(1) Subject to the provisions of this Part of this Act, no occupier of land shall after the commencement of this Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence (that is to say, a licence under this Part of this Act authorising the use of land as a caravan site) for the time being in force as respects the land so used.

...

(3) In this Part of this Act the expression "occupier" means, in relation to any land, the person who, by virtue of an estate or interest therein held by him, is entitled to possession thereof or would be so entitled but for the rights of any other person under any licence granted in respect of the land:

Provided that where land amounting to not more than four hundred square yards in area is let under a tenancy entered into with a view to the use of the land as a caravan site, the expression "occupier" means in relation to that land the person who would be entitled to possession of the land but for the rights of any person under that tenancy.

(4) In this Part of this Act the expression "caravan site" means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed.

2 Exemptions from licensing requirements.
No site licence shall be required for the use of land as a caravan site in any of the circumstances specified in the First Schedule to this Act and that Schedule shall have effect accordingly.

3 Issue of site licences by local authorities.
(1) An application for the issue of a site licence in respect of any land may be made by the occupier thereof to the local authority in whose area the land is situated.

Section 24 Power of local authorities to provide sites for caravans
(1) A local authority shall have power within their area to provide sites where caravans may be bought, whether for holidays or other temporary purposes or for use as permanent residences and to manage the sites or lease them to some other person.
(2) Subject to the provisions of this section, a local authority shall have power to do anything appearing to them desirable in connection with the provision of such sites, and in particular—
(a) to acquire land which is in use as a caravan site, or which has been laid out as a caravan site, or
(b) to provide for the use of those occupying caravan sites any services or facilities for their health or convenience;
and in exercising their powers under this section the local authority shall have regard to any standards which may have been specified by the Minister under subsection (6) of section five of this Act.

(8) In this section the expression “local authority” includes the county of a council and a joint planning board constituted under section four of the Act of 1947 for an area which consists of or includes a National Park defined by section (3) of section five of the National Parks and Access to the Countryside Act, 1949, or any part of such a National Park.

(9) This section extends to the administrative county of London and the expression “local authority” in this section as so extends includes the council of a metropolitan borough.\(^{17}\)

Section 29 Interpretation of Part 1

(1) In this Part of this Act, unless the context otherwise requires—

“local authority” means a council of a borough or urban or rural district the Common Council of the City of London\(^{18}\) and the Council of the Isles of Scilly;

Schedule 1

Sites occupied by licensing authority

11 A site licence shall not be required for the use as a caravan site of land occupied by the local authority in whose area the land is situated.

Caravan Sites Act 1968

Section 1 Application of Part 1.

(1) This Part of this Act applies in relation to any licence or contract (whether made before or after the passing of this Act) under which a person is entitled to station a caravan on a protected site (as defined by subsection (2) below) and occupy it as his

---

\(^{17}\) Repealed by London Government Act 1963

\(^{18}\) Inserted by London Government Act 1963
residence, or to occupy as his residence a caravan stationed on any such site; and any such licence or contract is in this Part referred to as a residential contract, and the person so entitled as the occupier.

(2) For the purposes of this Part of this Act a protected site is any land in respect of which a site licence is required under Part I of the Caravan Sites and Control of Development Act 1960 or would be so required if paragraph 11 of Schedule 1 to that Act (exemption of land occupied by local authorities) were omitted, not being land in respect of which the relevant planning permission or site licence—

(a) is expressed to be granted for holiday use only; or

(b) is otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation.

(3) References in this Part of this Act to the owner of a protected site are references to the person who is or would apart from any residential contract be entitled to possession of the land.

4. Provision for suspension of eviction orders.

(1) If in proceedings by the owner of a protected site the court makes an order for enforcing in relation thereto any such right as is mentioned in paragraph (b) of subsection (1) of section 3 of this Act, the court may (without prejudice to any power apart from this section to postpone the operation or suspend the execution of an order, and subject to the following provisions of this section) suspend the enforcement of the order for such period not exceeding twelve months from the date of the order as the court thinks reasonable.

... 

(6) The court shall not suspend the enforcement of an order by virtue of this section in the following cases, namely—

(a) where the proceedings are taken by a local authority within the meaning of section 24 of the Caravan Sites and Control of Development Act 1960;

(b) where no site licence under Part I of that Act is in force in respect of the site;

and where a site licence in respect of the site is expressed to expire at the end of a specified period, the period for which enforcement may be suspended by virtue of this section shall not extend beyond the expiration of the licence.

Section 6 Provision of sites by local authorities

(1) Subject to the provisions of this and the next following section, it shall be the duty of every local authority being the council of a county, metropolitan district or London borough to exercise their powers under section 24 of the Caravan Sites and Control of Development Act of 1960 (provision of caravan sites) so far as may be necessary to provide adequate accommodation for gipsies residing in or resorting to their area. . . .

Section 7 Function of district councils
(1) The duty imposed by section 6(1) of this Act on the council of a county shall extend only to determining what sites are to be provided and acquiring or appropriating the necessary land; and it shall be the duty of the council of the district in which any such site is located to exercise all other powers under section 24 of the Caravan Sites and Control of Development Act of 1960 in relation to the site.

(2) The charges to be made by the council of county district pursuant to subsection (3) of the said section 24 in respect of any such site shall be such as may be determined by the council of the county; and the council of the county shall pay to the council of the district sums equal to their expenditure reasonably incurred under this section (including the proper proportion of the remuneration and expenses of their officers and other administrative expenditure) so far as it exceeds their receipts thereunder.
20 May 1983

Caravan Sites And Control of Development Act 1960

1 Prohibition of use of land as caravan site without site licence.
   (1) Subject to the provisions of this Part of this Act, no occupier of land shall after the
   commencement of this Act cause or permit any part of the land to be used as a caravan
   site unless he is the holder of a site licence (that is to say, a licence under this Part of this
   Act authorising the use of land as a caravan site) for the time being in force as respects
   the land so used.

   ... 

   (3) In this Part of this Act the expression “occupier” means, in relation to any land, the
   person who, by virtue of an estate or interest therein held by him, is entitled to possession
   thereof or would be so entitled but for the rights of any other person under any licence
   granted in respect of the land:

   Provided that where land amounting to not more than four hundred square yards in area is
   let under a tenancy entered into with a view to the use of the land as a caravan site, the
   expression “occupier” means in relation to that land the person who would be entitled to
   possession of the land but for the rights of any person under that tenancy.

   (4) In this Part of this Act the expression “caravan site” means land on which a caravan is
   stationed for the purposes of human habitation and land which is used in conjunction with
   land on which a caravan is so stationed.

2 Exemptions from licensing requirements.
   No site licence shall be required for the use of land as a caravan site in any of the
   circumstances specified in the First Schedule to this Act and that Schedule shall have
   effect accordingly.

3 Issue of site licences by local authorities.
   (1) An application for the issue of a site licence in respect of any land may be made by the
   occupier thereof to the local authority in whose area the land is situated.

Section 24 Power of local authorities to provide sites for caravans
   (1) A local authority shall have power within their area to provide sites where caravans
   may be bought, whether for holidays or other temporary purposes or for use as permanent
   residences and to manage the sites or lease them to some other person.
   (2) Subject to the provisions of this section, a local authority shall have power to do
   anything appearing to them desirable in connection with the provision of such sites, and
   in particular—
(a) to acquire land which is in use as a caravan site, or which has been laid out as a caravan site, or
(b) to provide for the use of those occupying caravan sites any services or facilities for their health or convenience;
and in exercising their powers under this section the local authority shall have regard to any standards which may have been specified by the Minister under subsection (6) of section five of this Act.

(8) In this section the expression “local authority” includes the county of a council and a joint planning board constituted under section four of the Act of 1947 for an area which consists of or includes a National Park s defined by section (3) of section five of the National Parks and Access to the Countryside Act, 1949, or any part of such a National Park.

(9) This section extends to the administrative county of London and the expression “local authority” in this section as so extends includes the council of a metropolitan borough.

Section 29 Interpretation of Part 1

(1) In this Part of this Act, unless the context otherwise requires—

“local authority” means a council of a borough or urban or rural19 London Borough or a20 district the Common Council of the City of London and the Council of the Isles of Scilly;

Schedule 1
Sites occupied by licensing authority

11 A site licence shall not be required for the use as a caravan site of land occupied by the local authority in whose area the land is situated.

Gipsy sites occupied by county council or regional councils

11A A site licence shall not be required for the use of land occupied by a county council, or in Scotland by a regional council, as a caravan site providing accommodation for gypsies21

Caravan Sites Act 1968

Section 1 Application of Part 1.

19 Repealed by Local Government Act 1972
20 Inserted by Greater London Council (General Powers) Act 1976
21 Inserted by the Local Government, Planning and Land Act 1980 s.176
(1) This Part of this Act applies in relation to any licence or contract (whether made before or after the passing of this Act) under which a person is entitled to station a caravan on a protected site (as defined by subsection (2) below) and occupy it as his residence, or to occupy as his residence a caravan stationed on any such site; and any such licence or contract is in this Part referred to as a residential contract, and the person so entitled as the occupier.

(2) For the purposes of this Part of this Act a protected site is any land in respect of which a site licence is required under Part I of the Caravan Sites and Control of Development Act 1960 or would be so required if paragraph 11 of Schedule 1 to that Act (exemption of land occupied by local authorities) were omitted, not being land in respect of which the relevant planning permission or site licence—

(a) is expressed to be granted for holiday use only; or

(b) is otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation.

(3) References in this Part of this Act to the owner of a protected site are references to the person who is or would apart from any residential contract be entitled to possession of the land.

4. Provision for suspension of eviction orders.

(1) If in proceedings by the owner of a protected site the court makes an order for enforcing in relation thereto any such right as is mentioned in paragraph (b) of subsection (1) of section 3 of this Act, the court may (without prejudice to any power apart from this section to postpone the operation or suspend the execution of an order, and subject to the following provisions of this section) suspend the enforcement of the order for such period not exceeding twelve months from the date of the order as the court thinks reasonable.

...

(6) The court shall not suspend the enforcement of an order by virtue of this section in the following cases, namely—

(a) where the proceedings are taken by a local authority within the meaning of section 24 of the Caravan Sites and Control of Development Act 1960;

(b) where no site licence under Part I of that Act is in force in respect of the site; and where a site licence in respect of the site is expressed to expire at the end of a specified period, the period for which enforcement may be suspended by virtue of this section shall not extend beyond the expiration of the licence.

Section 6 Provision of sites by local authorities

(1) Subject to the provisions of this and the next following section, it shall be the duty of every local authority being the council of a county, metropolitan district or London borough to exercise their powers under section 24 of the Caravan Sites and Control of Development Act of 1960 (provision of caravan sites) so far as may be necessary to provide adequate accommodation for gipsies residing in or resorting to their area. . . .
Section 7 Function of district councils

(1) The duty imposed by section 6(1) of this Act on the council of a county shall extend only to determining what sites are to be provided and acquiring or appropriating the necessary land; and it shall be the duty of the council of the district in which any such site is located to exercise all other powers under section 24 of the Caravan Sites and Control of Development Act of 1960 in relation to the site.

(2) The charges to be made by the council of county district pursuant to subsection (3) of the said section 24 in respect of any such site shall be such as may be determined by the council of the county; and the council of the county shall pay to the council of the district sums equal to their expenditure reasonably incurred under this section (including the proper proportion of the remuneration and expenses of their officers and other administrative expenditure) so far as it exceeds their receipts thereunder.

Mobile Homes Act 1975

Section 9 Interpretation
(1) In this Act the following expression have the following meanings, that is to say—

"protected site" means any land in respect of which a site licence is required under Part I of the Act of 1960", not being land in respect of which the relevant planning permission of site licence—

(a) is expressed to be granted for holiday use only; or
(b) is otherwise so expressed or subject to such conditions that there are times of the year when no mobile home may be stationed on the land for human habitation;". 22

Mobile Homes Act 1983

Section 5 Interpretation
(1) In this Act, unless the context otherwise requires—

"the court" means—

(a) in relation to England and Wales, the county court for the district in which the protected site is situated or, where the parties have agreed in writing to submit any question arising under this Act or, as the case may be, any agreement to which it applies to arbitration, the arbitrator;
(b) in relation to Scotland, the sheriff having jurisdiction where the protected site is situated or, where the parties have so agreed, the arbiter;

"local authority" has the same meaning as in Part I of the Caravan Sites and Control of Development Act 1960;

"mobile home" has the same meaning as "caravan" has in that Part of that Act;

22 Repealed by the Mobile Homes Act 1983
“owner”, in relation to a protected site, means the person who, by virtue of an estate or interest held by him, is entitled to possession of the site or would be so entitled but for the rights of any persons to station mobile homes on land forming part of the site;

“protected site” does not include any land occupied by a local authority as a caravan site providing accommodation for gipsies or, in Scotland, for persons to whom section 24(8A) of the Caravan Sites and Control of Development Act 1960 applies but, subject to that, has the same meaning as in Part I of the Caravan Sites Act 1968.
30 April 2011

Caravan Sites And Control of Development Act 1960

1 Prohibition of use of land as caravan site without site licence.
(1) Subject to the provisions of this Part of this Act, no occupier of land shall after the commencement of this Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence (that is to say, a licence under this Part of this Act authorising the use of land as a caravan site) for the time being in force as respects the land so used.

...(3) In this Part of this Act the expression “occupier” means, in relation to any land, the person who, by virtue of an estate or interest therein held by him, is entitled to possession thereof or would be so entitled but for the rights of any other person under any licence granted in respect of the land:

Provided that where land amounting to not more than four hundred square yards in area is let under a tenancy entered into with a view to the use of the land as a caravan site, the expression “occupier” means in relation to that land the person who would be entitled to possession of the land but for the rights of any person under that tenancy.

(4) In this Part of this Act the expression “caravan site” means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed.

2 Exemptions from licensing requirements.
No site licence shall be required for the use of land as a caravan site in any of the circumstances specified in the First Schedule to this Act and that Schedule shall have effect accordingly.

3 Issue of site licences by local authorities.
(1) An application for the issue of a site licence in respect of any land may be made by the occupier thereof to the local authority in whose area the land is situated.

Section 24 Power of local authorities to provide sites for caravans
(1) A local authority shall have power within their area to provide sites where caravans may be bought, whether for holidays or other temporary purposes or for use as permanent residences and to manage the sites or lease them to some other person.
(2) Subject to the provisions of this section, a local authority shall have power to do anything appearing to them desirable in connection with the provision of such sites, and in particular—

(a) to acquire land which is in use as a caravan site, or which has been laid out as a caravan site, or
(b) to provide for the use of those occupying caravan sites any services or facilities for their health or convenience;

and in exercising their powers under this section the local authority shall have regard to any standards which may have been specified by the Minister under subsection (6) of section five of this Act.

(2) Subject to the provisions of this section, a local authority shall have power to do anything appearing to them desirable in connection with the provision of such sites, and in particular—

(a) to acquire land which is in use as a caravan site, or which has been laid out as a caravan site, or

(b) to provide for the use of those occupying caravan sites any services or facilities for their health or convenience; or

(c) to provide, in or in connection with sites for the accommodation of gipsies, working space and facilities for the carrying on of such activities as are normally carried on by them, and in exercising their powers under this section the local authority shall have regard to any standards which may have been specified by the Minister under subsection (6) of section five of this Act.

....

(8) In this section the expression “local authority” includes the county of a council in England and a joint planning board constituted under section four of the Act of 1947 for an area which consists of or includes a National Park as defined by section (3) of section five of the National Parks and Access to the Countryside Act, 1949, or any part of such a National Park, and “gipsies” means persons of nomadic habit of life, whatever their race or origin, but does not include members of an organised group of travelling showmen, or persons engaged in travelling circuses, travelling together as such.

(9) This section extends to the administrative county of London and the expression “local authority” in this section as so extends includes the council of a metropolitan borough.

Section 29 Interpretation of Part 1

(1) In this Part of this Act, unless the context otherwise requires—

... “local authority” means a council of a borough or urban or rural district, London Borough or a district the Common Council of the City of London and the Council of the Isles of Scilly but, in relation to Wales, means the Council of a Welsh county or county borough;
Schedule 1
Sites occupied by licensing authority
11 A site licence shall not be required for the use as a caravan site of land occupied by the local authority in whose area the land is situated.

Gipsy sites occupied by county council or regional councils
11A. A site licence shall not be required for the use of land occupied by a county council, or in Scotland by a regional council, as a caravan site providing accommodation for gipsies

Caravan Sites Act 1968

Section 1 Application of Part 1.
(1) This Part of this Act applies in relation to any licence or contract (whether made before or after the passing of this Act) under which a person is entitled to station a caravan on a protected site (as defined by subsection (2) below) and occupy it as his residence, or to occupy as his residence a caravan stationed on any such site; and any such licence or contract is in this Part referred to as a residential contract, and the person so entitled as the occupier.

(2) For the purposes of this Part of this Act a protected site is any land in respect of which a site licence is required under Part I of the Caravan Sites and Control of Development Act 1960 or would be so required if paragraph 11 of Schedule 1 to that Act (exemption of land occupied by local authorities) paragraph 11 or 11A of Schedule 1 to that Act (exemption of gipsy and other local authority sites)28 were omitted, not being land in respect of which the relevant planning permission or site licence—

(a) is expressed to be granted for holiday use only; or

(b) is otherwise so expressed or subject to such conditions that there are times of the year when no caravan may be stationed on the land for human habitation.

(3) References in this Part of this Act to the owner of a protected site are references to the person who is or would apart from any residential contract be entitled to possession of the land.

4. Provision for suspension of eviction orders.
(1) If in proceedings by the owner of a protected site the court makes an order for enforcing in relation thereto any such right as is mentioned in paragraph (b) of subsection (1) of section 3 of this Act, the court may (without prejudice to any power apart from this section to postpone the operation or suspend the execution of an order, and subject to the following provisions of this section) suspend the enforcement of the order for such period not exceeding twelve months from the date of the order as the court thinks reasonable.

...
(6) The court shall not suspend the enforcement of an order by virtue of this section in the following cases, namely—

(a) where the proceedings are taken by a local authority within the meaning of section 24 of the Caravan Sites and Control of Development Act 1960;

(b) where no site licence under Part I of that Act is in force in respect of the site; and where a site licence in respect of the site is expressed to expire at the end of a specified period, the period for which enforcement may be suspended by virtue of this section shall not extend beyond the expiration of the licence.

if—

(a) no site licence under Part 1 of that Act is in force in respect of the site, and

(b) paragraph 11 or 11A of Schedule 1 to the Caravan Sites and Control of Development Act 1960 (c. 2) does not apply

Section 6 Provision of sites by local authorities

(1) Subject to the provisions of this and the next following section, it shall be the duty of every local authority—being the council of a county, metropolitan district or London borough—to exercise their powers under section 24 of the Caravan Sites and Control of Development Act of 1960 (provision of caravan sites) so far as may be necessary to provide adequate accommodation for gipsies residing in or resorting to their area.

Section 7 Function of district councils

(1) The duty imposed by section 6(1) of this Act on the council of a county shall extend only to determining what sites are to be provided and acquiring or appropriating the necessary land, and it shall be the duty of the council of the district in which any such site is located to exercise all other powers under section 24 of the Caravan Sites and Control of Development Act of 1960 in relation to the site.

(2) The charges to be made by the council of county district pursuant to subsection (3) of the said section 24 in respect of any such site shall be such as may be determined by the council of the county, and the council of the county shall pay to the council of the district sums equal to their expenditure reasonably incurred under this section (including the proper proportion of the remuneration and expenses of their officers and other administrative expenditure) so far as it exceeds their receipts thereunder.

Mobile Homes Act 1975

39 Substituted by Housing Act 2004 s.211
30 Repealed by the Criminal Justice and Public Order Act 1994
31 Repealed by the Criminal Justice and Public Order Act 1994
Section 9 Interpretation
(1) In this Act the following expression have the following meanings, that is to say—

"protected site" means any land in respect of which a site licence is required under Part I of the Act of 1960, not being land in respect of which the relevant planning permission of site licence—

(a) is expressed to be granted for holiday use only; or
(b) is otherwise expressed or subject to such conditions that there are times of the year when no mobile home may be stationed on the land for human habitation;[32]

Mobile Homes Act 1983

Section 5 Interpretation
(1) In this Act, unless the context otherwise requires—

"the court" means—

(a) in relation to England and Wales, the county court for the district in which the protected site is situated or, where the parties have agreed in writing to submit any question arising under this Act or, as the case may be, any agreement to which it applies to arbitration, the arbitrator;
(b) in relation to Scotland, the sheriff having jurisdiction where the protected site is situated or, where the parties have so agreed, the arbiter;

"local authority" has the same meaning as in Part I of the Caravan Sites and Control of Development Act 1960;

"mobile home" has the same meaning as "caravan" has in that Part of that Act;

"owner", in relation to a protected site, means the person who, by virtue of an estate or interest held by him, is entitled to possession of the site or would be so entitled but for the rights of any persons to station mobile homes on land forming part of the site;

"protected site" does not include any land occupied by a local authority as a caravan site providing accommodation for gipsies or, in Scotland, for persons to whom section 24(8A) of the Caravan Sites and Control of Development Act 1960 applies but, subject to that, has the same meaning as in Part I of the Caravan Sites Act 1968.

IN THE MATTER OF THE MOBILE HOMES ACT 1983

AND IN THE MATTER OF SECTION 318 OF THE HOUSING AND REGENERATION ACT 2008

ADVICE

Mr G. Wild
Director of Law and Governance
Legal Services
County Hall
Maidstone
Kent ME14 1XQ

DX: 123693 Maidstone 6

Tel: (01622) 694489
Fax: (01622) 694498