

Mobile Homes Act 1983 – Pitch Fee Up-rating

**Consultation on proposal to change the basis
of pitch fee up-rating from Retail Prices Index
to Consumer Prices Index in Scotland**

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Purpose of this consultation paper

1. The Scottish Government wants to ensure that the protections relating to pitch fee uprating for residents of residential mobile homes under the Mobile Homes Act 1983 as it applies in Scotland remain fair, appropriate and in line with development of statistical measures. This is of particular importance in light of recent increases in the cost of living.
2. The Scottish Government is seeking views to inform decisions on whether:
 - it would be more appropriate for the presumption for annual uprating of pitch fees to be set at Consumer Price index (CPI) rather than Retail Price Index (RPI) or CPI with housing costs (CPIH);
 - the change should apply to agreements that are made in future only or to existing and future agreements; and
 - it would be appropriate for Ministers to be able to update the index in future via secondary legislation, to keep pace with developments in statistics.

Scope and extent of this consultation

3. This consultation relates to permanent homes with pitch agreements under the Mobile Homes Act 1983. This means agreements on caravan sites which are licenced under the Caravans Control Act 1960 for permanent homes. It also includes public sector Gypsy/Traveller sites. While public sector Gypsy/Traveller Sites do not require a licence, they are bound by the section of the Mobile Homes Act 1983 which relates to uprating. We recognise that public sector sites may be included in the process for local authority rent setting for housing. We are therefore seeking views on whether there are additional considerations for this type of accommodation.
4. Although the Mobile Homes Act 1983 is UK Parliament legislation, this consultation covers Scotland only. In 2018, following consultation, the Department of Communities and Local Government committed to changes to implied terms for agreements in England to change the pitch fee review inflationary index from RPI to CPI. The change is being implemented via a private members Bill which is currently in progress through the UK Parliament. In Wales, the basis of uprating was changed from RPI to CPI in 2015.

About Residential Mobile Homes in Scotland

5. Mobile homes, often known as park homes, are self-contained prefabricated buildings, transported to a licenced park home site where they are assembled. Mobile home sites can be on either holiday sites or residential sites, with some sites having a licence for both.

6. We do not have accurate up to date information on the numbers of sites in Scotland. Information gathered in 2013 by Consumer Focus Scotland identified 92 residential mobile home sites in Scotland. This research also found that residents were more likely to be older and/or disabled and on fixed incomes. Most sites were concentrated to six local authority areas: Aberdeen, Argyll and Bute, Angus, Dumfries and Galloway, Fife and Perth and Kinross. More recently, the Scottish Confederation of Park Home Residents Associations have estimated that there are around 100 parks in Scotland which may have more than 8,500 residents.

Legislative Context

7. Protections for residents of mobile homes come under two areas of legislation:
 - Consumer Rights for Residents - The Mobile Homes Act 1983 (and related regulations) control the “consumer” rights of mobile home owners. It sets out terms which must appear in the “written statement”. These cover things like the location and size of the pitch, pitch fees (the subject of this consultation) consultation with residents and residents’ associations. There are also terms which are implied into any agreement entered into between a permanent resident and a site owner to protect the rights of park home owners. The 1983 Act specifically requires consultation by Scottish Ministers with organisations representing the interests of those likely to be affected by changes to the implied terms and any other appropriate parties; and
 - Site Licencing by Local Authorities - Part 5 of the Housing (Scotland) Act 2014 Act added a new section to the Caravan Sites and Control of Development Act 1960 to set out the Scottish scheme for licencing residential mobile home sites. The regulations for the new system, [The Licencing of Relevant Permanent Sites \(Scotland\) Regulations 2016 \(legislation.gov.uk\)](#), were commenced on 1 May 2017 and apply to new site owners. Existing site owners had until May 2019 to apply for a new licence. The consultation on our rented sector strategy [“a New Deal for Tenants”](#) committed to a post implementation review of the Licencing Scheme before the end of this Parliament.
8. In 2013, the Scottish Government used secondary legislation to change the implied terms that are automatically included in every contract between a permanent resident and a site owner. The purpose of the changes was to protect mobile home residents from exploitation, while also ensuring the viability of the many well run privately owned sites, often family owned small and medium sized businesses. The Mobile Homes Act 1983 (Amendment of Schedule 1) (Scotland) Order 2013 significantly enhanced the protection of mobile home residents in Scotland and included:
 - Removal of the requirement for a site owner to approve a mobile home’s prospective purchaser. This was intended to prevent the site owner from blocking sales or requiring that the mobile home is sold back to them below open market price;

- The right to retain the mobile home on site owner's land and live in it;
- The ability to gift the mobile home to a relative/friend for no consideration and be exempt from commission charges on all such disposals;
- The right to request evidence for anything paid to the site owner (pitch fees, charges for services such as gas and electricity);
- For new residents, to be allowed 28 days to consider the terms of the written agreement with site owners before they sign up to the purchase of a mobile home. As there is no requirement to engage with a solicitor, this is an important health warning for would-be purchasers; and
- The considerations to be taken into account when calculating pitch fees. Consideration was given to the basis of uprating but, at the time, there was minimal difference between RPI and CPI.

Current Basis of Pitch Fee Uprating

9. The basis for uprating pitch fees is set out at Paragraph 23 of Schedule 1 of the Mobile Homes Act 1983, amended in Scotland by secondary legislation in 2013. There is a presumption that the pitch fee will increase or decrease by a percentage which is no more than any percentage change in RPI, since the last review date, unless this would be unreasonable. The site owner must issue a proposal for the new pitch fee 28 days in advance of the increase. If the occupier does not agree the proposed fee, they can apply to the Court to determine the new pitch fee. The pitch fee remains unchanged while this process is in progress.

Inflation Indexes

10. The three common inflation indices in the UK, which we have considered as possible bases for uprating, are RPI, CPI, and CPIH (CPI including some housing costs). More information on is available on the [Office for National Statistics website](#).
11. Any inflation index will be an imperfect measure for increases in the cost of maintaining mobile home sites. This is because they aim to measure economy wide inflation, rather than the factors specific to these sites.
12. Annual inflation rates for the year to the end of November 2022 are shown in this table:

Index	RPI	CPI	CPIH
Rate to November 2022	14%	10.7%	9.3%
Indicative monthly increase based on £172* per month pitch fee	£24.08	£18.40	£16.00

* based on an average pitch fee of £172 identified in recent UK Government research - [Mobile homes: The impact of a change in the maximum park home sale commission - GOV.UK \(www.gov.uk\)](#)

Weaknesses of the current RPI index

13. RPI lost its status as a National Statistic in 2013. While RPI is still reported, the Office for National Statistics (ONS) now discourage the use of RPI and consider it to be a poor measure of general inflation, at times greatly overestimating and at other times underestimating changes in prices and how price changes are experienced due to methodological issues. Despite this, for historical reasons it is still used across parts of government. The UK Government has confirmed that it will reform the measure of RPI from 2030, aligning the methodology with CPIH.¹ It is only legally possible to do this from 2030 due to the maturity of the final specific index-linked gilt. For these reasons, we do not think that RPI is an appropriate basis for uprating pitch fees.

Advantages and Disadvantages of CPI and CPIH

14. CPI was the ONS headline measure of inflation until 2017 when it was replaced by CPIH. CPI is calculated in line with international standards set by the United Nation's International Labour Organization. CPIH is broadly consistent with CPI, but is a UK measure designed to better capture the costs of owning housing, including Council Tax. However, it is important to note that housing costs included in CPIH do not include mortgage costs, as these are costs associated with purchasing a house. Instead, they cover costs of maintaining and living in a property.
15. CPI is used by the Bank of England for inflation targeting and has a reliable track record as a National Statistic. The statistic used in relation to uprating of state pension and other benefits is generally CPI. It will also be the basis for uprating pitch fees in England and in Wales, giving consistency for businesses that operate in more than one part of the UK.
16. Official forecasts of CPIH are not available and it is therefore not commonly used for uprating. Forecasts are required to assess the cost of uprating over a longer time period than the immediate future, and would make it easier for residents and site owners to plan ahead.
17. Based on this consideration the Scottish Government considers CPI to be the most appropriate current measure for uprating pitch fees.

Options for Changing the Basis of Uprating in Legislation

18. The enabling power for Scottish Ministers to make secondary legislation amending the Implied Terms of agreements between owners and occupiers ("the Implied Terms") is contained in [Section 2B](#) of the 1983 Act. Under the Mobile Homes Act 1983 (Amendment of Schedule 1) (Scotland) Order 2013 ("the 2013 Order"), alterations were made to Implied Terms. Scottish Ministers had the express power to make amendments to the Implied Terms

¹ [A consultation on the Reform to Retail Prices Index \(RPI\) Methodology - GOV.UK \(www.gov.uk\)](#)

that would apply retrospectively to pre-existing agreements entered into before the 2013 Order came into force (as well as to future agreements), but that only applied to the 2013 Order (being the first order made using those powers) . Any further order made under Section 2B would not be applied retrospectively to pre-existing agreements. While secondary legislation could therefore be used to change the basis of uprating for future contracts, changing the basis of uprating from RPI to CPI for existing contracts requires primary legislation. On this occasion there is a Housing Bill in the current Parliamentary timetable that would be an appropriate mechanism to make the change if primary legislation is required.

19. Primary legislation is made relatively infrequently, to implement a substantive changes in policy while secondary legislation can generally be scheduled more readily and passed more quickly. Secondary legislation is often used to set out technical details or administrative matters necessary for primary legislation to operate, for example to update existing regulations to reflect changes in practice over time. Secondary legislation provides flexibility to alter or update statutory arrangements without having to pass new primary legislation. The process for scrutinising primary legislation is different to that for secondary legislation, with primary legislation being subject to a greater level of scrutiny than secondary. More information on the difference between primary and secondary legislation is available on the [Bills and Laws](#) pages of the Scottish Parliament website.
20. Options to achieve a change in the basis of uprating and to prepare for future possible changes are set out below:
 - **Option 1** – to use existing powers to make secondary legislation under the 1983 Act to change the basis of uprating from RPI to CPI for contracts that are signed in future but leave existing contracts unchanged;
 - **Option 2** - to amend the implied terms of agreement set out in the 1983 Act to substitute RPI for CPI in existing and in future agreements; and
 - **Option 3** - to amend the implied terms of agreement set out in the 1983 Act to substitute RPI for CPI in existing and future agreements AND to include a further power to be able to make changes in the future to the basis for uprating by secondary legislation, with retrospective effect. This would mean that any future change to uprating needed to keep pace with changes in the reporting and forecasting of statistics, for example a move from CPI to CPIH or back to RPI, could be made by secondary legislation and apply to existing and future agreements.
21. The option chosen for making the changes to existing legislation needs to be proportionate to the aim. The level of consultation and scrutiny needs to be appropriate to making changes to implied terms in residential mobile home contracts under the Mobile Homes Act 1983, and sufficient to balance the interests of the residents and site owners. In addition, it needs to be proportionate to make changes apply retrospectively to existing agreements, as well as to future agreements.

22. We do not think that Option 1 would progress the policy intention of ensuring that the statistical measures are fair, appropriate and up to date because of the difference in effect on new and existing residents. Existing contracts are likely to be in place over a long period so that the change would be effected very slowly and different provisions for indexation increase potential for confusion. We would like to gather views on Options 2 and 3.

Consultation Proposal

23. As RPI is no longer considered a suitable measure of inflation, we propose to amend the presumed basis of pitch fee uprating from RPI to CPI through primary legislation so that the change is made to all Scottish contracts under the Mobile Homes Act 1983, existing and future.

24. We are considering whether it would be appropriate for Ministers to be able to update the index in future via secondary legislation, to keep pace with developments in statistics and would like to gather your views.

Consultation Questions

Question 1 - Do you agree with the proposal that Consumer Prices Index (CPI) is the most appropriate inflation index for uprating Scottish contracts under the Mobile Homes Act 1983?

- Agree
- Disagree

Please explain the reasons for your answer.

Question 2 - Do you agree that the proposed change in uprating from RPI to CPI should take effect for both existing and future contracts?

- Agree
- Disagree

Please explain the reasons for your answer.

Question 3 – Do you think a further change should be made to the Mobile Homes Act 1983 so that the statistical basis for uprating pitch fees can be amended by secondary legislation in the future, to keep pace with developments in statistics.

- Yes
- No

Please explain the reasons for your answer.

Question 4 – Are there any additional considerations in relation to this proposal as it affects public sector Gypsy/Traveller sites or any other types or site or contract covered by the implied terms under the Mobile Homes Act 1983?

Question 5 - In your opinion, what is the likely impact of the proposed change on businesses or other organisations?

Question 6 -In your opinion, what is the likely impact of the proposed change on residents and other individuals? This includes impacts on equalities groups who share protected characteristics under the Equality Act 2010². These include age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

² [Equality Act 2010: guidance - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Responding to this Consultation

We are inviting responses to this consultation by 7 April 2023.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at [Proposal to change the basis of pitch uprating under the Mobile Homes Act 1983 from Retail Price Index to Consumer Price Index](#)

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 7 April 2023.

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form at Page 11 and Consultation Questionnaire at page 13 in this document and send it to:

Residential Mobile Homes Team
4th Floor
4 Atlantic Quay
70 York Street
Glasgow
G2 8JX

Or email it to MobileHomeRPICPIConsultation@gov.scot

If you would like us to post you a paper copy of the consultation and questionnaire, please email MobileHomeRPICPIConsultation@gov.scot

To find out how we handle your personal data, please see our privacy policy:

<https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material,

responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available. Subject to stakeholders' views, and the approval of the Scottish Parliament, if we decide to proceed with the proposal, we aim to do so at the earliest opportunity. This is likely to be via the forthcoming Housing Bill, currently planned for 2023.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at MobileHomeRPICPIConsultation@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Residential Mobile Homes Act 1983 - Consultation
on proposal to change the basis of pitch fee uprating from Retail Prices Index to
Consumer Prices Index in Scotland



Scottish Government
Riaghaltas na h-Alba
gov.scot

Respondent Information Form

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- If an individual, are you a permanent resident of a residential mobile home?
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email Address

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

Consultation Questionnaire

To complete if unable to respond to the consultation online at: [Proposal to change the basis of pitch uprating under the Mobile Homes Act 1983 from Retail Price Index to Consumer Price Index.](#)

Consultation Proposal

As RPI (Retail Prices Index) is no longer considered a suitable measure of inflation, we propose to amend the presumed basis of pitch fee uprating from RPI to CPI (Consumer Prices Index) through primary legislation, so that the change is made to all Scottish contracts under the Mobile Homes Act 1983, existing and future.

We are considering whether it would be appropriate for Ministers to be able to update the index in future via secondary legislation, to keep pace with developments in statistics and would like to gather your views.

Question 1

Do you agree with the proposal that Consumer Prices Index (CPI) is the most appropriate inflation index for uprating Scottish contracts under the Mobile Homes Act 1983?

- Agree
- Disagree

Please explain the reasons for your answer

Question 2

Do you agree that the proposed change in uprating from RPI to CPI should take effect for both existing and future contracts?

- Agree
- Disagree

Please explain the reasons for answer

Question 3

Do you think a further change should be made to the Mobile Homes Act 1983 so that the statistical basis for uprating pitch fees can be amended by secondary legislation in the future, to keep pace with developments in statistics.

- Yes
- No

Please explain the reasons for your answer

Question 4

Are there any additional considerations in relation to this proposal as it affects public sector Gypsy/Traveller sites or any other sites or contracts covered by the implied terms under the Mobile Homes Act 1983?

Question 5

In your opinion, what is the likely impact of the proposed change on businesses or other organisations?

Question 6

In your opinion, what is the likely impact of the proposed change on residents and other individuals? This includes on equality groups who share protected characteristics under the Equality Act 2010. These include age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.



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The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80525-423-2 (web only)

Published by The Scottish Government, January 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1220602 (01/23)

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