Communities and Local Government

Llywodraeth Cynulliad Cymru
Welsh Assembly Government

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

Government response

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December 2009
Department for Communities and Local Government

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Introduction

This paper is the Government's response to the consultation it published in May 2009, *Further consultation on termination provisions in the Mobile Homes Act 1983 (as amended)*. It has been prepared jointly by Communities and Local Government (CLG) and the Welsh Assembly Government. Accordingly, it applies to both England and Wales.

In May 2009 the Government published its response to the May 2008 consultation[1] that had sought views on the possible transfer of jurisdiction for the determination of disputes and other proceedings under the Mobile Homes Act 1983 (the MHA) from the county courts to a tribunal service. We announced in our response that, subject to the necessary legislative consents, we would transfer the jurisdiction for dispute resolution and other proceedings from county courts to Residential Property Tribunals (RPTs). We propose to bring the necessary changes to the RPTs' jurisdiction into force in April 2010 subject, in England, to Parliamentary approval and, in Wales, to the agreement of the Welsh Assembly Government.

The purpose of the 2009 further consultation was to seek views on whether the fact finding role of county courts in termination cases should be transferred to RPTs. This document summarises the responses received, sets out the Government's view about the proposals in the light of those responses, and explains the changes that the Government intends to make.

The consultation process

A public consultation was held between 12 May and 9 June 2009. We allowed a shorter period for responses because the consultation paper did not introduce any new policy principle, but merely sought clarification of consultees' views on a discrete aspect of the original proposals in the May 2008 paper.

However, we accepted responses received after 9 June, as there were difficulties with the distribution of hard copies of the consultation paper.

Numbers of responses

In total, the Government received 18 responses, as detailed in the table below. In that table:

- **Park Home Residents' Associations** (RES-PH) are the responses from two national park home groups: The Independent Park Home Advisory Service and the National Association for Park Home Residents.

[1] A new approach for resolving disputes and to proceedings relating to Park Homes under the Mobile Homes Act 1983 (as amended)

- **Park Home Site Owners (**T-PH) are the responses received from the two trade bodies: the British Holiday & Home Parks Association and the National Park Homes Council.

- **Gypsies and Travellers' Legal Representatives** (LEG-G&T) include responses from the Community Law Partnership and other legal professionals.

- **Gypsies and Travellers' Residents Bodies** (RES-G&T) include responses from the Traveller Law Reform Project, the London Gypsy and Traveller Unit and other resident groups.

- **Gypsies and Travellers' Interest Bodies** (OTH-G&T) include responses from the Citizens Advice Bureau and on behalf of the All Party Parliamentary Group for Gypsy and Traveller Law Reform.

- **Others (**OTH-All) include responses from the Administrative Justice and Tribunals Council, a local authority and an interested body.

Overall figures:

	Number of responses
LEG-G&T	3
RES-G&T	5
OTH-G&T	3
RES-PH	2
T-PH	2
OTH-ALL	3
Total	**18**

It should be noted that not all consultees answered every question and, therefore, the total number of responses to individual questions does not necessarily amount to 18.

Response to the consultation paper

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

	Yes	No
LEG-G&T	0	3
RES-G&T	0	5
OTH-G&T	0	3
RES-PH	2	0
T-PH	0	2
OTH-ALL	3	0
Total	**5**	**13**

This question sought views as to whether the fact finding role of county courts in dealing with applications for authorisation to terminate an agreement under the Mobile Homes Act should be transferred to RPTs.

The two park home residents' associations supported the concept of RPTs taking over this role. One commented that it would prevent unscrupulous site owners from threatening or using court action to contest matters such as pitch fee reviews. Having determined the facts, the tribunal could rule whether or not it was vexatious. It thought that taking claims out of the small claims court would avoid the need for residents to incur the cost of hiring barristers. It was thought that unfounded applications would be weeded out at the tribunal stage. It added that it should be the role of the court to determine whether the matter complained about was a breach under the MHA and, although it agreed with the principle, wondered whether there would be much for the RPT to do. It was also concerned that the courts should not simply rubber stamp RPT decisions.

The other association felt that the use of the RPT could reduce the fear of proceedings often experienced by residents when threatened with court action by site owners. It felt the use of tribunals would be valuable for deciding whether the site owner's allegations were true or false. It would also ensure that unscrupulous site owners would not be able to take termination or other proceedings for breach of the agreement, in retaliation for a resident challenging the proposed new pitch fee.

Three other consultees supported the transfer in principle. One commented that its interest, stemming from its statutory function of keeping under review the administrative justice system, was concerned that the process should be seamless across the two adjudicative bodies and, in particular, users should not incur additional costs, delay or form filling.

The majority of respondents were opposed to the transfer.

One of the legal representatives of the Gypsy and Traveller community reiterated its concern about the transfer of any jurisdiction from the court to tribunals, and was

"utterly opposed" to this proposal. It thought the forfeiture provisions in section 168 of the Commonhold and Leasehold Reform Act 2002 was not a relevant comparable jurisdiction, especially as the role of the tribunal in that regard was introduced as a temporary measure, pending abolition of forfeiture. The consultee thought the Government's proposal for the division between 'fact findings' and 'legal role' showed a misunderstanding of how courts and tribunals work. It was pointed out that judges also make judgements, having heard, established and verified the facts; facts cannot be separated from law and, sometimes, what constitute facts is not apparent to a lay client.

The consultee also said that legal aid is not available for RPT hearings. Exceptional funding may not be available and, in any case, such funding only covers advocacy, and is paid at a lower rate than legal aid. The consultee thought it would not include 'preparation time'. Since such funding would not be available at the first stage of going to the tribunal, it was felt that residents might find it difficult to find solicitors/barristers willing to act in such cases. The consultee also thought that tribunal proceedings would be daunting, slow and expensive. It was concerned on the one hand that court process may amount to rubber stamping tribunals' decisions, as evidence of the facts would not be heard by the court. On the other hand, it thought that applications to suspend orders made by tribunals might occur; evidence would be called and cases might be re-run in courts. It was considered that the proposed transfer may breach Articles 6, 8 and 14 of the European Convention on Human Rights.

The consultee also pointed out that CLG had not given any evidence in support of its assertion of residents alleging site owners' use of termination proceedings as a bullying tactic. It pointed out that, in any case, the same could be done by site owners in tribunals. It was considered unlikely that local authorities were, in respect of Gypsy and Traveller sites, likely to resort to such tactics. It was therefore unnecessary to split the 'possession'[2] process. The consultee added that the best way of filtering out cases of no merit from getting to court, and reducing expense and anxiety to residents, is to create protocols like, for example, the rent arrears protocol for tenants of local authorities, to ensure possession action is a last resort.

Another legal representative consultee endorsed the comments of the consultee previously mentioned. It added that any split between the fact finding exercise and court proceedings is likely to result in extensive additional litigation (in particular, collateral challenges to facts as found by a tribunal) and also in challenges to compatibility of this proposal with Article 8 of the European Convention on Human Rights.

A third legal representative consultee agreed with the comments of the first.

Other organisations and individuals representing Gypsies and Travellers' interests opposed the transfer. Most were content to adopt the comments of the first mentioned legal representative consultee. One added that all matters, including applications to

[2] If an agreement subject to the MHA is terminated, the site owner is only able to gain possession of the pitch by a court order - see section3 (1) (b) of the Caravan Sites Act 1968. The consultation was not concerned with proceedings under that Act. The role of the court under paragraphs 4, 5 and 6 of Schedule 1 to the MHA is to authorise termination. The court does not terminate the agreement, that is for the site owner to do so once the court has given permission for it to be done.

terminate an agreement, should be dealt with by the courts. The view was also expressed that 'fact finding' in a tribunal would not provide residents with a fair or workable process. This consultee pointed out that there were lower literacy levels and financial means within the Gypsy and Traveller community.

Another consultee thought the split between the 'fact finding' and the 'legal role' would not serve to improve proceedings in any meaningful way, and would work contrary to interests of residents in proceedings, which are already extremely difficult for them.

One other consultee thought that the proposed transfer would adversely affect the right of mobile homes residents under the European Convention on Human Rights to respect for family and private life, and would not permit equality between the parties to a dispute. It said that courts were independent and considered that the transfer of their functions would breach residents' right to a fair trial under Article 6 the Convention.

The consultee thought that the tribunal proceedings were likely to be daunting and expensive, and extensive legal knowledge would be required to defend a case, but that advocates would not be available to assist. It felt that local authorities and site owners were likely to be well resourced compared to park home residents and Gypsies and Travellers. It added that Gypsy and Traveller cases cannot be treated in the same way as those relating to other park homes residents because, apart from literacy issues, there were cultural matters to be considered in such cases, including traditional activities, such as the keeping horses/animals.

Another consultee thought that Gypsies and Travellers need legal representation to enable them to enforce rights. The consultee said there was evidence to suggest that Gypsies and Travellers are routinely discriminated against, and that it is only when they are represented by an advice agency that their legal rights are enforced. Four case studies were provided in order to illustrate the importance of their having access to legal representation. It added that judges may find it hard to decide on the reasonableness aspect of a termination case, when they have not heard evidence as to the circumstances behind the application for termination. It considered that this would lead to applications to suspend orders and involve revisiting evidence by the court and duplication.

A consultee involved in the management of Gypsy and Traveller sites thought that the involvement of both RPTs and courts would complicate proceedings further, and site owners seeking evictions of "unruly" Gypsy and Traveller residents would incur additional costs. However, it was added that evictions are not done lightly, and matters were exacerbated by suspension of the operation of eviction orders by up to twelve months by the courts. This consultee was concerned that RPTs lacked knowledge of the law. It was also concerned about site owners having to pay additional costs to 'fast track' cases.

One of the two organisations representing park home site owners expressed "grave concerns" about the proposal. It felt that the two stage process would be protracted and could double anxiety and uncertainty for all parties. Its view was that termination cases should stay within courts. It felt that RPTs do not have the experience of the courts. The consultee also thought that factual matters in termination cases can be highly contentious – pointing out that breaches of the agreement involve a variety of behaviour and issues (examples of which were listed in the response). It was also

pointed out that consideration of the facts was not simply a question of determining whether there has been a breach and/or whether the notice to comply has been ignored. It was added that such consideration is far more complex. Indeed, facts relating to a breach cannot be separated from reasonableness. It was felt that a court hearing to decide the question of whether it was reasonable to terminate an agreement may well become a re-run of the RPT hearing. Cross-examination (in the court proceedings) would therefore need to be permitted where the credibility of a witness is in issue (the evidence of that witness having previously been heard by the RPT). There is a risk of either party seeking to re-run evidence before judges, so the reasonableness hearing would work as a form of appeal from the RPT.

On the suggestion that unscrupulous site owners use the courts as a form of intimidation, this consultee thought that such intimidation would continue when using tribunals, as it would be cheaper and more accessible than the courts. In any case, the consultee considered that intimidation should be addressed through the law on harassment.

The other consultee representing park home site owners thought that introducing a role for the RPT in termination proceedings would duplicate proceedings and make for an over-complicated and long process. The consultee considered that an additional liability and reasonableness tier risked causing injustice through conflicting outcomes, and would increase the costs of proceedings. It was pointed out that applications to terminate an agreement can take up to a year or longer in defended claims. In tribunal proceedings, legally aided advice and assistance will be more limited. In particular, the costs of expert surveyors and engineers would not be covered, and where technical advice is essential, this could be a significant problem for some. This consultee added that county courts have a good knowledge of termination cases.

Response

The Government has carefully considered the responses of the consultees, and for the reasons given below, has decided not to transfer to RPTs the 'fact finding' role of the courts in termination cases, other than in repair cases.

The Government understands that one of the reasons why the park home residents' associations were attracted to the proposal was because it could prevent unmeritorious cases being pursued in the courts. However, whilst those associations supported the fact finding role being transferred to the RPT, they also suggested that ultimately, the entire merits of the case should nevertheless be determined by the court.

The associations were also concerned that termination proceedings are often brought on the back of other disputes, such as pitch fee reviews, and that keeping the fact finding role with the courts could result in pitch fee reviews being determined by the courts rather than the RPT. These concerns are noted, but we feel that this kind of situation will not occur, because the roles of the courts and the RPTs will be narrowly defined. It will not, for example, be possible to bring a dispute relating to pitch fee reviews in the court in the first instance.

The consultees pointed out that residents would not need to appoint legal representation to present their cases at the tribunal. Whilst this is true, parties are not excluded from having legal representation in tribunal proceedings, and we have had to weigh the residents' view on the merits of this point, against the concerns and disadvantages expressed by the majority of consultees.

The other consultees who supported the proposal thought that RPTs would be suitable for the role; although one was concerned there should not be any burdens or barriers to users.

However, we have balanced the views of those in favour of the proposal against those who consider that the proposed division of jurisdiction would not work in MHA cases.

The consultation had envisaged that the division of jurisdiction would be similar to that which applies in leasehold forfeiture cases[3]. This, however, was not considered by consultees to be an appropriate model because jurisdiction in those cases was only temporary, pending abolition of forfeiture. However, none of the consultees suggested that the jurisdiction in relation to such cases worked inefficiently or ineffectively.

The Government notes some of the consultees' concerns that the proposed transfer of jurisdiction would breach Articles 6, 8 and 14 of the European Convention on Human Rights. We have considered this issue carefully, and have concluded that the proposal to transfer the jurisdiction to the RPT would be wholly compatible with the Convention.

It was suggested on the one hand that courts would simply rubber stamp cases, whilst on the other, that they would re-hear the whole matter. The Government does not agree that either scenario is likely to arise, as the division of jurisdiction would be clear. Nevertheless, we accept that it will sometimes be difficult for a resident or a site owner, particularly one who is not represented, to distinguish between the facts of the case and other matters, such as justification or mitigation. We therefore agree that in many cases, facts, the law and the issue of reasonableness may be intertwined, and that it would be useful, therefore, for the whole process to be dealt with by the court.

The majority of consultees have serious concerns about transferring the fact finding role of the courts in termination cases to RPTs, and even those who support it have reservations. For these reasons, the Government does not consider that it would be appropriate to transfer fact finding to the tribunals in cases under paragraphs 4 (a) and 5 (a), where the facts are not always easily distinguishable from the reasonableness question. We have, however, taken a different view with regard to paragraph 6 (a) cases.

[3] Section 168 of the Commonhold and Leasehold Reform Act 2002. Under that section no proceedings for forfeiting a long lease can be commenced in the county court unless the breach which is complained about has been admitted or determined by a Leasehold Valuation Tribunal.

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

	Q2(a)	Q2(b)
LEG -G&T	3	0
RES-G&T	2	0
OTH-G&T	3	0
RES–PH	0	2
T–PH	2	0
OTH–ALL	0	3
Total	**10**	**5**

This question sought views on whether (a) the court or (b) the RPT should deal with the specific question of whether the condition of the mobile home is a detriment to the amenity of the site and, if so, whether it is reasonably practical to order repairs to the home that would remedy that condition.

Question 2(a)

Many of those consultees who supported the courts' retention of this jurisdiction did so for similar reasons to those expressed in response to question 1. Specific comments included concern about splitting the case; adding another tier to the proceedings and allowing for 'yo-yoing' between an occupier and an owner. One consultee thought there could be an issue if the occupier was unable to carry out the repairs at the time of the RPT hearing, but was in a position to do so at the court hearing. It was also thought that the proposal did not take account of the court's need to find the facts that are relevant to the issue of reasonableness, and that residents might not be able to secure representation at both stages.

Question 2(b)

Those consultees who supported the transfer of this jurisdiction to the tribunal also did so largely for the same or similar reasons they supported the transfer of the 'fact finding' in termination cases generally. Specific comments included that RPT proceedings would be cheaper and quicker; residents cannot afford court costs in repair order cases and that the procedure could avoid termination orders being made. One consultee thought that residents in court proceedings are required to pay the park owner's costs because presenting a repairs schedule would concede liability. Another consultee thought that RPTs are better equipped than the courts to assess such breaches of agreements because of their expertise in property matters. One other added that tribunals have the knowledge and experience to determine the extent of the required repairs, and will easily be able to clarify whether they have been carried out.

Response

It is noted that the majority of consultees supported option (a) - the retention of the court's jurisdiction for the fact finding role under paragraph 6(1) (a) of Schedule 1 to the MHA, largely for the same reasons as they supported that option in response to question 1.

In relation to question 1, one park home site owners' representative commented that the lack of legal aid would mean that residents would be unable to instruct expert surveyors or engineers. However, we also heard from a residents' association that residents cannot afford to pay for schedules to be prepared, and are thus at a disadvantage in court proceedings when the site owner is professionally represented.

The Government believes this jurisdiction for the fact finding role should be transferred to the RPT. It is fact specific and concerned only with the determination of two issues: namely, whether the disrepair (if any) is detrimental to the site and, if so what, if any, repairs can be ordered to remedy that detriment. A specialist property tribunal is, in our view, better placed than a county court to deal with those issues. We agree with the minority view that RPTs will be able to deal with such cases quickly and more cheaply. Importantly, the tribunal will use its own expert knowledge to determine the facts, the members having inspected, in most cases, the home and site themselves. It will also use that expertise to determine what (if any) repairs can reasonably be undertaken. Unlike the court, the tribunal will not have to rely on expert evidence presented to it and will usually inspect the home and the site to determine the detriment (if any), and what can or needs to be done. In addition, residents will not normally be required to draw up a repairs schedule. This should save the parties considerable expense and resources, although site owners would of course need to identify the disrepair of which they complain.

We agree with the comments made by one consultee in relation to question 1 that applications should be seamless and not burdensome on users. Consequently, we propose that no fee will be charged for the fact finding proceedings in the RPT, but normal court fees will be payable if cases go forward to the county court for determination as to whether termination is reasonable.

The Government noted the concerns about splitting the case and potential 'yo-yoing'.

We do not accept that by splitting paragraph 6 cases between the two adjudicative bodies we are creating another tier to the proceedings. It is quite apparent that the proceedings are already two-staged, since the court must satisfy itself in the first instance whether the condition of the home is a detriment to the site and, if so, whether that can be remedied by ordering repairs to be done. It only considers whether it is reasonable to permit the agreement to be terminated if it does not make a repairs order, or if such an order has not been complied with. Thus, there are already two distinct and separate stages to these types of proceedings, and it is not always the case that stage two would be engaged. All that the Government has proposed is to transfer the first stage to a different forum (i.e. the tribunal).

We also do not accept that the proposal would allow for 'yo-yoing' between the two adjudicative bodies, because no application could be made to the court unless the

tribunal is satisfied that there are potential grounds to terminate the agreement. If the case goes to stage two, then the role of the court is to decide whether it is reasonable to terminate the agreement. It is important to bear in mind that this is the function of the court, and not the tribunal. The tribunal's role is solely to decide if the condition of the home is detrimental to the amenity of the site and, if it makes such a finding (and if it does not make a repairs order), it is then for the court to decide whether in all the circumstances, it would be reasonable to terminate the agreement. For example, a tribunal might decide that it is not reasonably practicable to repair a home because of its age, but the court may decide that the agreement should not be terminated on that account, since it would not be reasonable to do so because of the age of the resident.

One consultee raised an interesting scenario in which the resident was unable to carry out repairs at the time of the RPT hearing, but subsequently was able to do so when the matter came before the court. We intend to make provisions that would allow the court, in such circumstances, to transfer the case back to the RPT if it was satisfied that it would be in the interests of justice to do so and, in any case, as we have already indicated, the court is not obliged to make an order to permit the agreement to be terminated on the grounds that the resident had not agreed to carry out the repairs in the tribunal proceedings.

We therefore propose to transfer jurisdiction for the fact finding role in termination cases under paragraph 6 cases to the RPT for the reasons set out above.

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

	Q3(a)		Q3(b)	
	Yes	No	Yes	No
LEG-G&T	0	0	0	0
RES-G&T	0	0	0	1
OTH-G&T	0	0	0	0
RES–PH	2	0	2	0
T–PH	0	1	0	2
OTH–ALL	2	1	2	1
Total	**4**	**2**	**4**	**4**

These questions sought views as to whether: (a) RPTs should be able dismiss an application to terminate an agreement as an abuse of process if the site owner has caused, or significantly contributed to, the resident's breach, or that breach is minimal and (b): if a case is dismissed on that ground, the tribunal must award costs against the site owner.

Question 3(a)

One of the park home residents' associations thought that the RPT should be empowered to dismiss a case as an abuse of process, because it would overcome the

fear and harassment that some residents suffer from unscrupulous site owners who make false charges. The other considered that it would be an effective deterrent to the threat of action (by site owners) in cases where there was no real chance of success.

The park home site owners' organisation that disagreed, pointed out that it was not aware of any judge criticising a site owner for bringing a case, even when the termination order was refused. It also reminded the Government that the courts had powers to strike out vexatious and oppressive claims. It thought bullying could well continue, with unscrupulous site owners threatening the use of the RPT instead and, in any case, the matter may still involve court proceedings at some stage.

Question 3(b)

The park home residents' associations thought that unscrupulous site owners would desist with the threats of action if they were to encounter costs, and those who did, deserved to fail and be punished. Another consultee thought that costs must follow the event, and the amount of the costs ordered to be paid should be a matter of judgement for the tribunal.

One of the Gypsies and Travellers' legal representatives thought there ought to be an automatic cost order against a site owner whose case has been dismissed as an abuse of process, whether in the court or in a tribunal.

Both park home site owners' representatives pointed out that the courts can award costs. Another consultee thought it would be unusual for a tribunal to automatically make a costs order, and that it was not fully apparent why it should be mandatory for this jurisdiction. In any case, any order must take account of the person's ability to pay.

Response

This question remains relevant because of the Government's decision to transfer fact finding and repair orders in paragraph 6 cases (see response to question 2).

Although the question was posed in two parts, we do not think it is necessary to legislate for the definition of 'abuse of process', as we consider that this is a matter for tribunals to determine in the individual cases before them. However, as we have already made clear in our consultation response paper, we propose to give tribunals a power to dismiss those cases which are an abuse of process and which clarifies that the power does not have to be exercised in relation to conduct or proceedings that are also vexatious or frivolous. We believe this power should help address the problems raised by the residents' associations.

On the question of whether the tribunal should be obliged to make a costs order against a site owner whose application is deemed to be an abuse of process, we would remind consultees that our intention was that the mandatory requirement was only intended to apply to termination cases, and not all tribunal proceedings, as one consultee has suggested. Given that we propose to only transfer paragraph 6 cases, we think the number of cases going before the tribunal will not be significant, and it would be disproportionate to introduce a mandatory requirement to cater for such a

small number of cases. The tribunal will, of course, have a power to make an order if it considers the case is an abuse of conduct, and must take account of the applicant's ability to pay, which was not a requirement in the proposed mandatory scheme.

In conclusion, the Government does not intend to make any further rules on dismissal of cases on the grounds of abuse of process, or to make it mandatory for a costs order to be made in cases where the application is dismissed on that ground.

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

	With permission	Limited to a point of law	To the Lands Tribunal
LEG-G&T	0	0	0
RES-G&T	0	0	0
OTH-G&T	0	0	0
RES–PH	2	2	1
T–PH	0	1	0
OTH–ALL	2	2	2
Total	**4**	**5**	**3**

This question sought views as to whether appeals against RPT decisions on termination cases should be to the Lands Tribunal, and whether permission should be required (as is the proposed case with other RPT jurisdictions) and whether appeals should be on a point of law only.

One of the park home site owners' representatives thought that appeals should be to the Lands Tribunal on a point of law. The other thought appeals should be to the county court. Although it disagreed with the transfer of jurisdiction, one of the Gypsies and Travellers representatives thought any appeal should be with permission, and only on a point of law. Another consultee thought an RPT's decision should be final. Both residents' associations expressed concern about the lack of knowledge of park home law that the Lands Tribunal possessed. One wondered if the Lands Tribunal was "completely independent", and the other asked if there was a further avenue for appeals to the county court or a higher court.

Response

This question remains relevant because of the Government's decision to transfer fact finding and repair orders in paragraph 6 cases (see response to question 2).

We propose that appeals from the RPT will be to the Upper Tribunal (Lands Chamber), formerly the Lands Tribunal[4], and only with permission of the RPT or the Upper Tribunal itself. This is the same rule that applies to RPTs when exercising jurisdiction under the Housing Act 2004, and is proposed to apply to all other RPT jurisdictions under the MHA. We would add that this is also the rule that applies in Leasehold

[4] The functions of the Lands Tribunal were transferred to the Upper Tribunal (Lands Chamber), which is part of the Tribunal Service, on 1 June 2009. The Upper Tribunal exercises the same functions as the abolished Lands Tribunal.

Valuation Tribunal jurisdictions. The circumstances in which an appeal may be brought will be in accordance with the Upper Tribunal (Lands Chambers) rules.

We would assure consultees that the Upper Tribunal (Lands Tribunal) is completely independent and is, in fact, a court of law and indeed equivalent to the High Court. There is no question of appeals going to an inferior court (i.e. the county court) from that tribunal, as has been suggested. Appeals from the Upper Tribunal are to the Court of Appeal.

Arbitration and termination

In the response to the May 2008 consultation, the Government announced that it proposed to abolish compulsory arbitration in respect of any question arising under the MHA, or under a site agreement made under the MHA. Compulsory arbitration occurs when the site agreement contains conditions requiring disputes and applications, which would otherwise be determined by a court or a tribunal, to be determined by an arbitrator in accordance with the express terms of the agreement. Any new compulsory agreements entered into after the coming into force of the legislation will have no effect.

We also proposed that a site owner and resident would still be able to refer a matter for arbitration if both parties agreed in writing, at any time after the matter to be settled arose, if this is the way they wanted the matter to be settled.

Presently, where a compulsory arbitration agreement applies to termination cases under paragraphs 4, 5 or 6 of Schedule 1 of the MHA, the role of the county court is displaced, and its functions are carried out by the arbitrator[5]. In order to give effect to the Government's commitment to abolish compulsory arbitration, it intends to make provisions to transfer the functions of the arbitrator to the RPT, including those functions relating to termination cases.

It should be noted that this will not affect any existing pitch agreements that do not contain compulsory arbitration provisions. In those cases, the court will retain jurisdiction to deal with termination cases falling under paragraphs 4, 5 and 6 of the Schedule, other than the fact-finding element of paragraph 6 cases.
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Nor will it affect agreements to refer a matter to arbitration where that agreement is entered into after the matter to be settled arose.

Transfer cases

In our response to the consultation paper, we announced that any decision on whether to make provisions for the transfer of cases between the courts and tribunals would be deferred until a decision is made on termination cases (see response to question 10). As we have decided not to transfer the jurisdiction on termination cases to the tribunals (except in relation to paragraph 6 cases as outlined above) we will be making regulations that permit a tribunal to deal with any part of proceedings that are commenced in the county court, but fall within the jurisdiction competence of the tribunal, should the county court order such a transfer[6]. We do not propose to make any provisions for the transfer of cases from the RPT to the county court.

[5] Although possession may only be authorised by a county court - see section 3 (1) (b) of the Caravan Sites Act 1968.
[6] It is for the applicant to present a transferred case to the RPT. The court does not send it to the tribunal.

Conclusion and next steps

The Government has therefore decided not to transfer to the RPT, the fact finding role in termination cases brought under paragraphs 4 or 5 of Schedule 1 to the MHA. Cases brought under those provisions must be commenced in the county court. We will, however, transfer the court's jurisdiction to determine whether a home is detrimental to the amenity of a site, and its power to make a repair order to remedy the defect. Proceedings under paragraph 6 will, therefore, need to be commenced in the RPT, and no application for termination of an agreement to a county court can be made until that tribunal has concluded that the home is a detriment to the site, and is satisfied that either it should not make a repairs order, or is satisfied that, having made an order, the repairs ordered have not been carried out. Appeals from RPT decisions will be with permission only and to the Upper Tribunal (Lands Chamber).

We propose to bring the RPT's new jurisdictions under the MHA into force on 6 April 2010, subject to the necessary measures for obtaining legislative consent.