

Private Sector Housing Enforcement Policy

Amendment to the Policy due to changes in Legislation.

Decision under Delegated Powers

Officer Requesting Decision

Rebecca Short – Private Sector Housing Manager

Officer Making the Decision

Alison Simmons - Head of Strategic and Private Sector Housing

Recommendation

1. To approve amendments to the Private Sector Housing Enforcement Policy, as detailed below.

Reason

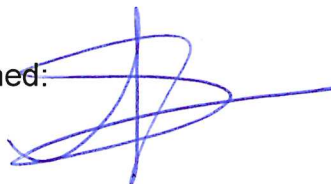
1. To incorporate changes in legislation – specifically the Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020.

Authority for Decision

Part 2a Delegations to Officers section 8: Delegations to the Head of Strategic and Private Sector Housing – Housing Strategy – para 25. *To make amendments to the Private Sector Housing Enforcement Policy, in response to changes to relevant legislation, subject to their being no major financial or human resource implications arising from the changes, in consultation with the relevant Lead Member.*

Decision and Date

Signed:



Date: 15th September 2021

Head of Strategic and Private Sector Housing

Background

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 (“the Regulations”), introduced the requirement for relevant protected site owners to apply to their local authority for the relevant person (themselves or their appointed manager) to be added to the register of fit and proper persons managing sites in their area (“the register”).

On June 4th 2021, the Government issued guidance on setting the fees for the new requirement and how local authorities should consider applications for inclusion on a fit and proper person register.

The fees policy has been amended in line with the guidance and application forms have been sent out to all mobile home site owners. Applications must be returned no later than 30th September 2021.

The Application form must include the information that is outlined in the Regulations. In summary:

- a) Details of site and applicant;
- b) Information relating to the site manager;
- c) Additional information where another person who is an individual is involved in the day-to-day management;
- d) Additional information where another person, who is not an individual, is involved in the day-to-day management of the site.

Where the site owner is an individual, the application must be completed by that individual.

If the site owner is a company or corporate body, the application must be completed by the ‘appropriate person’. The appropriate person:

- a) Where the applicant is a company, is a director or other officer of the company; or,
- b) Where the applicant is a partnership, a partner; or,
- c) Where the applicant is a body corporate, a member of the management committee.

The site owner must provide the following information about the responsible person’s conduct. That is, whether the responsible person:

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

A criminal record check (basic) must be submitted for the individual being assessed as the fit and proper person and, where applicable, other individuals responsible for the day-to-day management of the site. If a company, the individual responsible for day-to-day management of the site must also submit a criminal record check.

The criminal record check must have been issued no more than six months before the date of the Fit and Proper Person application.

There are other considerations that the Council may take into account as outlined in the Regulations, such as:

- a) Ability to secure proper management of the site (e.g. site licence compliance and long term maintenance of the site).
- b) Sufficient competence to manage site.
- c) Management structure and funding arrangements.
- d) Proposed management structure and funding arrangements.
- e) Any offences (as outlined above) committed by responsible or relevant person outlined in paragraphs 3 & 4 of Schedule 3 of the Regulations.

The above will ensure that a balanced decision is made, tailored to a particular area or site. The Local Authority is to ensure that consistent standards are applied to companies and other organisations who are not individuals.

The amendments to the Private Sector Housing Policy will incorporate the determination process, for use in the assessment of applications received, as an appendix (appendix 7).

Full details of the proposed amendments are as follows:

Amendment	Reason for Change
<p>Key Legislation page 4</p> <p>Move reference to the Mobile Homes Act 2013 from 'other legislation' and include in the Caravan Sites and Control of Development Act 1960 and Caravan Sites Act 1968 heading:</p> <p>To read: Caravan Sites and Control of Development Act 1960 (<i>as amended by the Mobile Homes Act 2013</i>) and Caravan Sites Act 1968</p>	<p>To improve clarity with regards to the legislation used to enforce licence conditions</p>
<p>Mobile Homes page 20</p> <p>Under the sub-heading Caravan Sites and Control of Development Act 1960 as amended by the Mobile Homes Act 2013, at the end of the section insert:</p> <p>The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 ("the Regulations) require the manager of a relevant protected site to be a Fit and Proper Person.</p> <p>The occupier of a relevant protected site under the Regulations must apply to the Council for the relevant person (themselves or their appointed manager) to be added to the register of fit and proper persons ("the register").</p> <p>The occupier may only apply to be added to the register if they hold, or have applied for, a site licence for the site. This provision also applies where the occupier or site manager is a registered company.</p> <p>Existing occupiers will be required to submit a completed application before 1 October 2021.</p> <p>New occupiers will be required to make an application within the relevant period in accordance with the Regulations.</p>	<p>To include reference to the need for site managers of relevant protected sites to be a Fit and Proper Person</p>

<p>A local authority must be satisfied that the site owner <i>"is a fit and proper person to manage the site"</i> or, if the owner does not manage the site, <i>"that a person appointed"</i> to do so by the site owner <i>"is a fit and proper person to do so"</i> or has, with the site owner's consent, <i>"appointed a person to manage the site."</i></p> <p>Where a site owner or their manager fails the fit and proper person test, and they are unable to identify and appoint a suitable alternative manager, who must pass the fit and proper person assessment, the local authority can instead appoint a person to manage the site, but only with the consent of the site owner.</p> <p>In the event that the Council have to appoint a person to manage a site, with the occupier's consent, the costs incurred by the Council will be recovered from the occupier in accordance with the Regulations.</p> <p>See appendix 7 for full details of the Council's determination policy in respect of the fit and proper person test for entry onto the register of fit and proper persons under the Caravan Sites and Control of Development Act 1960 (as amended).</p>	
<p>Add Appendix 7:</p> <p>Mobile Home Site Manager - Fit and Proper Person Determination</p> <p>(see attached)</p>	<p>To include the determination process in the policy for use in the assessment of applications for entry onto the fit and proper person register</p>

The Lead Member has been consulted and has approved the amendments to the Private Sector Housing Policy

Comments from HR

Not applicable

Financial Implications

There will be no impact on the 2021/2022 budget in respect of charges as the additional costs will be recovered via the new fee included in the Park Homes Fees Policy. The overall aim on the budget will be an estimated increase in income of £800, which will offset by the increased expenditure of £800.

Risk Management

Failure to review the policy and include the determination process - may result in applications being submitted and the council being unable to assess and process those applications.

Key Decision:

No

Background Papers:

Cabinet Report 10th May 2018
(approval of the Private Sector
Housing Enforcement Policy).

DD069 2020 (approval of the
inclusion of appendix 6 to clarify the
approach to be taken during the
COVID 19 pandemic).

DD120 2021 (Review of the Park
Homes Fees Policy).

Mobile Home Site Manager – Fit and Proper Person Determination

The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020, require the manager of a site to be a Fit and Proper Person (“the Regulations”). The Council is accordingly required to introduce a fit and proper person test for mobile home site owners, or the person appointed to manage the site, unless they are eligible for an exemption under the Regulations¹.

The Regulations, made on 23 September 2020, allow local authorities to receive applications from site owners, or the person appointed to manage the site, from 1 July 2021 up to and including 30 September 2021.

The Council must be satisfied that the site owner “*is a fit and proper person to manage the site*” or, if the owner does not manage the site, “*that a person appointed*” to do so by the site owner “*is a fit and proper person to do so*” or has, with the site owner’s consent, “*appointed a person to manage the site.*”

Where a site owner or their manager fails the fit and proper person test, and they are unable to identify and appoint a suitable alternative manager (who must pass the fit and proper person assessment) the Council can appoint a person to manage the site, but only with the consent of the site owner.

Principally, the fit and proper person test applies to relevant protected sites. A relevant protected site is a site which requires a licence, which is not solely for holiday purposes, or is otherwise not capable of being used all year round. The fit and proper person requirement will ensure that site owners, or their managers, have integrity and follow best practice. Additionally, it provides the safeguard that such individuals will not pose a risk to the welfare or safety of persons occupying mobile homes on the site.

¹ *ie it is a non-commercial, family occupied site under Regulation 3

The Evidence

When conducting the fit and proper person assessment, the Council must consider the following points relevant to the application:

1. **Is the individual able to conduct effective management of the site.** This includes, but is not limited to, securing compliance with the site licence and the long term maintenance of the site.

The Council must have regard to:

- i. whether the person has a sufficient level of competence to manage the site.
- ii. the management structure and funding arrangements for the site, or the proposed management structure and funding arrangements.


Competence to manage the site

This includes reviewing the competency of the appointed individual. The individual must have sufficient experience in site management, or have received sufficient training, and be fully aware of the relevant law as well as health and safety requirements.

The management structure and funding arrangements for the site

The Council must consider whether relevant management structures are in place and whether they are adequate to ensure effective management of the site. The applicant is expected to have a robust management plan, which should address following

- the pitch fee payment,
- proximity of the manager to the site,
- manager's contact details for residents (including out of office and emergency contact details),
- the complaints procedure,
- maintenance, refuse/recycling removal.
- Staffing.



It is advisable that the site is managed by an applicant based in the UK and that a management structure would be unlikely to be considered suitable if the applicant is an individual, or a company (including its directors), which does not reside or have a permanent UK address. This is because there may be complex issues as a result of this, such as needing the court's permission to serve a claim in a foreign country.

The applicant's interest in the land will have an important impact, as would their financial standing, management structures and competence, all of which could contribute to the overall assessment of their suitability to manage to effectively manage the site.

The proposed management structure and funding arrangements in place for managing the site

The Council must consider whether the applicant has sufficient funds (or has access to sufficient funds) to manage the site and comply with licence obligations. Evidence of these funds should be readily available.

2. Personal information relating to the applicant concerned. This would include a criminal record check and should include evidence that the applicant:

- has not committed any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements);
- has not contravened any provision of the law relating to housing, caravan sites, mobile homes, public health, planning or environmental health or of landlord and tenant law;
- has not contravened any provision of the Equality Act 2010 in, or in connection with, the carrying on of any business;
- has not harassed any person in, or in connection with, the carrying on of any business;
- is not or has not been within the past 10 years, personally insolvent;
- is not or has not been within the past 10 years, disqualified from acting as a company director;
- has the right to work in the UK;

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- is a member of any redress scheme enabling complaints to be dealt with in connection with the management of the site (when this is in place).


The Council has a duty to investigate any conduct which could amount to harassment and any evidence obtained will be reviewed to determine whether it is sufficient to be used to prosecute a site owner. Local authorities may rely on convictions by the courts as evidence of harassing behaviour.

The Council may have records of previous harassment complaints made against a site owner, or their manager and even if no action was taken on these complaints, they will still be taken into consideration in the fit and proper person determination. These complaints may identify further potential risks and can provide an indication of potential underlying problems with the management of the site, or the site owner's lack of experience/skills in dealing with customers. The Council may address any underlying issues by attaching conditions to the individual's entry on the register.

3. **Rejection of an application by other local authorities.** Upon rejection of a person's application by any other local authority this should be centrally recorded and include the details of the person involved and the reasons for the rejection.

Other Considerations

1. The applicant" is defined at paragraph 2 of the Regulations as "the person who makes an application under regulation 6".
2. The "relevant person" is defined at paragraph 2 of the Regulations to mean "the subject of the fit and proper person assessment under Regulation 7".
3. The conduct of any person associated or formerly associated with the relevant person (whether on a personal, work, or other basis) is an important factor to be considered in the fit and proper person assessment.
4. Site owners may be required to provide details of any current or former associates of the relevant person in the application form. Those associates will not include other current joint owners as that information would have already been required in their own application forms.

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5. It is not routinely required to provide information of all current or past associates of the site owner. However, prior to making any final decisions, the Council will consider the conduct of past and current associates relevant to that individual's application. The site owner can be asked to provide additional information during the application process.
 6. The Council is required to establish whether an individual is considered to be an associate of the relevant person and then whether their conduct is relevant to the application. A relevant associate could be defined as any individual who may have played a part, directly or indirectly, in a decision or action, which has had an impact on residents' rights, or the quiet enjoyment of their homes.
 7. The Regulations are drafted widely giving the opportunity for local authorities to take into consideration other relevant matters. The Council is mindful that poor management practices do not necessarily affect a person's conduct unless they are a breach of the criminal or civil law. A person cannot be deemed unfit due to conduct, simply because of poor management, although this is highly relevant to determining any question of suitability or competence. All conduct is relevant in relation to the person's fitness to hold a licence and/or manage the particular mobile home site.
 8. The Council is able to decide the specific matters they deem relevant to the fit and proper person application. These matters could be in relation to current or previous issues, or events, that have occurred in relation to the mobile home site, or any other mobile home site owned or managed by the site owner, or site manager, in another local authority area. Additionally, the site owner's conduct regarding other business, outside of the mobile homes sector, can have implications on the financial and management arrangements of the site in question. Any matters which the Council believe to be of relevance to the application should primarily focus on the relevant person's conduct, competence and their suitability to manage the site.
 9. The Council aim to obtain evidence to support any additional matters that they require to be taken into consideration for each application. The evidence could include previous tribunal and court decisions, documents or records from Companies House, or other public bodies or financial institutions. It is not

anticipated that allegations which have not been investigated, or documented will be used as evidence to support a decision.

Applications

The Regulations use various terms in the application process, and these are outlined below:

“Relevant Person” is defined in paragraph 2 of the Regulations and is “the subject of the fit and proper person assessment under Regulation 7”. Please note that this could be the site owner or person appointed to manage the site by the site owner.

“Relevant Officer” is defined in paragraph 1 of Schedule 2 of the Regulations, where the applicant is a company, a relevant officer will be a director or other officer of the company; or, where the applicant is a partnership, a partner; or, where the applicant is a body corporate, a member of the management committee of that body.

“Required Information” is defined in paragraph 14 of Schedule 2 of the Regulations (N.B: The Regulations incorrectly state that this information is contained in paragraph 13) as:

- the person’s name and business contact details;
- details of the person’s role or proposed role in relation to the management of the site; where the person has not yet been appointed, the address, telephone number and email address (if any) at which the person may be contacted in respect of the application;
- details of each relevant protected site (other than that to which the registration application relates) — for which the person holds a licence issued under section 3 of the Caravan Sites and Control of Development Act 1960, or in which the person has a legal estate or equitable interest, or which the person manages.

The application for inclusion in the fit and proper register, must therefore include the following:

Details of the site and the applicant:

Information provided must include:

- (1) The applicant's name and business contact details.
Where the applicant is not an individual, the following information in relation to the individual completing the application on behalf of the applicant and each relevant officer:
 - (i) the person's name.
 - (ii) details of the person's role (if any) in relation to the management of the site.
- (2) The name and address of the site.
- (3) Evidence of the applicant's legal estate or equitable interest in the site.
- (4) Confirmation that the applicant is the occupier within the meaning of section 1 of the Caravan Sites and Control of Development Act 1960.
- (5) The name and business contact details of any other person that has a legal estate or equitable interest in the site.

The name and address of each other relevant protected sites:

Information provided must include the name(s) and address(es) of any other relevant protected site(s):

- (1) for which the applicant holds a licence issued under section 3 of the Caravan Sites and Control of Development Act 1960;
- (2) in which the applicant has a legal estate or equitable interest; or
- (3) that the applicant manages.

The applicant must clearly specify whether their application is made in respect of either the applicant, or site owner, or the person that the applicant or site owner has appointed to manage the site.

Information relating to the site manager

In circumstances where a site manager has been appointed to manage a site, more information is needed. The person who is applying for the site manager to be registered as a fit and proper person (the relevant person) must provide the following information: the site manager's name and details of that person's role (if any) in relation to the management of the site.



If the site manager has appointed or intends to appoint a further individual (“A”), Required Information would be needed from A. And where A is not a relevant officer

of the site manager, the relevant officer to whom A is accountable. for the day to day management of the site, should be the one to provide the Required Information.

Additional information when the applicant is the relevant person and an individual

When the applicant is the relevant person, and is an individual, and the applicant has appointed, or intends to appoint, someone else (“B”) to be responsible for the day to day management of the site, Required Information would be needed from B. If B is not an individual but is, instead, for example, a company, and B has appointed an individual (“C”) to do the day to day management, Required Information would be needed from C. Where C is not a Relevant Officer of a company, the Relevant Officer to whom C is accountable for the day to day management of the site would need to provide the Required Information.

Additional information where the applicant is the relevant person and not an individual

When the applicant is the relevant person but is not an individual and the applicant has appointed or intends to appoint someone else (“B”) to be responsible for the day to day management of the site, Required information would be needed from this person. If B is not a Relevant officer of the applicant, the person to whom B is accountable for the day to day management of the site (“C”) would need to provide the Required Information. Where B itself is not an individual, the individual (“D”) that B has appointed or intends to appoint to be responsible for the day to day management of the site would need to provide the Required Information. Where D is not a Relevant officer of B, the relevant Officer to whom D is accountable for the day to day management of the site would need to provide the Required Information.

It can be seen from the above that the Regulations prohibit the operation of a relevant protected site unless the site owner or its site manager (whatever the management structure might be) has been assessed by the local authority as a fit and proper person to do so. This has been included to ensure that consistent standards are applied to companies and other organisations that are not individuals.

Criminal Record Certificate/s

Criminal Records Certificates must be issued under section 113A (1) of the Police Act 1997 and will be required where: (a) the Relevant Person is an individual and (b) for each individual in relation to whom the applicant is required to provide information for example, a site manager or individuals A, B, C or D as outlined above.

The Council has the discretion to require the criminal record check to be either basic or enhanced.

The certificate must have been issued no more than six months before the date of the application. It is incumbent upon the site owner to ensure that any certificates provided meet this requirement.

Declaration

A declaration made and signed by the “appropriate person”, which means:

- (a) where the applicant is a company, a director or other officer of the company;
- (b) where the applicant is a partnership, one of the partners;
- (c) where the applicant is a body corporate and the conduct of the management of the body is vested in its members, a member;
- (d) where the applicant is not a body falling within (a) to (c) above, a member of the management committee;
- (e) where the applicant is an individual, that individual.

Where the applicant is not the relevant person, the declaration must confirm that the applicant has made all reasonable enquires into the matters mentioned in paragraph 9 of the Regulations and considerations relevant to the fit and proper person assessment as set out below.

The declaration should state that the information provided in the application is correct and complete to the best of the applicant’s knowledge and belief.

Considerations relevant to Fit and Proper Person Assessment

Proper management of the site includes, but is not limited to, securing compliance with the site licence and the long term maintenance of the site.

To be able to secure the proper management of the site, the Council must (amongst other things) have regard to whether the relevant person has a sufficient level of competence to manage the site and the management structure, or proposed management structure and funding arrangements for the site in question.

Decisions, Notification and Rights of Appeal

The Council must make a decision on the application in a timely and practicable manner.

Where the decision is to grant the application unconditionally and include the relevant person on the register for 5 years, the Council will serve a final decision notice on the applicant. Where this is not the case, the Council will serve a preliminary decision notice on the applicant.

On receipt of an application the Council may:

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

Grant the Application Unconditionally

Where the Council is satisfied that the applicant meets the fit and proper person test unconditionally, the applicant will be included on the register for a maximum 5 years. Charnwood will issue a final decision notice to the applicant to inform them of its decision.

The final decision notice will clearly state:

- (a) the date the final decision notice is served;
- (b) the final decision;
- (c) the reason(s) for the decision;

- (d) when the decision is to take effect;
- (e) information about:
 - (i) the right of appeal to the First Tier Tribunal; and
 - (ii) the period within which an appeal may be made.

To include the applicant on the Register subject to certain Condition(s)

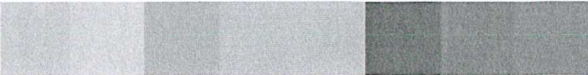
In some circumstances, the Council can specify that the individual for the fit and proper person test will only be successful if certain conditions are met. If these conditions are satisfied, an application can be granted subject to those condition(s). An entry on the register can be granted for less than 5 years.

The Council may decide to include the person on a register subject to condition(s), if it would only be satisfied that the person would meet the fit and proper requirement if the condition(s) were complied with. An applicant will be able to appeal against the decision to attach (or vary) any condition to an entry on the register. It is therefore imperative for the Council to have clear and justifiable reasons for attaching any condition(s) and that any conditions imposed can be enforced.

Conditions will need to be clearly stated for the applicant's understanding and this will allow the Council to ensure that the condition(s) are enforceable.

An example of the requirements is included in the table below.

Specific	The specific condition(s) a site owner is being requested to address.
Measurable	The condition(s) required, and the outcome(s) expected.
Achievable	The applicant should be reasonably expected to be able to achieve the condition. For example, it may not be reasonable to expect a site owner of one small site to have the same resources to introduce the same procedures as a medium sized company.
Realistic	The applicant should have a clear understanding of how the required outcome can be reached and that there are no circumstances or factors which would make the achievement of the outcome impossible or unlikely.
Timebound	A clear timescale in which the task/action must be completed.



Matters to which Conditions can relate

The fit and proper person test is aimed at ensuring that the person managing the site is competent and the conditions should relate directly to the person's ability to secure the proper management of the site.

Where a person has contravened legislation, or committed offences set out above, it is not recommended that conditions are set in relation to those matters. This is because such a condition would be unlikely to meet the tests set out above; for example, if a person has committed fraud or violence, that specific incident cannot be reversed by requiring the person to perform a specific task.

In cases where the person has committed those listed offences or contravened legislation, the Council will consider these breaches, together with all the other information available, to reach a preliminary decision.

Conditions can relate to any factors which are relevant to the persons competence to manage the site, the management structure, or funding arrangements for the site, an associated person's influence, or any other relevant factor.

Example 1 - A local authority has evidence of a site owner's failure over a certain period of time to address resident's complaints. This is an example of poor management which could be resolved by the site owner implementing an adequate complaints procedure. A condition could be attached requiring the site owner to *"implement an effective and accessible three stage complaints process for residents by xx date and provide the LA with quarterly reports of complaints and outcomes, from that date and for the first year"*.

If the condition is met within the specified time frame, the local authority can record this in the register. If, at a future date, it is found that the site owner failed to implement a complaints procedure, a further opportunity to comply may be given and this could include a new condition of the site owner providing quarterly reports of complaints and outcomes for each year. The site owner could be expected to complete a relevant "CPD customer service/Dealing with complaints" course by a certain period. However, should the local authority consider the actions as unlikely to achieve the desired outcome, the site owner could be removed from the register.

Example 2 – If, when considering an application, certain documents or information are unavailable to the applicant, because of delays from third parties, the local authority may wish to attach a condition to the entry on the register that the site owner “is to provide the authority by registered post, with the original xx document by xx date”.

Example 3 - An associated person has been visiting the mobile home site and, through their action ‘X’, has caused distress to the residents impacting their wellbeing and security. A condition could be attached to the register requiring the site owner to put measure(s) in place by xxx date preventing the associated person, or any other person, from carrying out action X on the site.

Decision not to include the Applicant on the Register

Should the Council determine that the applicant does not meet the requirements, and attaching conditions would not be appropriate, a refusal to grant the application can be issued.

Where the Council makes a decision to include the applicant on the register, subject to conditions, or not to include the applicant on the register, a preliminary decision notice to the applicant must be issued.

The preliminary decision notice must clearly state:

- (a) the date the preliminary decision notice is served;
- (b) the preliminary decision;
- (c) the reason(s) for it;
- (d) the date it is proposed that the final decision will have effect;
- (e) information about the right to make written representations
- (f) where the preliminary decision is to refuse the application, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the Regulations; and
- (g) where the preliminary decision is to grant the application subject to condition(s), the consequences of failing to comply with any condition(s).

Right to make a Representation

An applicant who receives a preliminary decision notice will have 28 days in which to make representations to the Council. The 28 day period begins with the day after the day on which the notice was served. The Council is obliged to consider any representations before making a final decision.

Final Decision Notice

Following the end of the 28 day representation period, the Council must, as soon as reasonably practicable, make a final decision and serve the decision notice on the applicant.

The final decision notice must set out:

- (a) the date the final decision notice is served;
- (b) the final decision;
- (c) the reason(s) for it;
- (d) when the decision is to take effect;
- (e) information about the right of appeal and the period within which an appeal may be made;
- (f) where the decision is to refuse the application, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the Regulations; and
- (g) where the decision is to grant the application subject to conditions, the consequences of failing to comply with any condition.

Appeals

The applicant can decide to appeal the decision by making an application to the First tier Tribunal (Property Chamber) (“the tribunal”) within specific timeframes set by the tribunal. The applicant is permitted to appeal against any decisions served by the Council. These could include:

- (a) including the relevant person on the register for an effective period of less than 5 years;

- (b) including the relevant person on the register subject to conditions; and
- (c) rejecting the application.

Where an applicant accepts the Council's decision not to include the person originally stated in the application on the register, they will be required to seek alternative management arrangements to comply with the fit and proper person requirement. If they fail to do so they will be committing an offence.

An appellant will not be able to claim compensation for losses incurred pending the outcome of an appeal.

Withdrawal or Amendment of Notice

There may be circumstances where the Council may decide not to continue, or to withdraw, a previously agreed action, such as after serving:

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

To withdraw or amend a notice, the Council must serve notice to the person on whom the original notice was served.

There are no requirements for notices to contain specific information, however, it is recommended that a withdrawal or amendment notice should state:

- a) that the original notice (a copy of the original notice should be attached for reference) is being withdrawn/amended;
- b) the reason(s);
- c) the date it takes effect; and,
- d) the implications of the decisions in relation to the person's entry on the register.

Removal from the Register

If, after a person is included in the register, and new evidence relevant to the person's inclusion becomes available, the Council may decide to:

- a) remove the person from the register;
- b) impose a condition on the inclusion of the person in the register (whether or not there are conditions already imposed);
- c) vary a condition; or
- d) remove a condition.

The Council must use its judgement when determining whether to review an entry and consider any subsequent actions are required. It is recommended that any such decision should be related to the person being a fit and proper person rather than, for example, site licensing issues which are governed separately. If the Council decides to take any of the actions listed a) to c) in the above paragraph, a notice of proposed action will be served on the occupier.

The notice of proposed action must clearly state:

- a) the date the notice of proposed action is served;
- b) the action that the Council proposes to take;
- c) the reason(s) for it;
- d) the date it is proposed that the Council will take the action;
- e) information about the right to make written representations;
- f) where the proposed action requires the removal of a person from the register, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of the Regulations; and
- g) where the proposed action is to impose a condition on the inclusion of a person in the register or to vary a condition, the consequences of failing to comply with said condition(s).

A notice of proposed action is not required if the Council decides to remove a condition attached to an entry. A removal of a condition is viewed widely as being a positive step, which is unlikely to be opposed. It is for that reason that a notice of proposed action is not required. As good practice though, it is recommended that local authorities make the site owner or their manager aware of the decision in writing and ensure the register is updated.

Notice of Action Taken

Where a notice of proposed action is given, the occupier will have 28 days, starting from the day after the notice is served, in which to make representations.

The Council must, as soon as reasonably practicable after the end of the 28 day period, decide whether to carry out the proposed action.

Where the Council decides to take the action, a further notice will be served on the occupier, indicating the action that has been taken, within the period of 5 working days beginning with the day after the day on which the action was taken.

The notice of action must set out—

- (a) the date the notice of action is served;
- (b) the fact that they have taken the action;
- (c) the reason(s) for doing so;
- (d) the date the action was taken;
- (e) information about the right of appeal and the period within which an appeal may be made;
- (f) where the action is to remove a person from the register, the consequences of causing or permitting the land to be used as a relevant protected site in contravention of Regulations; and
- (g) where the action is to impose a condition on the inclusion of a person in the register or to vary a condition, the consequences of failing to comply with any condition.

Offences

There are 3 offences which can occur within the Regulations. They are as follows:

- Operating a site in contravention of the fit and proper person Regulations - The site owner will have certain defences under the Regulations in any proceedings brought against them.

- Withholding information or including false or misleading information in the registration application the site owner will not have any defences under the Regulations in any proceedings brought against them for this offence.
- Failing to comply with a specified condition - The site owner will have certain defences under the Regulations in any proceedings brought against them.

A site owner found guilty of any of the above offences will be liable on summary conviction to a level 5 (currently unlimited) fine.

Defences

One defence is available to a site owner who has inherited a site and would be found to have a reasonable excuse for failing to make an application within the relevant periods as set out below.

Relevant periods in Specific Circumstances

The below table outlines limited circumstances where a site owner may have a defence:

Row	Circumstance	Relevant period for making an application in the circumstance
1	The occupier held a site licence immediately before the day on which Regulation 4 (operating a site without being a fit and proper person) came into force, on 1 October 2021.	From 1 st July 2021 and before 1 October 2021, the day on which Regulation 4 came into force
2	The period of a person's inclusion in the register in relation to the site has come to an end other than as a result of action by the local authority under Regulation 8(1)(a) (removal from the fit and proper register after new relevant evidence becomes available).	Not less than two months before the end of the period of the person's inclusion in the register

3	At the time that the occupier became entitled to possession of the land it was in use as a relevant protected site; and within the period of 28 days beginning with the day after the day on which the person became the occupier of the land the occupier notifies the relevant local authority of its intention to make an application under Regulation 6 (application for inclusion in the register)	Within the period of 3 months beginning with the day after the day on which the person became the occupier of the land
4	At the time that the occupier became entitled to possession of the land it was in use as a relevant protected site; and the occupier does not give the notification referred to in row 3 above	Within the period of 28 days beginning with the day after the day on which the person became the occupier of the land
5	A person appointed to manage the site no longer does so; and within the period of 28 days beginning with the day after the relevant day the occupier notifies the relevant local authority that the person no longer does so	Within the period of 3 months beginning with the day after the relevant day
6	A person appointed to manage the site no longer does so; and the occupier does not give the notification referred to in row 5 above	Within the period of 28 days beginning with the day after the relevant day
7	The breach of Regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has removed a person from the register; and within the period of 28 days beginning with the relevant day in relation to the local authority's decision the occupier notifies the relevant local authority of its intention to make a new application under Regulation 6 (application for inclusion in the register) in relation to the site	Within the period of 3 months beginning with the relevant day
8	The breach of Regulation 4(1) arises because the local authority has removed a person from the register; and the occupier does not give the notification referred to in row 7 above	Within the period of 28 days beginning with the relevant day

9	The breach of Regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has rejected an in time application; and within the period of 28 days beginning with the relevant day in relation to the rejected application the occupier notifies the relevant local authority of its intention to make a new application under Regulation 6	Within the period of 3 months beginning with the relevant day
10	The breach of Regulation 4(1) (operating a site without being a fit and proper person) arises because the local authority has rejected an in time application; and the occupier does not give the notification referred to in row 9 above	Within the period of 28 days beginning with the relevant day

The Fit and Proper Persons Register

The Council will set up and maintain a register of persons who they are satisfied are fit and proper persons to manage a site in their area. This register will be open to inspection by the public during normal office hours and will be published online.

The register will provide a record of the outcome of the fit and proper person tests carried out and will include the following:

- (a) the name and business contact details of the person;
- (b) the name and address of the relevant protected site to which the application relates;
- (c) the status of the person (site owner or manager of the site);
- (d) the dates of the first and last day of the period for which the person's inclusion in the register has effect;
- (e) whether any condition is attached to the person's inclusion in the register; and
- (f) where any condition is attached to the person's inclusion in the register—
 - (i) the number of any such conditions;
 - (ii) the dates of the first and last day of the period for which any such condition applies (if applicable); and

(iii) the date any condition is varied or satisfied (if applicable).

A person's inclusion on the register will be for such period as the Council decide but will not exceed 5 years.

In order to comply with the fit and proper person requirement, a site owner must submit a new application for the person (or alternative) to be included in the register at least two months before the existing inclusion in the register comes to an end.

Where there are refused applications, the following information must be included in the register:

- (a) the name and address of the site to which the application relates;
- (b) that an application in respect of the site has been refused;
- (c) the date on which the application was refused.

Details of the refused application will remain on the register until a successful fit and proper person application is made in respect of the owner or manager of the site. The name of the refused applicant will not be included on the register; however, the Council will be able to consider requests for further information about the entry on the register; for example, the details of the specific conditions attached and any additional information, on a case by case basis and in accordance with data protection legislation.

Where the Council has, with the site owner's consent, appointed a person to manage the site, the Council must include the following information:

- (a) the name and business contact details of the person;
- (b) the name and address of the site which the person has been appointed to manage;
- (c) the status of the person;
- (d) the dates of the first and last day of the period for which the person's inclusion in the register has effect;
- (e) whether any condition is attached to the person's inclusion in the register; and
- (f) where any condition is attached to the person's inclusion in the register—
 - (i) the number of any such conditions;
 - (ii) the dates of the first and last day of the period for which any such condition applies (if applicable); and
 - (iii) the date any condition is varied or satisfied (if applicable).

