

**Explanatory Memorandum to The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (Wales) Order 2012 and The Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012.**

This Explanatory Memorandum has been prepared by the Housing Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (Wales) Order 2012 and the associated Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012

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## **1. Description**

- 1.1 The Mobile Homes Act 1983 provides security of tenure for residents of mobile or park homes sites and gives them other rights, including the ability to resolve disputes through arbitration or the courts.
- 1.2 The Jurisdiction Order will transfer jurisdiction to determine disputes under the Mobile Homes Act 1983 to Residential Property Tribunals. County Courts will retain jurisdiction only in relation to applications by the owner of a mobile or park homes site to terminate the agreement that allows a person to station a park home on the site and to occupy it as his main residence. The accompanying Fees and Procedures Regulations will define the arrangements that will apply following transfer.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

None.

## **3. Legislative background**

- 3.1 The current rights, liabilities and obligations of site owners and residents are regulated through the Caravan Sites and Control of Development Act 1960, The Caravan Sites Act 1968 and the Mobile Homes Act 1983 as amended by the Housing Act 2004.
- 3.2 Section 229(3) of the Housing Act 2004 gave powers to the National Assembly for Wales to confer jurisdiction on residential property tribunals. These powers are now vested in the Welsh Ministers. Section 229(4) gives powers to modify legislation to enact this.
- 3.3 The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (Wales) Order 2012 will be subject to approval of the National Assembly for Wales under the affirmative procedure, and the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012 will be subject to annulment under the Negative procedure.

## **4. Purpose & intended effect of the legislation**

- 4.1 The Jurisdiction Order transfers most of the jurisdiction to determine disputes under the Mobile Homes Act 1983 from the county courts to Residential Property Tribunals.
- 4.2 The aim of the transfer is to introduce a system for bringing proceedings, and resolving disputes under the 1983 Act which operates fairly between residents and site owners and which ensures both are treated on an equal footing, through access to low cost, specialist non-adversarial tribunals that can use

their expertise to resolve matters between parties relatively informally, cheaply and quickly.

- 4.3 Residential Property Tribunals are one of a group of tribunals administered by the Residential Property Tribunal Service. In Wales, it is known as the Residential Property Tribunal for Wales. This is a non-departmental public body sponsored jointly by the Department for Communities and Local Government and the Welsh Assembly Government.
- 4.4 The other tribunals which come under the umbrella of the Residential Property Tribunal for Wales are: Leasehold Valuation Tribunals, Rent Assessment Committees and Rent Tribunals. These, and Residential Property Tribunals, are specialist tribunals which adjudicate on a range of housing, residential valuation and landlord and tenant issues. Members are appointed, and are eligible, to sit on any of the tribunals within the group.
- 4.5 It is estimated that there are currently around 100 residential park home sites in Wales containing some 5,500 homes which are protected by the 1983 Act. About 10,000 people in Wales live in mobile or park homes as their main place of permanent residence. The 1983 Act (which was significantly amended by the Housing Act 2004) among other things, confers security of tenure on residents providing they occupy the home as their only or main residence; it regulates the amount of pitch fee (rent) payable and gives residents the right to assign their agreements and sell their homes, subject to the buyer being approved of by the site owner.
- 4.6 Under the 1983 Act, disputes between residents and site owners are determined by the county court or an arbitrator. If the agreement under which the park home is stationed requires disputes to be referred to arbitration, this ousts the county court's jurisdiction. It has been a source of complaint for some time from park home residents that the use of county courts to resolve disputes under the Act often favours site owners and disadvantages residents, two thirds of whom are thought to be over the age of 60 and on limited and fixed incomes. (Economics of the Park Home Industry published by ODPM in October 2002).
- 4.7 The Jurisdiction Order is being introduced along with The Residential Property Tribunal Procedures and Fees (Wales) Regulations 2011 to give effect to the transfer of the jurisdiction. These procedure and fee regulations set out, amongst other matters, the procedure to be adopted and fee charged in respect of applications to a tribunal brought under the 1983 Act.
- 4.8 The Mobile Homes (Written Statement) (Wales) Order 2007 which prescribes the information to be included within in the formal agreement between a site owner and a resident, as required under section 1 of the 1983 Act will not be affected by this transfer of jurisdiction and will continue to apply.
- 4.9 The original intention was to bring forward the proposed legislation jointly with England, however, due to timing and other considerations, it is now being introduced separately in each country. In England, additional legislation is being introduced which will bring local authority owned Gypsy and Traveller sites within the remit of the Mobile Homes Act 1983. Consequently, dispute

resolution on these sites will be transferred to Residential Property Tribunals in England. The appropriateness of implementing a similar policy in Wales will be considered once consultation has been carried out with the Gypsy and Traveller communities.

## **5. Territorial Extent and Application**

- 5.1 These instruments will apply to Wales. Similar legislation was made in England on 30 April 2011.

## **6. Consultation**

- 6.1 In May 2008, the Welsh Assembly Government issued a joint consultation with the Department of Communities and Local Government called “*A New Approach for Resolving Disputes and to Proceedings relating to Park Homes under the Mobile Homes Act 1983 (as amended)*”. It contained three options on which consultees were invited to comment:

- Option 1      Retaining the county court’s jurisdiction under the Act
- Option 2      Transferring the jurisdiction to Residential Property Tribunals (other than in respect of termination proceedings)
- Option 3      Transferring the jurisdiction to a dedicated tribunal solely dealing with park home cases (other than those relating to termination proceedings)

- 6.2 In addition, the consultation sought views on whether agreements under which the use of an arbitrator to resolve disputes is mandatory should no longer be binding and whether this rule should apply to existing agreements containing such a provision.

- 6.3 The consultation also sought views on onward appeals and upon procedures to be adopted and fees to be charged by Residential Property Tribunals (if that were the adopted option) in dealing with cases under the 1983 Act.

- 6.4 There were 1760 responses to the consultation paper. 1650 were in the form of a campaign letter from residents; 80 were individual responses from residents; 12 were from residents’ associations, including two of the national resident groups; 6 were from site owners, including the two national trade bodies and 12 were from other interested organisations, including local authorities, professional bodies and representatives of Gypsies and Traveller interests.

- Six consultees supported option 1.
- 96 consultees (and in addition those supporting the campaign) supported option 2.
- Four consultees supported option 3.

- 6.4 Most of the consultees who supported option 1 were a minority of site owners and those representing Gypsies and Traveller interests. The comments included that tribunal decisions were not binding; the courts could award

costs; the use of the courts was of paramount importance; the case for change had not been made out and there was concern about ousting the courts in favour of administrative tribunals.

- 6.5 Those who supported option 3 (residents and site owners) thought this would be ideal, but considered it unlikely because it would not be cost effective.
- 6.6 The significant majority (almost all residents and their representatives, the majority of site owners and large proportion of the other interested organisations) supported option 2. Amongst others, some of the reasons given by consultees for supporting this option were: that proceedings would be quicker and cheaper than in the county court; tribunal proceedings would be less intimidating and stressful than those in the court; Residential Property Tribunals have a wealth of experience in landlord and tenant issues; access to justice was denied to residents in the courts because of expense and the threat of court action which residents could ill-afford can be used as a means of intimidating and harassing residents. A minority of consultees, including those representing Gypsies and Traveller interests, opposed this option for, amongst other reasons, that legal representations may not be possible to obtain because legal aid is not available in tribunals, which could breach the human right to a fair trial; that tribunal proceedings could be complicated and time consuming and because of that, residents may not be able to represent themselves; tribunals do not award costs and it was thought their decisions could not be enforced.
- 6.7 In May 2009, a further mini consultation was undertaken on whether the “fact finding” role of the court in the termination of agreement cases should be transferred to Residential Property Tribunals; it being proposed that determination on whether it was reasonable to authorise termination remaining with the county court. The consultation period was shorter than normal (4 weeks) because it introduced no new policy principle and merely sought views on a discrete aspect of one of the jurisdictions of the Act. There were 18 responses to this consultation, including two from of the national residents’ groups, the two national trade organisations, representatives of Gypsies and Travellers interests and other professional bodies. The majority of consultees (13) disagreed with the proposal, including the trade organisations and all those representatives of Gypsies and Traveller interests. A minority, including the national residents’ group and some of the professional organisations (5) supported it.
- 6.8 Subsequently, the Governments indicated that the jurisdiction in respect of the “fact finding” role of the county courts in termination cases would not be transferred to Residential Property Tribunals, except in relation to proceedings for termination on account of disrepair. The view of the minority of consultees who supported the transfer was accepted, that Residential Property Tribunals were better qualified than the courts to evaluate property conditions and repairs that might be required.

## **7. Impact**

- 7.1 The proposed transfer will impact on owners of park home sites in the private sector in Wales. The cost of presenting or defending a case in the court is

estimated to be in the region of £ 4,000 plus. The fee for presenting an application to a Residential Property Tribunal will not exceed £150 (where a fee is payable at all). A tribunal does not award costs to follow, i.e. parties bear their own costs, if any, win or lose. Consequently, proceedings in the tribunal can result in significant financial savings to parties as compared to those in the courts.

- 7.2 It is estimated that the annual cost to the Residential Property Tribunal Service (England and Wales) in exercising this jurisdiction will be about £152,500 defrayed from its current budget of £10 million and, therefore, no additional cost to the public sector will be incurred.
- 7.3 The legislation applies to small business, as most sites in the private sector are owned by businesses that meet the definition. However, it is not believed that the proposals will have any significant impact upon them, other than to the extent of the potential savings outlined in paragraph 7.1.

## **PART 2 REGULATORY IMPACT ASSESSMENT**

An Impact Assessment was included as part of the joint consultation document issued in May 2008.

Few consultees commented on the draft Impact Assessment and there were few, if any, significant or clear objections or differences of opinion expressed on the costs and benefits identified in the assessment. There have been no subsequent significant changes to the facts and figures provided at the time of the consultation and so no further assessment has been undertaken. The findings of the Impact Assessment are attached.

## **Impact Assessment**

### **What is the problem under consideration? Why is government intervention necessary?**

The Government has accepted that there are concerns over the time and cost it takes to bring a case before the County Court under the dispute resolution provisions in the Mobile Homes Act 1983. The proposal is, therefore, to transfer the jurisdiction of the court to a low cost specialist housing tribunal – the Residential Property Tribunal.

### **What are the policy objectives and the intended effects?**

The objective is to promote speedier, and for most, more access to justice through the auspices of a low cost, informal specialist tribunal. The effect would be to create greater parity in dispute resolution between landowners and the residents.

### **What policy options have been considered?**

Three options have been considered - Do nothing; to transfer the jurisdiction of the 1983 Act to the Residential Property Tribunal (RPT), or the creation of a new park homes tribunal service. The middle option of the transfer to the RPT is proposed.

### **When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

The Policy will be reviewed three years after it has come into force.

## **Background**

The park home sector is a small, but valued part of the housing industry, usually catering for older people in the community. In law, a park home is a “caravan”, but in reality they are more akin to prefabricated bungalows, many of which are often of very high quality. Park home sites are laid out as private estates, with most services and amenities to the home being provided by the site owner.

The tenure arrangements for homes is also unusual in that the resident owns the home, but rents from the site owner the plot of land on which it is situated. Since a park home is a “caravan” and not therefore attached to the land in the usual sense of the word, the resident does not possess a legal estate in it, unlike, for example, a leaseholder. The home is legally a “chattel”, and the resident only has permission, i.e. via a “licence”, to station it on the plot. This puts the site owner in a very strong position vis-à-vis the resident. To a degree this imbalance has been addressed by the Mobile Homes Act 1983 which confers security of tenure to residents and regulates many contractual dealings between them and the site owners. This includes conferring on a resident, a right to sell his/her home to a person approved by the site owner.

Notwithstanding the provisions in the 1983 Act, there still exists a problem of unreliable or unscrupulous site owners continuing to act outside of the spirit, or often, the letter of the law. This can involve a number of different things, for example, by providing false or misleading information to potential purchasers of homes, unreasonable behaviour in running, or rather, what can usually amount to mismanagement of a site, or outright harassment of residents not to exercise their right of sale. These activities are usually motivated for financial gain.

The Government does of course view such situations and related activities as being unacceptable, especially as they usually affect or target elderly and vulnerable people. We therefore believe that a clear and compelling need exists for a more effective disputes resolution system.

The current rights, liabilities and obligations of site owners and residents are regulated through the Caravan Sites and Control of Development Act 1960, The Caravan Sites Act 1968 and the Mobile Homes Act 1983 (as amended). Park home sites are permanent residential sites, but do not include sites which are used exclusively for holiday purposes. However, some of the provisions in the legislation do apply to these types of sites.

### **Support for the Proposed Transfer of Jurisdiction**

The Government attaches great importance to a well run park homes sector in which disputes, which inevitably arise as in any sector, can be resolved informally by negotiation and agreement. There is evidence that such good practice is carried out in this sector. Inevitably though it will not always be possible to resolve disputes and so an effective and meaningful third party resolution system needs to be available to the parties.

There is also some evidence of sharp practices, where impediments are put in place to prevent residents exercising their lawful rights by unscrupulous site owners under



the current system. There are also examples where certain site owners liberally and inappropriately use the threat of court action to coerce, often vulnerable, residents into agreeing things they might not otherwise have agreed to.

However, these problems are not in one direction only. There are examples where site owners have been unable to exercise their rights because of the uncooperative and unjustified attitude of residents and the only remedy is to go to court, which in some cases because of expense and delay, is not a viable option. For example, if a site owner wanted to secure a modest increase in the pitch fee and the resident refused to agree to it, he is currently obliged to apply to a county court to secure the increase. On balance the expense and delay in that process may not be worth the effort in enforcing the right to obtain a revised charge.

The Government believes therefore that there should be a level playing field between residents and site owners in resolving disputes that cannot be done so by agreement.

Two consultations were carried out jointly by the Department for Communities and Local Government and the Welsh Assembly Government in 2008 and 2009, the purpose of which was to elicit views on three options to take this matter forward. The options consulted upon were :

1. Jurisdiction to remain vested in the county court. This would maintain the status quo, and residents would continue to have to apply to the court for a determination of an issue under the Mobile Homes Act 1983.
2. Transfer of the county court's jurisdiction to residential property tribunals. This would mean that cases under the 1983 Act, with the exception of termination of agreement cases, would transfer to the RPT.
3. Transfer of the county court's jurisdiction to a dedicated tribunal, dealing exclusively with park home issues.

The results of these consultations have shown that there is broadly strong support for implementing Option 2 as soon as possible.

**Option 1 – Jurisdiction to remain vested in the County Court**

By doing nothing the current legal situation would remain in place, namely that the jurisdiction of the Mobile Homes Act 1983 would remain with the county court.

**Benefits of the county courts**

- The courts have historically had jurisdiction over the law relating to park homes and, therefore, built up an appropriate level of expertise in this area.
- The courts have, in any case, a wide range of expertise in the field of landlord and tenant law and in dispute resolution generally.
- The courts are “self regulatory” to the extent that within the existing procedural rules, the court manages its own proceedings.
- Proceedings before the courts are adversarial in nature and the presiding judge hears the evidence of the parties and evaluates it impartially, without generally engaging in the opposing arguments.
- The courts can award costs against the losing party.
- The courts can enforce their own decisions and judgement.
- Legal aid may be available for some residents.

**Disadvantages of the county courts**

- The adversarial nature of court proceedings largely (but not formally) acts as a deterrent to some people from appearing in person who will, therefore, usually require legal representation, which can be costly.
- The formality of court proceedings can also be daunting to a litigant in person.
- Generally the court awards costs against the losing party, which is often significant if the winning party was legally represented.
- Cases may take a significant time to be heard by the court and may also take a lengthy period before judgement is obtained.
- The courts are not a court of record and decisions are not binding on other courts.

**Costs**

***Costs to the individual***

The costs of going to court are significant for the individual. The estimated costs for a single case going to courts, including all application fees and legal costs (where used) are as follows:

<b>Cost</b>	<b>Sum</b>
Applying to the Court (based on a non money case).	£150
Hearing Preparations	£200

Obtaining copies of documents from the court	£5 per document – £15 total
Legal Costs (see note below)	£4,000
Total cost of case with Legal Representation for the individual	£4,365

The application cost, hearing preparation fee and obtaining copies of document figures were obtained from HM Court Service.

Although the court system does not require the use of legal representation, the majority of persons applying to the court will use a lawyer given the adversarial nature of the court. Figures from HM Court Service estimate the average legal costs of all cases heard by the County Court to be approximately £4,000.

The figures do not include cases where one of the parties appeals the decision, nor does it include any monetary awards that the courts may decide to issue.

### ***Costs to Government***

HM Court Service advises that the overall cost to Government per hour for a county court case is £709. We estimate that an average park home case at county court would last two hours, giving a gross hearing cost of £1,418. Taking off the fees payable by the individual from applying to the court and hearing preparations (see table above) the net cost to Government for a park home case is £1,068.

### ***Total Costs***

The cost to the individual plus the cost to government give a total cost of £5,433 per case. It is currently estimated (based on conversations with LAs and HM Court Service) that 60 cases occur per year. This gives a total annual figure of £325,980.

### ***Savings***

Any savings on this option would be negligible, given that the court currently hears the cases. The only savings would be minimal in that the RPT would not need training in order to understand the legislation. There would also be minimal savings for the Government in terms of not having to publicise the change.

## **Option 2 – Transfer of the County Court’s jurisdiction to residential property tribunals**

An alternative to the county courts for the determination of disputes would be the transfer of jurisdiction to a residential property tribunal (RPT). An RPT is a specialist housing tribunal which is part of an umbrella organisation called the Residential Property Tribunal Service, which in addition to the RPT administers the Leasehold Valuation Tribunal and Rent Assessment Committees. The RPT and its sister tribunals have a wealth of experience in adjudicating on leasehold, rented sector and landlord licensing disputes and in valuation cases.

### **Benefits of residential property tribunals**

- RPTs and their sister tribunals have a wealth of experience in adjudicating on disputes and in carrying out other functions in connection with housing and landlord and tenant matters.
- Hearings before RPTs are inquisitorial in nature and informal with tribunal members taking an active role in the proceedings.
- RPTs are low cost tribunals and do not award costs against a losing party per se.
- Parties can and are encouraged to represent themselves, although legal representation is permitted.
- Cases can be determined on “paper” without the need for an oral hearing.
- RPT hearings are usually held locally.
- RPTs will usually inspect the site as part of the decision making process.
- RPTs can deal with cases speedily and in some cases can be fast tracked.
- RPT decisions are published and are available to members of the public.

### **Disadvantages of residential property tribunals**

- RPTs do not currently have any experience in dealing with Park Home disputes.
- Legal aid is not available in connection with proceedings.
- RPTs cannot enforce their own decisions.
- The parties have to bear their own costs – win or lose.

### **Costs**

The costs of going to the RPT are significantly less than going to court. We are proposing that the standard fee will be in line with the cost of applying to the county court, so the cost of application will be £150 (subject to some specified exceptions).

Given that the RPT is inquisitorial in nature, rather than the adversarial nature of the county court, there is no need for legal representation on either side, therefore saving both the resident and the site owner money.

We estimate that there will be approximately 150 to 200 cases per annum at the RPT (England and Wales), the estimated annual cost of applying (paid by the individual) being £22,500 to £30,000.

These costings do not of course include any cases that may be appealed on. We do not believe however that there will be a significant number of appeals; therefore any costs are likely to be minimal.

There will of course be costs in terms of any award made by the RPT, but this is very hard to quantify.

There may be some start up costs in relation to the RPT making themselves familiar with the Mobile Homes Act 1983, but we expect that these costs will be minimal.

The Government will incur some costs in relation to ensuring that all park owners and residents become aware of the changes. However, we believe that this can be achieved with the assistance of our stakeholders and actual costs will be minimal.

**Costs to Government**

We estimate that 180 cases per annum will go to the RPT (England and Wales) and that cases will normally last a day. We estimate the Government will incur the following costs overall:

<b>Cost</b>	<b>Sum</b>
Office Costs (including hiring of venues for hearings)	£5,000
Travel and Subsistence	£2,000
Training costs	£2,000
Pay for chairman of tribunal	£71,100
Pay for lawyer to site on tribunal	£50,580
Pay for lay member of Tribunal	£21,840
<b>Total Overall cost (to Government)</b>	<b>£152,520</b>

**Total cost**

Depending on number of cases this would be between £175,000 and £182,000 (assuming number of cases lies between 150 and 200).

**Savings**

The savings will be to both the site owners and residents in terms of legal costs, as there is less need for legal representation at the hearings of the RPT.

Compared to the reference case, where hearings are heard in Court, there will be a

saving of between £151,000 and £143,000. However, there will be cases where residents and/or site owners may wish to use legal representation which would incur additional costs.

It is not possible to quantify in terms of estimated savings how much would be saved if all those applying to court did not use legal representation, as the number of cases estimated appearing at the court is significantly less than that what we estimate for the RPT.

There will of course be additional savings if an applicant wins the case, and then their fee will be refunded. However it is not possible to accurately quantify how large this saving will be as it is impossible to estimate how many applicants will win their case.

There will of course be non financial benefits, most notably in the time it takes for a case to be heard at the RPT. One of the major criticisms of the court system is the length of time it takes for the court to hear a case. In addition, the fact that the RPT is an inquisitorial hearing, as opposed to the adversarial nature of the courtroom, will mean that residents should be more comfortable in bringing forward cases.

There will also be savings in terms of travel for both residents and site owners in terms of travel to the County Court. In the main the RPT holds its hearings at the nearest town hall or in some cases in a nearby village hall or other facility, close to the location of the dispute. Savings are hard to quantify in terms of the number of cases.

## Option 3 – Transfer of the County Court’s jurisdiction to a dedicated tribunal

An alternative option to transferring the county courts’ jurisdiction to the RPT is the transfer of the county courts jurisdiction to a dedicated tribunal. It has the many of the advantages and disadvantages as option 2, but in addition there are some other disadvantages which need to be mentioned. First, the creation of a new dedicated tribunal would require primary legislation and, therefore, would not be established for some considerable time.

In addition, the cost burden discussed below is significantly high, when compared against the number of cases we estimate such a service would deal with.

### Costs

There would be significant costs to Government in the setting up of a new tribunal. The costs below assume that there would be 180 cases going to the new tribunal (England and Wales) with regional offices being set up where cases may be heard. They also assume that there would be a maximum of one case per day for the tribunal to hear.

These include:

Cost	Sum
Pay for chairman of tribunal	£395 per day, £71,100 per annum
Pay for lawyer to sit on tribunal	£281 per day, £50,580 per annum
Pay for lay member of tribunal	£182 per day, £32,760 per annum
Pay for administrative staff at tribunal offices	£160,000 per annum
Office costs (Including rent, IT etc)	£300,000 per annum
Travel & subsistence allowance	£20,000 per annum
Training costs	£10,000 one off, £2,000 per annum
Creation of website	£250,000 one off, £5000 per annum maintenance
Recruitment	£50,000 one off
Setting up of contracts	£50,000 one off
Total one off costs	£360,000
Annual cost	£641,440
Cost per case	£3653

The listed costs for the pay, along with the travel and subsistence allowances, for the members of the tribunal have been provided to us by the RPT. The office costs are comparable with those for the RPT. The projected list of costs should not be seen as exhaustive and there may be other unseen costs that it is not possible to quantify.

The costs of applying to a park home tribunal will still be significantly less than going to the court, and will be in line with the costs outlined in option 2 for transferring the jurisdiction to the RPT.

## **Savings**

The savings would be similar to those identified with option 2.



## **Overall conclusion**

### **Option 1**

There is much to be said for the use of the courts in this area. County courts have experience in dealing with disputes under the Act. They can enforce their own judgements. They can award costs against a losing party, which acts a deterrent to a person bringing a frivolous or vexatious claims. Persons who are unable to afford to bring or defend proceedings may be entitled to legal aid.

However, there are disadvantages too, some of which are the flip side of the benefit coin. For example, if a person is not on legal aid he may incur a large legal bill in bringing or defending proceedings. That prospect can act as a disincentive to many. Coupled with that, the formality and adversarial nature of proceedings normally calls for (although it does not require) legal representation, which some people can ill afford.

There is some evidence that some site owners routinely threaten court action in order to secure benefits and agreements from residents, which they might not otherwise achieve. This “threat” often works because residents sometimes find the prospect of court action daunting and would rather agree to the demands rather than face proceedings, which if they lose they may have to pay for.

However, such threats are rarely carried out and very few cases are brought by residents either. It has been estimated in England that no more than about sixty cases under the Act are brought before the courts each year. This cannot be seen, given the well documented difficulties in this sector, as indication that residents and site owners are happy with their lot, but must reflect a reluctance to avail the use of the courts.

### **Option 2**

There are clearly some perceived disadvantages in a transfer to the RPT. It can be argued that RPTs do not have any relevant knowledge or experience in dealing with park home disputes. Insofar as that argument goes, that is true. However, RPTs have previously acquired new jurisdictions (which this one is not), such as licensing under the Housing Act 2004. RPTs, with their experience in housing and valuation disputes, are more than capable of taking on a jurisdiction like this, for which members will be given training and, in any case, where the tribunals will have the guidance of previous court decisions.

It may be argued that it is a disadvantage that the winning litigant cannot recover his costs in connection with the proceedings from the losing party, but that bar exists because this is a low cost tribunal where parties are encouraged to represent themselves and, therefore, not incur substantial costs in any case. If a party to proceedings chooses to be legally represented, then s/he must be prepared to pay for that representation out of his/her own funds. It, therefore, follows that if legal representation is not required, then legal aid cannot be made available. (It should be noted, however, that the tribunal will be given a limited power to award costs in exceptional circumstances).

Finally on the disadvantages, RPTs cannot enforce their own decisions (as opposed to their own procedures). The reason for that is, of course, they are administrative tribunals rather than courts of law. An RPT decision can, however, be enforced by a county court.

On the other hand RPTs have a range of experience in dealing with housing and valuation issues. Cases are dealt with speedily and informally and because legal representation is not required, cheaply. It can also deal with cases without the need for an oral hearing and it operates under its own procedural rules which are less complicated and more flexible than court rules.

In addition, the cost to government of this option when compared to the cost of retaining of the courts jurisdiction is significantly less.

The Government does not believe that the disadvantages of using RPTs as a forum for dispute resolution and proceedings under the Act are so significant as to call into question the viability of this option. In particular we have every confidence in the tribunal service's capability to take on this jurisdiction, which is proven by its track record in relation to the other jurisdictions it exercises. In any case, the ease of access to justice, the informality of proceedings and their low cost, are clear indicators that RPT service is a competent body in which to vest the jurisdictions under the Act. Therefore, this is the Government's preferred option.

### **Option 3**

An alternative option to transferring the county courts' jurisdiction to the RPT is the transfer of the county courts jurisdiction to a dedicated tribunal. It has the many of the advantages and disadvantages as option 2, but in addition there are some other disadvantages which need to be mentioned. First, the creation of a new dedicated tribunal would require primary legislation and, therefore, would not be established for some considerable time. Secondly, the costs of establishing such a tribunal, estimated at a start up cost of £0.36 million with annual costs of £0.64 million, is disproportionate to the amount of work, estimated at 180 cases per annum, that it would undertake. Thirdly, it is difficult to see what particular additional benefits would be gained by use of such a tribunal, as against the use of a residential property tribunal (which will in effect be a "park homes" tribunal when hearing a case under the Act). Indeed, we cannot envisage that a newly established tribunal would do anything differently from an RPT.

### **What difference will the transfer of jurisdiction make?**

As already indicated above, the measures will directly or indirectly give overall support to :

- Provide fairer and more equal access to justice through a significantly lower cost hearings system which will be quicker in achieving desired results, easier to access and more user friendly and convenient for the majority of people.

- Protect the general interests, needs and aspirations of park home residents, many of whom are older and vulnerable people. The needs and rights of site owners will also be addressed in some cases where necessary.
- Ensure park home residents are afforded greater confidence and assurances on matters relating to health, and safety, security and general wellbeing, and treated with dignity and respect.
- Help to prevent or discourage criminal activity and other extreme behaviour against residents by some (albeit a minority of) site owners, such as harassment, blackmail, fraud, threats or actual harm to people and property.
- Help to improve and drive up management standards in the Park Homes sector generally, which will benefit not only residents and local neighbourhoods, but all site owners who already operate in a reputable and honest way, together with other business and trade interests directly or indirectly linked to the provision and operation of park homes.