

PITCH FEE Review Form

[The Mobile Homes (Pitch Fees)(Prescribed Form)(England) Regulations] SI 2013/1505

FORM TO ACCOMPANY A PITCH FEE REVIEW NOTICE
Form prescribed under paragraph 25A(1) of Chapter 2 of Part 1 of
Schedule 1 to the Mobile Homes Act 1983

Important note: This form, or a form substantially to the like effect, must be sent with the pitch fee review notice where the site owner proposes to increase the pitch fee otherwise the pitch fee review will not be valid. This form may also be used if the site owner is proposing to reduce the pitch fee.

Both the site owner and the occupier(s) should read the notes at the end of this form as they contain important information about pitch fee reviews.

Section 1: Parties

From: Lusso Residential Holdings Ltd

[site owner(s)]

To: _____

[insert name of occupier(s)]

Section 2: Proposed new pitch fee

We propose to increase / reduce *[delete as appropriate]* your pitch fee for:

[insert address of the home]

The last review date was:

[insert date]

The current pitch fee is

£2,450 per year

The proposed new pitch fee is

£ _____ per year

[insert amount]

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Section 3: Date new pitch fee proposed to take effect (effective date)

The review date is twelve months after the last review date.

The effective date is the date when it is proposed the new pitch fee is payable from, which may be on the review date or, in the case of a late review, a later date.

- The proposed pitch fee will take effect on the review date on _____

Note: For further information on the review, late reviews and effective dates see notes at end of the form.

Section 4: Calculation of the proposed new pitch fee

The proposed new pitch fee has been calculated as **(A) + (B) + (C) - (D)** where:

(A) is the current pitch fee of

£ _____
[insert figure]

(B) is the Retail Prices Index (RPI) Adjustment

£ _____
[insert +/- figure] [calculated from a percentage increase/decrease [delete as appropriate] of .%]

(C) is the recoverable costs of

£ _____
[insert figure]

(D) is the relevant deductions of

£ _____
[insert figure]

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(B) The RPI adjustment

In accordance with paragraph 20(A1) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983, we have calculated the RPI adjustment as the percentage increase/decrease [*delete as appropriate*] in the Retail Prices Index (RPI) over 12 months by reference to the RPI published for

_____ [insert month and year of latest index] which was ... [insert RPI for that month].

Note: For further information on the correct RPI figures to use refer to the section on the RPI adjustment in the notes at the end of this form.

(C) Recoverable costs

We have added a charge that we have incurred and believe can be recovered through the pitch fee. The details of the costs are set out below.

Description of item relating to the costs	The period in which the cost was incurred	The total cost	How this has been divided across the homes	The net charge to the occupier is

The total net charge to you is

£ _____ per year
[insert amount]

(D) Relevant deductions

We have deducted the sum of

£ _____ per year
[delete as appropriate]

to take account of the following matters

_____ [insert details of any matter(s) which you have taken into account in calculating the figure arrived at].

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We have arrived at that figure as follows

[insert explanation of how you have calculated the figure for (D)]

Note: The matters to which the site owner(s) shall have particular regard to when carrying out the pitch fee review include those set out in paragraph 18 of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 (as amended by section 11 of the Mobile Homes Act 2013) which forms part of your implied terms. Account should therefore be taken of these matters in the calculation of either (C) or (D). Paragraphs 18 and 19 of that Chapter also set out certain matters which cannot be taken into account in the calculation of (C) and (D). Further information can also be found in the notes at the end of this form.

Section 5: What to do if you disagree with the proposed new pitch fee

If you do not agree to the proposed pitch fee you do not have to pay the proposed new amount from the effective date, but you must continue to pay the current pitch fee. You will not incur arrears. I/We may, however, apply to a tribunal for it to decide what the new pitch fee should be. You also have the right to apply to the tribunal. If the tribunal decides that a new pitch fee is payable it shall be payable as from the effective date. (The notes accompanying this form contain further information).

Section 6: Signature of site owner(s)

Signed _____

Date _____

Name and address of the site owner(s)

(for the purpose of serving notices)

Section 7: Notes:

You should read these notes carefully as they contain important information about the pitch fee review. You should note, however, that these notes are for guidance only and do not purport to provide a definitive statement of the law.

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General

- This form should be used if the site owner is proposing to change the pitch fee.
- This form must be served on the occupier with the pitch fee review notice at least 28 days before the date on which it is proposed to change the pitch fee.
- This form sets out the proposed new pitch fee, the date from which it is proposed the new pitch fee will take effect and how it has been calculated. This form should be sent to the occupier(s) with the pitch fee review notice.
- The new proposed pitch fee cannot be imposed on the occupier. It must be agreed or determined by a tribunal.

Reviews and late reviews

- A change in pitch fee is normally proposed to be effective from the review date. A minimum notice period of 28 days prior to the review date must be given.
- The review date is the date specified in the written statement as the date on which the pitch fee will be reviewed in each year. If no date is specified it is likely to be each anniversary of the date the agreement commenced.
- If the site owner misses the review date a proposed change to the pitch fee can be made to take effect at a later time. Provided a minimum notice period of 28 days is given a late review can be proposed to take effect at any time after the review date and before the next review date.
- The "next review date" is the date twelve months from the review date. This applies whether or not the current review is late. It means, for example, if the review date is 1st April 2014, but the review is late and doesn't take effect until 1st July, the next review date will be on 1st April 2015, rather than 12 months from the effective date of the current review.
- As reviews are conducted annually, if the site owner does not propose a change in the pitch fee on the review date or before the next review date (in the case of a late review) the review is deemed to have been conducted for the year in question. This means, for example, that if a review date was 1st April 2014, but the site owner did not initiate a review before 1st April 2015, any charges (including RPI) attributable to the 2014 review cannot be included in the 2015 review.

The effect of the pitch fee review notice & making an application to the tribunal

- If the occupier accepts the new pitch fee they can let the site owner know or simply pay the proposed amount from the effective date.
- The occupier is not obliged to accept the proposal or pay the proposed amount. Failure to pay the new pitch fee will not result in the occupier being in arrears.
- If the occupier does not accept the proposed pitch fee they can let the site owner know, but the occupier does not have to do so. Provided the current pitch fee continues to be paid that is the maximum amount payable unless the tribunal decides a different figure.
- If there is no agreement as to the new pitch fee the site owner or the occupier may make an application to a tribunal for it to make a determination.

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- Where the pitch fee review notice was served at least 28 clear days before the review date, an application to the tribunal may be made after the end of the period of 28 days beginning with the review date but not later than three months after the review date.
- Where the pitch fee review notice was served later, an application to the tribunal may be made after the end of the period of 56 days beginning with the date on which the site owner serves the notice but not later than four months after that date.
- In either case, a late application to the tribunal is permitted only if there are good reasons for the failure to apply within the time limit and for any delay since then in applying for permission to apply out of time.
- Before deciding a case the tribunal will invite representations from the parties and may hold a hearing and inspect the site.
- If you act unreasonably in connection with an application the tribunal can impose a costs order against you.
- If the tribunal makes a determination its decision will apply from the effective date. This means any proposed increase could be backdated by several months. However, the occupier shall not be treated as being in arrears until 28 days after the date of the order made by the tribunal determining the new pitch fee.
- If no agreement as to the pitch fee is reached and the tribunal does not make a determination (i.e. because the site owner has not made an application or because an application is refused or withdrawn) the occupier must continue to pay the existing pitch fee, but the proposed pitch fee cannot be charged, there are no arrears and the review process has ended for the year to which the notice refers.
- If, on the application of the occupier, a tribunal is satisfied that a notice of pitch fee review is of no effect due to the failure to serve this form with the notice of pitch fee review, but the occupier has nevertheless paid the pitch fee proposed in the notice, the tribunal may order the site owner to pay back the difference between the amount which the occupier was required to pay for the period in question and the amount which they have actually paid.

Matters that can and cannot be taken into account on a proposed review

- The law says¹ there is a presumption that the pitch fee cannot be changed by more than the annual change in Retail Price Index (RPI), unless this would be unreasonable having regard to the matters set out in paragraph 18(1) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983.
- This part of the notes explains how the RPI adjustment is worked out and what other matters can be taken into account as part of the review.

RPI adjustment

- How the RPI adjustment has been worked out is in section 4 (B) of the form.
- The maximum RPI adjustment is limited to the RPI change in the previous year, even if the pitch fee has not changed for a number of years. (See above in the reviews and late reviews section for further details.)

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- When applying the RPI adjustment to a pitch fee review which is proposed to take effect on the review date, the figure that must be used in the calculation is the latest published 12 month RPI figure available before the notice of review is served. The notice must be served at least 28 clear days before the review date.
- When applying the RPI adjustment to a pitch fee review which is proposed to take effect at a date later than the review date (a late review), the RPI figure that must be applied is the last 12 month RPI figure that was published before the day by which the site owner(s) should have served the review notice had the review taken place on time – i.e. the last 12 month RPI figure published prior to the day which was 28 clear days before the review date. So, if the review date is the 1st April 2014, the RPI figure to be applied would be the last RPI figure published before 4th March 2014.
- No other date or method for calculating the RPI adjustment is permitted.

Other matters that can be included in a review

- Costs incurred by the site owner, which are proposed to be recovered from the occupier, are shown in section 4 (C) of the form.
- Matters to which such costs relate that are recoverable through the pitch fee include:
 - A change in the law since the last review date, other than one which is specifically prohibited from being included, which has directly affected the cost of the management or maintenance of the site.
 - The costs of certain “improvements” to the site (see below for details on improvements).
- A deduction from the pitch fee should be made and shown in section 4 (D) of the form if it relates to a matter set out below:
 - The deduction of any charges included in previous reviews relating to the cost of improvements which have already been recovered through the pitch fee.
 - A reduction in costs as a result of the change in the law since the last review date, which has directly affected the cost of the management or maintenance of the site.
 - A deduction to reflect any deterioration in the condition or decrease in the amenity of the site or any adjoining land occupied or controlled by the site owner which has occurred since 26 May 2013 and which has not been taken into account in a previous pitch fee review.
 - A deduction to reflect any reduction in the services that the owner supplies to the site, pitch or mobile home, or any deterioration in the quality of those services which has occurred since 26 May 2013 and which has not been taken into account in a previous review.

Improvements

The cost of an improvement can only be recovered in a pitch fee review if:

- a) the improvement is for the benefit of the occupiers of the site;
- b) there has been consultation with the occupiers and any qualifying residents’ association and

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- c) the majority of occupiers have not disagreed in writing to the improvements being carried out or where the majority have disagreed, a tribunal has ordered that the costs can be included in the pitch fee².

Matters that cannot be included in a pitch fee review

Any costs relating to the following matters cannot be included in a pitch fee review:

- costs in complying with changes to the Mobile Homes Act 1983 introduced by the Mobile Homes Act 2013, including any cost relating to the preparation and serving of this form³;
- costs incurred as a result of any action taken by the local authority in licensing enforcement under sections 9A to 9I of the Caravan Sites and Control of Development Act 1960 and as a result of being convicted for an offence under section 9B⁴;
- fees paid by the site owner for an application to the local authority for site licence conditions to be altered⁵ or for consent to transfer the site licence⁶
- any costs incurred by the site owner in connection with expanding the protected site and
- any costs incurred by the site owner in relation to the conduct of proceedings under the Mobile Homes Act 1983 or under agreements made between the site owner and occupiers under that Act.

Site owner's consultation obligations

- The site owner is required to consult the occupiers on any improvements to the site in general and in particular those where the owner proposes to recover the cost of the works through the pitch fee⁷ (see improvements above.)
- In addition, the site owner must consult with any qualifying residents' association⁸ of the site on matters relating to the operation and management of the site and any improvements to the site that might affect the occupiers of the site directly or indirectly⁹.
- In consulting the site owner must give at least 28 days notice of the improvement in writing. The consultation document must describe the proposed improvement and explain how it will benefit the occupiers in both the short and long term. The document must provide details about how the pitch fee will be affected by the proposed improvement at the next review date and it must state when and where representations can be made about the proposal¹⁰.
- Before undertaking any improvements to the site the owner must take account of any representations received from the occupiers¹¹. But the site owner cannot undertake any works the cost of which is proposed to be recovered through the pitch fee if the majority of occupiers have disagreed to the works by notification in writing, unless a tribunal has authorised in default that the costs can be recovered in the pitch fee¹².

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Site Owner's Repairing and maintenance liabilities

- Paragraph 22 (c) and (d) of Chapter 2 of Part 1 of Schedule 1 to the Mobile Homes Act 1983 sets out the site owner's repairing liabilities. These are that the owner :
 - Be responsible for repairing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home;
 - maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site.
- Examples of such repairs and maintenance that fall within paragraph 22 may include repair and maintenance of pipes, conduits, wires, structures, tanks or other equipment provided by the site owner and of the parts of the site that are under the control of the site owner; including access ways, roads, pavements, street furniture and lighting, boundary fences, buildings in common use, drains and the drainage system and any open spaces or facilities in common.
- The site owner is also obliged to provide the occupier, free of charge, on request, documentary evidence in support and explanation of:
 - Any new pitch fee;
 - Any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement and
 - Any other charges, costs or expenses payable by the occupier to the owner under the agreement¹³.

Occupiers' Repairing Liabilities

- The occupier is required to
 - (a) keep the home in a sound state of repair and
 - (b) maintain the outside of the home and the pitch, including all fences and outbuildings belonging to, or enjoyed with, the pitch and the mobile home and ensure the same are kept in a clean and tidy condition¹⁴.
- Where the occupier is seeking the reimbursement of any costs or expenses from the site owner, if requested the occupier must supply to the owner documentary evidence in support of the claim¹⁵.

Further information

Further information on pitch fee reviews and other charges can be downloaded from the Fact Sheet at www.gov.uk/park-homes-guidance

Or by contacting LEASE on 020 7383 9800.