



Department for
Communities and
Local Government

Changes to Temporary Stop Notices

Equalities statement

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Changes to Temporary Stop Notices

Revocation of the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005

Introduction and aims

This Equality Statement on the revocation of Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 (Statutory Instrument 2005/206) is published in conjunction with the government's response to the public consultation which includes the summary of responses.

Consultation on this proposal was undertaken between 21 December 2012 and 13 February 2013, returning 67 responses. A number of questions related to the impact of the proposal and to ensure the consultation engaged effectively with travellers,¹ the government also held three oral hearings attended by representatives of Gypsy and Traveller communities, lawyers and planning consultants. The points raised in the consultation responses and oral hearings have informed this Equalities Statement.

The intention to revoke Statutory Instrument 2005/206 was announced on 29 March. The government plans to publish guidance to assist local authorities use Temporary Stop Notices effectively and with due consideration in line with its guidance review process, the aim of which is to produce a revised guidance suite in summer 2013.

Background

Our Planning Policy for Traveller Sites makes clear that we expect authorities to plan to meet the needs of their traveller community in much the same way as we ask them to meet the housing needs of their settled community. Our policy sets out that from 27 March this year where authorities cannot demonstrate that they have identified a five-year supply of suitable sites then this will be a significant material consideration in the determination of temporary planning permission.

The government wants to see fair play throughout planning, with the rules applying evenly and equally to all and decisions on development and enforcement action taken at a local-level where possible. However, intentional, unauthorised development undermines confidence in the planning system.

The government wants to cut unnecessary red tape and bureaucracy, whilst ensuring that the rules and protections which do remain are applied equally, fairly, and with due process.

Currently, a local council can issue a Temporary Stop Notice if they think that there has been a breach of planning control and that it is expedient that the activity is stopped

¹ Defined in *Planning policy for traveller sites* as including Roma Gypsies, Irish Travellers and persons of nomadic habit of life 'including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently'.

immediately. Temporary Stop Notices apply for 28 days, during which the local council is able to assess the circumstances and determine whether to take further enforcement action.

Statutory Instrument 2005/206 restricts the use of Temporary Stop Notices, by preventing them from being issued against caravans stationed on the land, where that caravan is a person's main residence, unless there is a risk of harm to a compelling public interest that is so serious as to outweigh any benefit to the occupier of the caravan.

The revocation will give greater flexibility and control to local authorities over the issue of a Temporary Stop Notice in respect of caravans that are used as main residences. In doing so, we will remove unnecessary national regulation, allowing local authorities to make decisions about whether the use of Temporary Stop Notices are a proportionate response to the breach of planning control.

Local authorities in exercising these powers are required to have due regard to the requirements of the European Convention of Human Rights under the Human Rights Act 1998 and Equality Act 2010. It will still be for local authorities to balance the impacts of using their enforcement powers against individuals in breach of planning control against wider impacts on the local area.

Impact of policy upon Protected Groups

Section 149 of the Equality Act 2010 requires authorities to consider the needs of people who share 'protected characteristics' and to have 'due regard' to the need to eliminate unlawful discrimination, promote equality of opportunity, and promote good relations between people from different groups. Romany Gypsies and Irish Travellers are recognised as having a protected characteristic under the Equality Act 2010.

In accordance with section 149 of the Equality Act 2010, the government and local authorities must have due regard to the needs of these protected groups in the exercise of their functions. The government and local authorities are also under a duty through the Human Rights Act 1998 to 'facilitate the gypsy way of life' in relation to ethnic Gypsies. The revocation of the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 is likely to impact on Romany Gypsies and Irish Travellers.

The government's aim, through its *Planning Policy for Traveller Sites* (March 2012) is to secure more authorised traveller sites in appropriate locations, to address historic under provision and meet future supply needs. This in turn will offer more certainty to Gypsies and Travellers when applying for planning permission for private sites.

Our new policy returns to local authorities the rights and responsibilities to assess and plan to meet their traveller needs in consultation with their local community. Specifically, the new policy expects local authorities to identify a supply of specific, deliverable and developable sites over the next five years to meet these local targets. It also asks local authorities to identify a supply of specific, developable sites or broad locations for growth, for years six to ten and, where possible, for years 11-15. It asks local authorities to work collaboratively with neighbouring authorities and to consider joint development plans that

set targets on a cross-authority basis – an approach supported by the statutory duty to cooperate. The availability of existing site provision and level of need in a local area is capable of being a material consideration in local authorities' determination of individual applications for traveller sites.

A further government aim is to reduce the number of unauthorised traveller sites. Unauthorised sites lead to tension, undermine community cohesion and create resentment against the overwhelming majority of travellers who are law abiding and do not live on unauthorised sites. Although the proportion of unauthorised sites has declined significantly in the last 20 years, from around 30% to 15%² of overall provision, as authorised provision has increased, there still remains a significant number of unauthorised sites which fuel community tensions and give law-abiding travellers a bad name.

Statutory equality regulations

In addition to section 149 of the Equality Act 2010, there are other regulations that are relevant to the implications of this proposal for Gypsies and Travellers:

- Safeguards are provided by the and European Convention on Human Rights, in particular Article 1 of Protocol 1, Article 6, Article 8, and Article 14, adopted through the **Human Rights Act 1998**.
- Local authorities are still required to carry out assessments of the accommodation needs of Gypsies and Travellers, as set out in section 8 of the Housing Act 1985. The Housing Act also requires authorities to prepare a strategy demonstrating how the accommodation needs of Gypsies and Travellers will be met as part of their housing strategies.
- Taken together, the Planning and Compulsory Purchase Act 2004 and Housing Act 1985 provide legislative protection to ensure that (a) the accommodation needs of the traveller community are assessed; and (b) that local plans must be sound, meaning inter alia that they present the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence (which must include the accommodation needs of the traveller community).

Section 38(6) of the **Planning and Compulsory Purchase Act** and section 70(2) of the **Town and Country Planning Act 1990** requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework and Planning Policy for Travellers Sites are material considerations in planning decisions.

Evidence considered in demonstrating due regard to the Public Sector Equality Duty

The following sources of information have been used:

² DCLG, *Count of Gypsy and Traveller Caravans- January 2012* (available online at <https://www.gov.uk/government/publications/gypsy-and-traveller-caravan-count-january-2012>)

- Bi-annual Caravan Count figures
- National quarterly planning statistics
- Letters to the Department for Communities and Local Government (the department) from MPs, elected members, council officials, general public and traveller organisations
- Consultation document on the amendment to the Temporary Stop Notice Regulations (March 2007)
- Summary of responses and consultation responses to the amendment to the Temporary Stop Notice Regulations (October 2007)
- The responses to the government's consultation on the proposed changes to the use of Temporary Stop Notices (February 2013)
- Outcomes from the three oral hearings with traveller groups/representatives on the proposed changes to the use of Temporary Stop Notices (February 2013)

Action taken in response to equality issues identified from consultation

EQUALITIES

Responses from the recent consultation and oral hearings on the proposed revocation of the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 raised concerns that Romany Gypsies and Irish Travellers will be disproportionately affected by the change (the regulations relate to caravans used as main residences, which would chiefly but not exclusively mean travellers as defined in Planning Policy for Traveller Sites). It was argued by some that the proposal may be discriminatory on the grounds of race under the Equality Act 2010.

Consultation responses and feedback through the oral hearings highlighted that Gypsies and Travellers already experience poor outcomes across a range of indicators including health; education; employment and deprivation. Concerns were raised that those members of the traveller community most likely to be affected by this proposal would be the most vulnerable, as they would likely to be living on unauthorised sites. It was felt that this could force traveller families to occupy other unauthorised sites which are even more inappropriate or on to the roadside thereby exacerbating problems associated with insecurity of accommodation. Particular concerns were raised in relation to the impact on children; their physical and mental health.

HUMAN RIGHTS

Some respondents also felt that the revocation would raise Human Rights issues and may be in contravention of a number of Articles under the European Convention on Human Rights. In particular:

- Article 6 – right to a fair hearing;
- Article 8 – right to respect for private and family life;

- Article 14 – prohibition of discrimination enshrined in the Human Rights Act 1998 and
- Article 1 of the First Protocol under the European Convention on Human Rights – right to peaceful enjoyment of property

In relation to Article 6 – right to a fair hearing, a concern was raised over the lack of facility to appeal following any issue of a Temporary Stop Notice. Some local authorities reported that this may act to discourage them from using Temporary Stop Notices in these situations for fear of being legally challenged under the Judicial Review process. Some respondents added that the Judicial Review process was not in itself an effective mechanism for ruling on human rights issues.

However, local councils, as public authorities, are required to have due regard to the Human Rights Act 1998 and the Equality Act 2010 when discharging their functions, including enforcement action. This proposal does not change this situation. In determining whether to issue a Temporary Stop Notice in respect of a caravan being used as a main residence, local authorities will need to consider the impact on the occupants and their families. This will include considerations of the consequences of the notice, the potential for the occupants to be displaced to the roadside or other inappropriate locations as well as the ability of occupants to access local services.

The change aligns with the government's overall aims for the planning system which seeks to remove unnecessary national regulation and enable local councils to make decisions on development and enforcement action in the best interests of the communities they serve whilst ensuring protections for some where appropriate.

Evidence from the consultation responses indicates that there is a high-level of awareness amongst authorities of their responsibilities and need to balance human rights and equalities considerations in determining whether to issue Temporary Stop Notices and whether that action is proportionate in response to the alleged breach of planning control. In particular, it was notable that a number of local councils which responded to the consultation acknowledged that when exercising these powers consideration had to be given to the impact on the occupants and their families.

Responses to the consultation were strongly in favour of guidance (80% of respondents) to assist councils in exercising these powers, especially in relation to human rights and equalities considerations. We will therefore produce guidance, in line with the government's guidance review process, to support local councils to assess the impact on equalities and human rights and balance those considerations against any decision to issue a Temporary Stop Notice in these circumstances. This will help local authorities to exercise these powers effectively and with due consideration to take account of human rights and equalities issues. It will also mitigate the risk of legal challenge to any local council's decision to issue a Temporary Stop Notice.

The purpose of Temporary Stop Notices is to bring about immediate and temporary cessation of any development where the local council believes that an alleged breach of planning control has occurred. The ability of local councils to respond quickly is critical to preventing further unauthorised development which can lead to protracted and costly enforcement proceedings.

A Temporary Stop Notice allows a period of 28 days in which local authorities can consider whether further enforcement action is necessary. After this period, if a local council decides to take further enforcement action, then occupants would be able to appeal through the normal channels. In any case, the powers are discretionary, local authorities still have to consider whether the use of a Temporary Stop Notice is a proportionate and necessary response.

Moreover, any decision by a local council to issue a Temporary Stop Notice can be challenged by the occupants through the Judicial Review process. Inappropriate use of Temporary Stop Notices by local authorities may result in compensation to the occupants where the activity specified in the temporary stop notice:

- has already received planning permission;
- has permitted development rights;

Or:

- the local planning authority later issue a lawful development certificate confirming that the development was lawful;
- the local planning authority subsequently withdraws the temporary stop notice.

We believe that when taken as a whole: authorities duties and responsibilities under Human Rights and Equalities legislation; the temporary nature of the action itself (applies for a 28-day period) and the subsequent right to appeal against any further enforcement action should this be taken; as well as the right to legally challenge any local council's decision to issue a Temporary Stop Notice in the first place; and the possibility of compensation from the local authority where these powers are exercised inappropriately provides sufficient safeguards.

UNEQUAL TREATMENT OF DEVELOPMENT

Responses also raised concern that the proposed change was discriminatory and represented unequal treatment of unauthorised development from the traveller community in comparison with the settled community. Specifically, regulations prevent local authorities from using Temporary Stop Notices against unauthorised development of buildings which are being used as a dwellinghouse.

Although current legislation does not allow local authorities to use a Temporary Stop Notice against unauthorised development of a building used as a dwellinghouse, there is a clear distinction to be made here with caravans used as main residences. Whilst a caravan is immediately a home once occupied, a house under construction is not a home until it has been completed and subsequently occupied.

The nature and length of this construction process in relation to a building will mean that there is more time and therefore more opportunities to take effective action, including the use of Temporary Stop Notices, against suspected breaches of planning control. Where unauthorised development relates to change of use to residential, the building is already in place. The impact on the local environment and amenity of the area is therefore likely to be more limited than moving caravans onto land and using them for residential purposes.

The immediate nature of unauthorised development by the siting of caravans as main residences means that the opportunity to take effective action at an early stage is limited

but the impact of such development on the local environment and amenity can be significant

This change will help councils to take action against the small minority who choose to ignore planning rules and encourage those who wish to develop sites to go through the due planning process. This will enable authorities to fully consider the appropriateness of proposals as and when they come forward in accordance with the local plan and the National Planning Policy Framework.

Groups that will benefit from the policy

The presence of caravans on unauthorised sites can be the source of significant community tension, undermines community cohesion and causes resentment against the overwhelming majority of law-abiding travellers who do not live on unauthorised sites. The tension is exacerbated where caravans remain on land for long periods of time without the necessary planning permission. Those in the settled community perceive it to be unfair that those occupying caravans appear to be able to flout planning legislation.

The current regulations can create an impression that the local planning authorities are powerless to tackle a breach in planning control. By revoking the 2005 Regulations, this will give far greater flexibility for local councils to act in these cases; improve confidence and trust in the planning system and help to foster better community relations.

Effective enforcement measures will also benefit Gypsies and Travellers. The government's aim is to increase authorised provision in appropriate locations. Unauthorised development is by definition inappropriate provision which raises public health and safety concerns for those living on them as well as the surrounding community. The change will encourage Gypsies and Travellers to apply for planning permission through the proper channels, will enable full consideration of individual proposals and will result in better quality and more appropriate site provision for Gypsies and Travellers.

The proposal will also guard against the negative impact of unauthorised sites on the wider community; and reduce the financial costs to local councils associated with protracted enforcement proceedings.

Gaps identified in data or equalities information

We held a 7-week public consultation to ensure we gathered evidence from as full a range of relevant sources as possible. We made key stakeholders, including traveller groups, aware of the publication date. The consultation document includes specific questions on whether the revocation will have an acceptable impact on those most likely to be affected. We held three oral hearings with a range of traveller groups and their representatives including lawyers and planning consultants and invited ad hoc meetings with individuals or organisations who had a particular interest in this area and particularly in relation to any impacts on Gypsies and Travellers.

This Equalities Statement will be published alongside the summary of responses and as part of the government's response to the consultation.

Overall, can you make an assessment of the potential of this policy; programme/service to have a substantial equalities impact on discrimination, fostering good relations or advancing equality of opportunity?

The department has recognised the importance of assessing the impacts of the revocation of the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005. It has identified the impacts discussed in this Statement, and made a careful assessment of them.

The department has concluded that there is sufficient mitigation within the system or that could be provided to mitigate adverse impacts. This mitigation is provided through legislation and policy and could be provided through guidance.