



Department for  
Communities and  
Local Government

# Changes to Temporary Stop Notices: revoking Statutory Instrument 2005/206

Consultation

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# Changes to Temporary Stop Notices consultation

## Summary of consultation

<p><b>Topic of this consultation</b></p>	<p>This consultation seeks views on revoking the <i>Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005</i> (Statutory Instrument 2005/206). The effect of this revocation would be to give local councils greater freedom to determine whether to use Temporary Stop Notices in respect of caravans that are used as main residences.</p>
<p><b>Scope of this consultation</b></p>	<p>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 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. In most cases regulations prevent Temporary Stop Notices being used to prohibit the stationing of caravans used as main residences (the exception being where the local council considers that the resulting risk of harm to the public interest is so serious as to outweigh any benefit to the occupier of the caravan).</p> <p>Intentional unauthorised development undermines confidence in the planning system. The Government wants to see fair play in planning: cutting unnecessary red tape and bureaucracy, whilst ensuring that the rules and protections which do remain are applied equally, fairly, and with due process.</p> <p>As regulations currently limit the circumstances in which local councils can use Temporary Stop Notices in respect of caravans used as main residences, this may discourage or prohibit their use in some instances where they could be beneficial. The availability of appropriate alternative sites for caravans used as main residences will be a factor in determining whether it would be appropriate to use Temporary Stop Notices to stop such unauthorised development (i.e. if there is suitable site provision to which the unauthorised caravans could be relocated). Revoking Statutory Instrument 2005/206 to give councils greater freedom to determine whether to use Temporary Stop Notices</p>

	<p>may therefore encourage councils to identify land for sites to meet their traveller needs (a core aim of the Government's planning policy for traveller sites).</p> <p>Local councils will still have to balance the impacts of using their enforcement powers against individuals in breach of planning control against wider impacts, having due regard to the requirements of the Human Rights Act 1998 and Equalities Act 2010.</p>
<b>Geographical scope</b>	This proposal relates to England alone.
<b>Impact Assessment</b>	The potential impacts of this proposal are set out in the body of this consultation document. Question 6 asks specifically for any evidence that is relevant to this proposal (in relation to the use of Temporary Stop Notices, relating to caravans within unauthorised developments, impacts on caravan occupants, equalities implications, or any other impacts).
<b>To:</b>	This is a public consultation open to anyone with an interest in the use of Temporary Stop Notices. In particular we are keen to hear views from local councils and those who use caravans as main residences, including travellers.
<b>Body responsible for the consultation:</b>	The Department for Communities and Local Government
<b>Duration:</b>	7 weeks - closes on Wednesday 13 February
<b>Enquiries:</b>	Owen Neal 0303 444 4412 <a href="mailto:TSNConsultation@communities.gsi.gov.uk">TSNConsultation@communities.gsi.gov.uk</a>
<b>How to respond</b>	<p>In <b>writing</b> to:</p> <p>Owen Neal Planning - Economy and Society Department for Communities and Local Government 1 Floor Zone H6/G6 Eland House Bressenden Place London SW1E 5DU</p> <p>Or by <b>email</b> to: <a href="mailto:TSNconsultation@communities.gsi.gov.uk">TSNconsultation@communities.gsi.gov.uk</a></p> <p>In developing this consultation we have taken careful account how best to engage with the traveller community, particularly in relation to traveller levels of literacy, nomadic habit of life, and socio-economic disadvantage. The consultation process is designed to engage appropriately, specifically we have:</p>

	<ul style="list-style-type: none"> <li>• produced an easy to read version of the consultation document (paying attention to Plain English standards where possible);</li> <li>• engaged, and will continue to engage, with organisations representing the traveller community throughout the consultation period;</li> <li>• put arrangements in place to hold three oral hearings sessions in early 2013 (please contact Owen Neal on 0303 444 4412, <a href="mailto:TSNConsultation@communities.gsi.gov.uk">TSNConsultation@communities.gsi.gov.uk</a>).</li> </ul>
<b>Additional ways to become involved:</b>	<p>We also welcome ad-hoc meetings with those who would seek to contribute to this consultation where this is the best way of understanding their views. It also asks for respondents' views on the likely impacts of the proposal, and whether guidance or further reform would support more effective use of Temporary Stop Notices. Please contact Owen Neal on details above to arrange.</p>
<b>After the consultation:</b>	<p>A summary of responses will be published and a statement on the way forward.</p>

# Background

## 1. Policy context

- 1.1 The National Planning Policy Framework sets out that effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local councils should act proportionately in responding to suspected breaches of planning control. Local councils should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should include how they will investigate alleged cases of unauthorised development and take action where it is appropriate to do so.
- 1.2 The Government seeks to ensure fair and equal treatment for travellers in a way that facilitates their traditional and nomadic way of life, while respecting the interests of the settled community. The Government's planning policy for traveller sites gives councils the freedom and responsibility to determine the right level of traveller site provision in their area in consultation with local communities. The Government's policy for traveller sites also aims to reduce tensions between settled and traveller communities whilst enabling provision of accommodation from which travellers can access education, health, welfare and employment infrastructure.
- 1.3 Local councils should set targets for traveller site provision based on robust evidence, including identification of sites for five years and forecasting ahead where possible to 15 years future provision. The Government's policy makes clear that traveller sites (temporary or permanent) are inappropriate development in the Green Belt and that there should be due regard for the protection of the local environment and amenity by local councils in setting criteria for allocating traveller sites. If a council cannot demonstrate an up-to-date five year supply from 27 March 2013, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission for traveller sites.
- 1.4 A further aim of the Government's planning policy for traveller sites is that plan-making and decision-taking should aim to reduce the number of unauthorised developments and encampments and make enforcement more effective. In the consultation document on planning policy for traveller sites published in April 2011, the Government set out that it was considering strengthening local councils' ability to use Temporary Stop Notices.<sup>1</sup>
- 1.5 A further aim of the Government's planning policy for traveller sites is ensuring good design and integration of traveller sites: brownfield, untidy or derelict land should be used effectively, sites should be well planned and landscaped to enhance the environment and increase its openness. Unauthorised development has the potential to conflict with this objective.

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<sup>1</sup> DCLG, *Planning policy for traveller sites: Consultation* (April 2011, available online at <https://www.gov.uk/government/consultations/planning-for-traveller-sites>)

## 2. Procedure

- 2.1 Temporary Stop Notice powers were introduced by the *Planning and Compulsory Purchase Act 2004* in response to the 2002 Office of the Deputy Prime Minister review of the enforcement regime. Most respondents to this review considered planning enforcement to be basically sound, although some expressed concern over the speed with which enforcement action could respond to breaches of planning control: i.e. there are 28 days to comply with enforcement notices, three days before stop notices take effect, and in most cases notice of applications for planning injunctions must be given.
- 2.2 Section 171E of the *Town and Country Planning Act 1990* enables local councils to serve Temporary Stop Notices if they think that there has been a breach of planning control and that it is expedient that the activity is stopped immediately. Temporary Stop Notices apply for 28 days, during which the local council is able to assess the circumstances and determine whether further enforcement action would be appropriate. The effect of a Temporary Stop Notice is to require that any unauthorised development is stopped immediately. The penalty for non-compliance with a Temporary Stop Notice is a fine of up to £20,000 on a summary conviction, or an unlimited fine on indictment. There is no right of appeal against the service of a Temporary Stop Notice, though it may be subject to judicial review.
- 2.3 Evidence indicates that Temporary Stop Notices are a widely used and broadly effective tool.<sup>2</sup> Since 2005 there have been 2,200 Temporary Stop Notices served. The number of Temporary Stop Notices served peaked at 530 in 2006/7 and has remained stable since at around 250-300 served annually.
- 2.4 Currently *The Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005* (Statutory Instrument 2005/206) prohibit Temporary Stop Notices being used in respect of caravans that are main residences sited on land immediately before the issue of the Temporary Stop Notice, unless the local council consider that the risk of harm to a compelling public interest is so serious as to outweigh any benefit to the occupier of the caravan. This situation is typically where the site is either dangerous (e.g. by a roadside or contaminated) or sensitive (e.g. a Site of Special Scientific Interest).
- 2.5 In 2007 the previous Government consulted on whether Temporary Stop Notice regulations should be amended to enable their use in respect of caravans used as main residences where there was an alternative authorised site. Local councils generally supported this proposal on the basis that it would help them reduce problems associated with unauthorised development. Given the under-supply of sites at the time, however, this proposal was not taken forward. In the summary of responses, the then Government signalled that it was open to reconsidering whether to amend the Temporary Stop Notice regime at a point where site provision has increased.

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<sup>2</sup> DCLG, *Amendment to the Temporary Stop Notice Regulations, Consultation* (March 2007, available online at <http://webarchive.nationalarchives.gov.uk/20120919132719/www.communities.gov.uk/archived/publications/planningandbuilding/amendmenttemporaryconsultation>)

2.6 The Government has also introduced stronger enforcement powers in the *Localism Act 2011*, which apply equally to breaches of planning control relating to caravans as all other types of development. They enable councils to deal effectively with applications for retrospective planning permission where an enforcement notice has already been issued, give greater powers over concealed breaches of planning control, and enable heavier penalties to be served following breaches of planning conditions. Similarly, new guidance was recently published explaining existing powers to tackle illegal encampments and unauthorised occupation of land.<sup>3</sup>

### 3. Rationale

- 3.1 There is an important balancing act to be undertaken between the rights of individuals and the wider impacts on communities (both nationally in establishing planning enforcement powers and locally in exercising these powers in specific cases). The Government believes that councils are best placed to consider whether to use Temporary Stop Notices in response to local circumstances and that current regulations preventing Temporary Stop Notice use in relation to caravans prohibit councils using them in some cases where they would be beneficial. More broadly, the Government is of the view that the planning system should, as far as possible, apply equally to all.
- 3.2 The rights of travellers must be respected and maintained, but so also must the rights of the wider community. Local councils need adequate powers to safeguard the amenity of the area against harmful unauthorised development. Unauthorised siting of caravans can cause considerable impact on local amenity and create considerable community tension.
- 3.3 Reducing the number of unauthorised developments and encampments, making enforcement more effective, and ensuring traveller sites are well designed and integrated are all aims of the Government's planning policy for traveller sites. Greater freedom to use Temporary Stop Notices in respect of caravans would support local councils in achieving these aims. Similarly, the ability to take early, effective enforcement action may prevent further unauthorised development occurring and guard against protracted, costly enforcement action.
- 3.4 As the availability of alternative traveller sites will be a factor in determining whether to serve a Temporary Stop Notice, this proposal will encourage local councils to identify land for sites to meet their needs for travellers. If a local council cannot demonstrate an up-to-date five year supply of traveller sites from 27 March 2013, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission for traveller sites.
- 3.5 In the summary of responses to the 2007 consultation on amendments to Temporary Stop Notice regulations, the then Government set out its openness to amending the Temporary Stop Notice regime at a point where authorised site provision had

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<sup>3</sup> DCLG, *Dealing with Illegal and Unauthorised Encampments: A Summary of Available Powers* (August 2012, available online at <https://www.gov.uk/government/publications/dealing-with-illegal-and-unauthorised-encampments-a-summary-of-available-powers>)

increased. In January 2007 there were 16,610 Gypsy and Traveller caravans in England, 13,070 (78.7%) of which were on authorised sites. Authorised site provision has subsequently increased to accommodate 15,900 caravans in January 2012 (84.8% of a total 18,750 caravans in England).

- 3.6 This is in the context of a longer-term increase in authorised site provision for travellers; between January 1994 and January 2012 the proportion of Gypsy and Traveller caravans on authorised sites has increased from 70% to 84.8% (1994 as the year in which the Caravans Act 1968 was repealed and Circular 1/94 *Gypsy Sites and Planning* issued).
- 3.7 The last five Gypsy and Traveller caravan counts indicate that caravans which are in unauthorised developments on travellers' own land has declined by 21% from 2,400 in January 2010 to 1,890 in January 2012.<sup>4</sup> Strengthening local councils' powers to use Temporary Stop Notices would assist in supporting councils' existing efforts in addressing such unauthorised development and help further reduce this number. In consulting on planning policy for traveller sites in April 2011 the Government reiterated that it was considering strengthening local councils' ability to use Temporary Stop Notices.

## 4. Proposal

- 4.1 The Government therefore proposes revoking Statutory Instrument 2005/206. This would give local councils greater freedom to make a decision on the basis of local circumstances on whether serving Temporary Stop Notices in respect of caravans used as main residences is appropriate. It will remain for local councils to consider the consequences of taking enforcement action on the rights of the individuals concerned, both traveller and local residents, and whether the action is necessary and proportionate in the circumstances. In exercising their enforcement powers, local councils will of course remain bound by the requirements of the Human Rights Act 1998 and the Equalities Act 2010.

- Q1. Will this proposal improve local councils' ability to use Temporary Stop Notices in respect of breaches of planning control related to using caravans as main residences?**
- Q2. Will the impacts of this proposal on caravan occupants be acceptable?**
- Q3. Would guidance assist local councils in determining whether and how to use Temporary Stop Notices in respect of unauthorised development?**
- Q4. Are there other or alternative reforms that would make Temporary Stop Notices more effective?**

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<sup>4</sup> 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>)

## 5. Impacts

5.1 Revoking Statutory Instrument 2005/206 would give local councils greater freedom to determine whether to use Temporary Stop Notices in respect of caravans that are used as main residences, and contribute to the objectives of the Government's planning policy on travellers and enforcement specifically:

- increasing the effectiveness of local councils' enforcement powers, contributing to the Government's objective of maintaining public confidence in the planning system
- ensuring councils have the same ability to serve Temporary Stop Notices in respect of caravans used as main residences as other types of unauthorised development
- providing greater ability to guard against the adverse impacts on local amenity and community tension that can arise from the unauthorised siting of caravans
- enabling swifter enforcement action to be taken to guard against protracted and costly enforcement proceedings
- contributing to traveller planning policy objectives of reducing the number of unauthorised developments and encampments and ensuring traveller sites are well designed and integrated with existing services and communities

### Risks

5.2 Revoking Statutory Instrument 2005/206 entails potential risks. The list below sets these risks out and ways in which they are, or could be, mitigated:

Local councils may be reluctant to use Temporary Stop Notice powers for fear of breaching requirements of the Human Rights Act 1998 and/or Equalities Act. Guidance could assist local councils in using Temporary Stop Notices effectively, and balancing Human Rights and Equalities responsibilities.

Informal engagement in respect of unauthorised caravan development is preferable to embarking on formal enforcement action. Local councils are best placed to judge what approach is best in respect of unauthorised development. Revoking Statutory Instrument 2005/206 would not prevent local councils undertaking informal engagement, rather provide another tool for enforcing effectively.

Local councils remain reluctant to use Temporary Stop Notice powers as this would serve to displace the issue to other unauthorised sites in the same or other local council areas (or may have the consequence of requiring caravans to relocate to less suitable sites). Authorised site provision will be a factor in determining whether to use a Temporary Stop Notice and the Government's policy for traveller sites sets out clearly that local councils should plan to meet their traveller needs. From 27 March 2013 if a local council cannot demonstrate an up-to-date five-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of planning permission.

## 6. Other considerations

- 6.1 Section 171F(1)(a) of the *Town and Country Planning Act 1990* provides that a Temporary Stop Notice does not prohibit the use of a building as a dwelling house. Revoking Statutory Instrument 2005/206 would enable greater freedom for a Temporary Stop Notice to be used in respect of a caravan used as a main residence. This difference of approach is proposed because of the different impacts associated with each type of development. The potential detrimental impacts of caravans being moved onto land and used as main residences will generally be greater than a change of use to an existing building which is already part of the landscape. With buildings there is also an opportunity for the local council to take enforcement action during the construction process, whereas this would not be possible in relation to caravans.
- 6.2 All public bodies are subject to the Equality Duty under Section 149 of the Equalities Act 2010, which requires them 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 racial groups, which are protected characteristics under equalities law. Equally local councils must have appropriate regard to the requirements of the Human Rights Act 1998 in exercising their functions.
- 6.3 Under this proposal, local councils would need to balance carefully the positive and negative impacts of serving Temporary Stop Notices against caravans used as main residences in breach of planning control. They would need to take account, amongst other factors, of the immediate detrimental impacts on the local amenity of the unauthorised use of caravans as main residences (and the impacts that might arise from displacing the caravans elsewhere through taking enforcement action). They would have to balance the detrimental impacts of the unauthorised use of land for residential caravans against the Equalities and Human Rights considerations that would arise from serving Temporary Stop Notices to prevent this use continuing.

**Q5. Do you agree with the potential impacts of this proposal as set out above?**

**Q6. Do you have any evidence that is relevant to this proposal (in relation to use of Temporary Stop Notices, relating to caravans within unauthorised developments, impacts on caravan occupants, equalities implications, or any other impacts)?**

**Q7. Are there any other comments you wish to make as part of this consultation?**

## 7. Summary of consultation questions

- Q1. Will this proposal improve local councils' ability to use Temporary Stop Notices in respect of breaches of planning control related to using caravans as main residences?**
- Q2. Will the impacts of this proposal on caravan occupants be acceptable?**
- Q3. Would guidance assist local councils in determining whether and how to use Temporary Stop Notices in respect of unauthorised development?**
- Q4. Are there other or alternative reforms that would make Temporary Stop Notices more effective?**
- Q5. Do you agree with the potential impacts of this proposal as set out above?**
- Q6. Do you have any evidence that is relevant to this proposal (in relation to use of Temporary Stop Notices, relating to caravans within unauthorised developments, impacts on caravan occupants, equalities implications, or any other impacts)?**
- Q7. Are there any other comments you wish to make as part of this consultation?**

## 8. Glossary

**'Caravan'** in planning terms is defined in Section 29(1) of the *Caravan Sites and Control of Development Act 1960* as modified by Section 13(1) of the *Caravan Sites Act 1968* and Statutory Instrument 2006/2374.

**'Gypsies and Travellers'** in planning policy means: Persons of nomadic habit of life whatever their race or origin, 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, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

**'Travelling showpeople'** in planning policy means: Members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). This includes such persons who on the grounds of their own or their family's or dependants' more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily or permanently, but excludes Gypsies and Travellers as defined above.

**'Travellers'** means 'Gypsies and Travellers' and 'travelling showpeople'.

**'Unauthorised development'** is any development that does not comply with planning control. In relation to caravans, where caravans are sited on land in breach of planning control they are unauthorised development. This may occur, for example, where the use of the land is changed to residential if the caravans are used as main residences.

**‘Unauthorised encampments’** are where caravans are sited on land which is not owned by travellers. There are powers outside of planning to deal with unauthorised encampments (see <https://www.gov.uk/government/publications/dealing-with-illegal-and-unauthorised-encampments-a-summary-of-available-powers>).