

EXPLANATORY MEMORANDUM TO
THE HOUSING (ASSESSMENT OF ACCOMMODATION NEEDS) (MEANING
OF GYPSIES AND TRAVELLERS) (ENGLAND) REGULATIONS 2006

2006 No. 3190

1. This explanatory memorandum has been prepared by the Department of Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. **Description**
 - 2.1 The Regulations define the term “gypsies and travellers” for the purposes of section 225 of the Housing Act 2004 (“the Act”).

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None

4. **Legislative Background**
 - 4.1 During the course of the Housing Bill through its Parliamentary process, there was discussion around ensuring that the accommodation needs of gypsies and travellers were taken into account by local housing authorities. In response, Government amendments were tabled at Lords Report stage (Official Report, Lords, 20 October 2004: col 841).

 - 4.2 Section 225 of the Act accordingly places a duty on local housing authorities to conduct an assessment of the accommodation needs of gypsies and travellers when undertaking an assessment of the housing needs of the population under section 8 of the Housing Act 1985 (periodical review of housing needs).

 - 4.3 An amendment made by paragraph 47 of Schedule 15 to the Act also requires local authorities to include the needs of “gypsies and travellers” in any housing strategy they produce in line with section 87 of the Local Government Act 2003.

5. **Extent**
 - 5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Under section 8 of the Housing Act 1985 local authorities are under a duty to assess the housing needs of the population and plan strategically to meet that need. Gypsies and travellers have not routinely been included in the housing needs assessment process and in some areas their need for accommodation has been overlooked. The lack of assessing accommodation need and strategic planning in relation to the provision of appropriate accommodation has partly contributed to the current situation where around 25% of caravans are on unauthorised sites. The introduction of the duty on local housing authorities in section 225 in the Housing Act 2004 will ensure that the accommodation needs of gypsies and travellers are assessed and planned for in a strategic manner.

7.2 Following the enactment of the Housing Act 2004, priority within the Department was given to completing an internal Gypsy and Traveller Policy Review (conducted between 2004 and 2005). The policy review highlighted the need for a broader definition of gypsy and traveller for Housing Act purposes. As a result, the Government consulted on the definition of “gypsies and travellers” to be included in the Regulations in the consultation paper “Definition of the term ‘gypsies and travellers’ for the purposes of the Housing Act 2004”. The definition was consulted on between 2 February 2006 and 28 April 2006, although responses were accepted after this date.

7.3 There were thirty-eight responses to the consultation, a number of which were fully supportive of the proposed definition and which also expressed support for the proposed formulation of words. However a few concerns were expressed.

7.4 Four responses from Romany Gypsies and Irish Travellers and their representative organisations (one of which represented thirteen Romany Gypsy and Irish Traveller groups) felt that the definition should solely be based on ethnicity rather than encompassing a way of life i.e. nomadism. In recognition of the ethnic status of Romany Gypsies and Irish Travellers, seven respondents also wanted the term to be capitalised (rather than lower case as it was throughout the consultation document). The definition now separates the various groups that are covered by it although it still encompasses other travellers who pursue a nomadic way of life rather than being confined to Romany Gypsies and Irish Travellers. This is because the Government’s ultimate aim is to reduce the levels of unauthorised camping by all types of traveller. Any definition must therefore encompass all travellers of a nomadic way of life, regardless of race or origin. It is also for this reason that the term was spelt in lower case throughout the

consultation document, so as not to presuppose the ethnicity of those covered by the term.

7.5 Ten responses advocated the use of a single definition of “gypsies and travellers” for housing and planning purposes. (Government guidance on planning policy in relation to gypsy and traveller caravan sites uses a narrower definition than the one used in the order¹). However, within those responses, there was no clear agreement on what definition might be most appropriate. A few supported the adoption of the planning definition (as contained in Circular 01/2006 “Planning for Gypsy and Traveller Caravan Sites”) for both housing and planning purposes while one expressed support for a single definition but offered no views on which definition might be appropriate. One response supported the adoption of the proposed housing definition for planning purposes and a further three supported the adoption of an ethnic definition for both housing and planning purposes.

7.6 The Government carefully considered the use of the planning definition for the purposes of the housing legislation. However, in using a narrow definition, those Romany Gypsies and Irish Travellers that may live in housing who may have ceased to travel for reasons other than those set out in the planning definition e.g. lack of authorised sites, would not be included. The Government believes it to be important that local housing authorities in assessing need seek views from gypsies and travellers that currently live on sites, both authorised and unauthorised and from those ethnic Romany Gypsies and Irish Travellers that may live in housing and may not be getting access to appropriate housing or other services that they need. Housing need identified through the gypsy and traveller accommodation assessment may not be confined to those in need of a caravan site but might uncover other accommodation needs such as more suitable types of housing or other support services.

7.7 Conversely, it was considered inappropriate to adopt the use of the wider housing definition for planning purposes. Since the wider housing definition encompasses all Romany Gypsies and Irish Travellers, regardless of their way of life, using a broad definition in the context of planning would effectively allocate land for a particular ethnic group - which might discriminate against members of other ethnic groups who would not benefit in the same way. Guidance on planning contained in ODPM Circular 01/06 relates to the designation of land for a specific land use requirement – in this case, the requirement is borne out of a way of life, and not an ethnic identity and therefore the definition contained in the planning circular is based on nomadism.

¹ The definition set out in ODPM Circular 01/06 is: 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 show people or circus people travelling together as such.

7.8 The broader definition which was consulted on for the purposes of the duty under section 225 of the Housing Act 2004, enables local housing authorities to assess and strategically plan for the wide range of need that may exist (both amongst those of a nomadic way of life and amongst Romany Gypsies and Irish Travellers on caravan sites and in housing) – it does not imply that those assessed should have their needs met in a particular way.

7.9 Some local authorities also expressed concern that the definition appeared to include travelling showpeople who have not traditionally been included in definitions of ‘gipsies’ or ‘gypsies and travellers’. However, this view was balanced by responses from The Showmen’s Guild of Great Britain and others which welcomed the fact that travelling showpeople were included in the definition, although they thought that this should be made more explicit. In response to this concern, the Government has decided to modify the definition that was consulted on to include explicitly travelling showpeople.

7.10 The definition of gypsies and travellers used in the regulations mirrors the definition used in the Social Landlords (Permissible Additional Purposes) (England) Order 2006 [SI 2006/1968] (“the Order”), which extends the permissible purposes of registered social landlords under section 2 of the Housing Act 1996. Local housing authorities will be expected to adopt a common sense approach to the words used in the definition, which have ordinary and natural meanings, so that a proper and comprehensive assessment of needs can be undertaken.

8. Impact

8.1 A Regulatory Impact Assessment including a Race Equality Impact Assessment is attached to this memorandum.

9. Contact

Katie Jones at the Department for Communities and Local Government Tel: 020 7944 3565 or e-mail: Katie.jones@communities.gsi.gov.uk can answer any queries regarding the instrument.

Final Regulatory Impact Assessment (RIA)

Title of Proposal

1. Regulations setting out the meaning of 'gypsies and travellers'² for the purposes of section 225 of the Housing Act 2004 (the Act).

Purpose and Intended Effect of Measure

Objective

2. To define the scope of the term 'Gypsies and Travellers' so that local housing authorities understand their responsibilities under section 225 of the Act in relation to the completion of accommodation needs assessments and preparing strategies to meet that need.
3. Once the meaning of Gypsies and Travellers has been prescribed in regulations, section 225 of the Act will be commenced imposing a duty on local housing authorities to carry out an assessment of the accommodation needs of Gypsies and Travellers when undertaking a review of housing needs in their area under section 8 of the Housing Act 1985. The definition is also relevant to the production of strategies showing how the identified need will be addressed.
4. There is no specific timescale attached to the completion of an accommodation assessment or a strategy. The accommodation assessment process forms part of the evidence base to inform authorities' Local Development Frameworks, and the timescales for completion of the documents which form this framework vary depending on where authorities are in the cycle. However, we would encourage local housing authorities to complete accommodation assessments at the earliest opportunity since the needs of Gypsies and Travellers have so long been overlooked and the high levels of unauthorised camping and development in some areas are unsustainable. In many areas accommodation assessments of the needs of Gypsies and Travellers are already underway and in some areas they have been completed.

Background

5. In the July 2006 caravan count 25 % of caravans were on unauthorised sites.
6. Local housing authorities have an existing duty under section 8 of the Housing Act 1985 to assess the housing need of all of the population. This assessment of need then informs the local housing strategy, which each local housing authority completes and which includes priorities for the area and an action plan to address those priorities. Should they fail to do this, the Secretary of State has a power under section 87 of the Local Government Act 2003 to require them to do so.
7. Whilst it has been good practice to include Gypsies and Travellers in housing needs assessments and housing strategies, in reality this has happened in very few instances. The consequences of this have been widely varying levels of understanding and very different approaches to the accommodation needs of Gypsies and Travellers in different areas.
8. The proposed definition of Gypsies and Travellers which was consulted upon only applied to English housing authorities. Secondary legislation applying to Wales is the responsibility of the National Assembly for Wales (NAW) and NAW propose to make similar regulations shortly. The

² The formulation used here is how the term appears in section 225 of the Housing Act 2004. However, in response to concerns raised in consultation the term will appear in capital letters throughout this document. In capitalising the term, the Government is not presupposing the ethnicity of those covered by the term, recognising that many that are covered by the definition will belong to the ethnic groups of Gypsies and Irish Travellers but that some may not.

proposals should have additional impacts on the wider 'settled' community and businesses, since the wider policy framework, of which this definition is an essential part, should reduce the levels of unauthorised camping and development. The impacts of the proposals on the wider community and small businesses are discussed in this document.

Rationale for government intervention

9. The Caravan Count undertaken in July 2006 showed that there are over 16,000 Gypsy and Traveller caravans in England. Around 75% of these caravans are on authorised sites, many of which are well-managed and are an accepted part of the local community. However, under-provision of authorised sites has resulted in Gypsies and Travellers camping on unauthorised land or developing their own land without planning permission.

10. Further family growth is likely to lead to an increased number of Gypsies and Travellers on unauthorised sites, although in recent years, the level of increase has been mitigated by funding from central government to refurbish and make full use of existing sites.

11. The continuing incidence of unauthorised sites is likely to fuel tensions between Gypsies and Travellers and the settled community. The social exclusion that is experienced by Gypsies and Travellers is one of the drivers for poor educational³ outcomes in comparison with the wider settled community and BME groups and poor health outcomes⁴ in comparison with the wider settled community. Those that are living in unauthorised encampments are particularly at risk given the difficulty they often experience in accessing services due to patterns of frequent moving.

12. Many authorities have not made adequate site provision for Gypsies and Travellers and some local authorities have pursued an enforcement only approach. Local authorities can spend a considerable amount on enforcement activity on evicting Gypsies and Travellers. In contrast, Gypsy and Traveller sites can be cost neutral i.e. they are financed through rental income.

Consultation

Within government

13. Consultation took place across Government on the proposed meaning of Gypsies and Travellers contained in the consultation paper, 'Definition of the term 'Gypsies and Travellers' for the purposes of the Housing Act 2004

Public consultation

14. A consultation paper entitled 'Planning for Gypsy and Traveller Sites' was issued in December 2004 and consulted on changes to planning policy in relation to Gypsies and Travellers. The consultation ran until March 2005 and informed the publication of a revised Circular regarding planning policy in relation to Gypsies and Travellers entitled, ODPM 01/2006 'Planning for Gypsy and Traveller Caravan Sites', published in February 2006. The circular contained a revised definition⁵ of Gypsies and Travellers which recognised that many Gypsies

³ For further information on the educational attainment of Gypsies and Irish Travellers see, Ethnicity and Education: The Evidence on Minority Ethnic Pupils aged 5-16. DfES June 2006

⁴ For further information on health issues relating to Gypsies and Travellers see Parry, G. Van Cleemput, P. Peters, J. Moore, J. Walters, S. Thomas, K. Cooper, C. (2004) The Health Status of Gypsies and Travellers in England. Sheffield: University of Sheffield School of Health and Related Research.

⁵ The definition contained in the Planning Circular 01/06 Planning for Gypsy and Traveller Caravan Sites is as follows: 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 dependents'

and Travellers stop travelling for various reasons. The range of views expressed in response to the planning circular consultation informed the Housing Act consultation exercise outlined below.

15. A consultation paper entitled 'Definition of the term 'Gypsies and Travellers' for the purposes of the Housing Act 2004' was published on 2 February 2006 and was consulted upon for 12 weeks ending on 28 April. 38 responses were received and a full summary of responses to that consultation is available on the DCLG website at www.communities.gov.uk. A summary of the additional impacts identified through consultation and the changes made to the definition as a result of consultation are outlined at paragraphs 59-65.

Options

Option 1 – Do nothing

16. If the Government chooses to 'do nothing' then regulations prescribing "gypsies and travellers" will not be made, impacting on the viability of commencing the relevant sections of the Act. Commencing sections 225 and 226 of the Act without defining "gypsies and travellers" in regulations would mean that local housing authorities would have to decide for themselves who fell into this group, potentially leading to inconsistencies between areas and some groups' needs being left out of the assessment. It therefore wouldn't make sense to commence sections 225 and 226 until the term Gypsies and Travellers is defined in regulations. If the sections of the Act are not commenced, local housing authorities will be under no specific duty to assess the accommodation needs of Gypsies and Travellers and are unlikely to strategically plan to meet that need.

17. The accommodation needs assessment is part of a wider policy framework that will ultimately result in additional authorised provision for Gypsies and Travellers thus reducing the need for unauthorised sites. One of the outputs of the local and regional accommodation assessment process will be the level of additional pitches that need to be provided within the area. The outcome of accommodation assessments will inform revisions to the Regional Spatial Strategy, which will allocate the number of additional pitches required for each authority to deliver through the identification of sufficient land.

18. If an appropriate number of authorised sites to meet existing and future need are not delivered then unauthorised camping is likely to continue. This means that the existing problems associated with unauthorised sites such as the tensions between Gypsies and Travellers and the settled community, the costs of enforcing against unauthorised sites and the social exclusion experienced by Gypsies and Travellers on unauthorised sites are likely to continue. Those respondents that commented on option one recognised that doing nothing was not a realistic option and fully understood the reasons for assessing the accommodation needs of Gypsies and Travellers and planning strategically to meet those needs.

19. The Government has identified the need for a specific duty to assess the accommodation needs of Gypsies and Travellers because they have been overlooked in the past in many areas. Without this duty it is likely that the distinctive accommodation needs of Gypsies and Travellers will continue to be overlooked and appropriate provision won't be made. The Government's view is that setting out the meaning of Gypsies and Travellers in secondary legislation for the purposes of this duty is considered necessary.

Option 2 – Use proposed definition

educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.

20. The Government's preferred definition, which was consulted on was as follows:

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, and all other persons with a cultural tradition of nomadism and/or caravan dwelling.

21. The proposed definition was deliberately broad to ensure that local authorities understand the wide range of need that exists amongst the Gypsy and Traveller community and not just those that have specific land use requirements arising from those needs. Understanding the wide range of need that may exist will help inform the wider policies and responsibilities of local authorities towards the group identified, whilst at the same time ensuring that the authority can strategically plan for current and future needs. For example, the accommodation needs assessment may help local authorities to understand better any particular issues faced by this group. The process will help to identify how any problems can be overcome and the ways in which housing may be made to work better for them. This could reduce the numbers wishing to leave housing for sites, and encourage some of those currently on unauthorised sites to move into housing where that is a suitable option for them.

22. Assessing the needs of a wider group does not imply that a particular course of action should be followed to meet that need. Local authorities must prioritise and balance the identified needs of Gypsies and Travellers with those of the wider population, although in many areas addressing the backlog of need may be a priority. It should also be noted that, as for other groups, the accommodation assessment process focuses on need rather than preference or aspiration.

Option 3 – Using the planning definition

23. A definition of Gypsies and Travellers for planning purposes is contained Circular 01/06 'Planning for Gypsy and Traveller Caravan Sites'. The definition is as follows:

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 show people or circus people travelling together as such.

24. The definition will be relevant when people apply for planning permission in those areas of land which have been designated for use by Gypsies and Travellers.

25. If the planning definition were to be mirrored in housing legislation, local housing authorities would only be under a duty to assess the accommodation needs of those people who were judged to fall within the above definition. By implication, such assessments would not capture the wider range of need that may exist e.g. amongst ethnic Gypsies and Travellers who may live in housing, but who may have ceased travelling due to a shortage of sites and are therefore not covered by the narrower planning definition.

26. The housing definition needs to be a pragmatic strategic one which enables local authorities to fully understand the accommodation needs of a group of people whose needs have frequently been overlooked in the past. The Government believes that taking a narrower view, as would be the case if the planning definition was used, would not give local authorities a full picture of the accommodation needs of the whole Gypsy and Traveller community. This would mean that those that have a need for sites but that don't fall within the above definition would not have their needs assessed nor planned for, which could result in continued levels of unauthorised camping and development.

Costs and Benefits

27. The proposal consulted upon impacts on Gypsies and Travellers themselves, local authorities and travelling showpeople who may not regard themselves as Gypsies or Travellers. The proposal also potentially impacts upon private landowners, business and local communities.

Race Equality Impact Assessment

28. Since the majority of those captured by the definition will be Romany Gypsies and Irish Travellers which are recognised ethnic groups, the definition will inevitably have a disproportionate impact on particular ethnic groups. A Race Equality Impact Assessment is therefore attached at Annex A.

Rural Impact Assessment

29. It could be argued that the scope of the definition will have an impact on rural areas. The accommodation assessment process is part of a wider policy framework which will result in additional provision of sites in appropriate locations.

30. If a narrower definition of Gypsies and Travellers is used, less need for pitches might be identified resulting in less land being allocated in local plans (some of which might be in rural areas). However, if the definition is too narrow it might not identify those people with genuine requirements for caravan pitches. If enough authorised land is not identified and there continues to be high levels of unauthorised camping there is likely to be a negative impact on the countryside. For example, Gypsies and Travellers may continue to camp on or develop Green Belt land without planning permission. Where Gypsies and Travellers are camping unlawfully they are much less likely to receive local authority services such as waste collection. This can result in fly-tipping making the environment unattractive and damaging wildlife.

31. It is therefore important that the wider policy framework results in the delivery of adequate areas of land in sustainable locations to provide for those people with a need for authorised land on which to station their caravan.

Breakdown of costs and benefits

Option 1 – Do nothing

32. As stated earlier, the outputs from local and regional accommodation assessments feed into the wider planning framework and inform the amount of land which needs to be designated for Gypsy and Traveller sites. Doing nothing is likely to result in sections 225 and 226 of the Act not being commenced. Therefore doing nothing impacts on the ability of the wider planning system to deliver appropriate levels of land. The impacts under each of the headings below are therefore based on the lack of the wider system to deliver appropriate land.

Economic

33. If alternative, appropriate land is not available for those Gypsies and Travellers who have no authorised place to live, then unauthorised camping and development is likely to continue resulting in local authorities having to incur ongoing costs in support of enforcement activity. Private landowners may also have to use their own money to remove Gypsies and Travellers from their land.

34. Enforcement does not solve the causes of unauthorised camping, and in many cases merely moves the problem elsewhere. The costs of enforcement are therefore repeat ongoing costs.

There are no definitive figures available on the costs of enforcement. However, a study published in 2002⁶ concluded that in 1998-1999, the costs to local authorities of dealing with unauthorised sites were around £6 million. It should be noted that the authors also stated that, 'It is probably safe to assume that the actual figure of £6 million derived from this research could be multiplied a number of times before the real annual cost of managing unauthorised encampments is reached.' In addition, many local authorities that took part in the research did not include staff time or the costs of site clearance in their responses to the survey. Anecdotal evidence also suggests that the costs of evicting individual sites and the associated clean up costs can run into millions.

35. If the meaning of Gypsies and Travellers is not set out in regulations and sections 225 and 226 of the Act not enacted, local housing authorities will not be specifically required to conduct accommodation assessments of Gypsies and Travellers or include Gypsies and Travellers in their housing strategies. This will save some money in terms of staff time working on both the accommodation assessment and housing strategy, although this saving is likely to be far outweighed by the amount of staff time spent on enforcement against unauthorised sites.

Environmental

36. If the meaning of Gypsies and Travellers is not set out in regulations and sections 225 and 226 of the Act not enacted then the ability of the planning system to deliver appropriate land will be compromised and unauthorised camping will continue. Unauthorised camping is sometimes in highly inappropriate locations such as Sites of Special Scientific Interest or Green Belt land. Where this is the case, Gypsies and Travellers are usually moved on quickly but sometimes individual sites are damaged or spoilt by rubbish. There are often complaints of fly-tipping and rubbish left around unauthorised encampments. In some cases the rubbish may be left by the Gypsies and Travellers and in others, unauthorised encampments tend to attract fly-tipping from the wider community.

Social

37. Unauthorised encampments and developments are often the source of significant community tension between Gypsies and Travellers and the settled community. Continued unauthorised camping is therefore likely to fuel this community tension. Gypsies and Travellers are one of the most socially excluded groups with poor life outcomes in relation to the wider population. Although approaches between local authorities vary, those who camp at the side of the road often have particularly poor access to education and health services.

Option 2 – Using a broad definition

38. The definition which was proposed in the consultation paper was intended to be a pragmatic strategic one that enables local authorities to understand the current and possible future accommodation needs of the group and plan strategically to meet that need.

Economic

39. Using a broad definition of Gypsies and Travellers to carry out an accommodation assessment and produce a strategy may cost an authority slightly more money than if a narrower definition was used, since the authority might have to use a variety of means to reach those

⁶Clements, L and Morris, R., 2002. *At What Cost? The Economics of Gypsy and Traveller Encampments*. Bristol: The Policy Press.

Gypsies and Travellers that are not immediately identifiable (e.g. those in housing). However, if the council is fully informed about the needs of Gypsies and Travellers in the area and can plan strategically to meet that need, particularly through the identification of appropriate land for them to live on, then the amount of unauthorised camping and development is likely to decrease. This means that the costs of producing accommodation assessments and strategies are likely to be offset and exceeded by the savings generated through no longer needing to take enforcement action against unauthorised sites. Some local authorities have already undertaken Gypsy and Traveller accommodation assessments and estimates of the costs vary between £5,000 and £10,000 per council. The Unit is encouraging councils to work together to undertake joint assessments which can help reduce the cost to each constituent authority.

40. There has been little research undertaken into the relative costs of enforcement versus site provision. However, Bristol City Council estimated that it spent around £200,000 per annum in evicting Gypsies and Travellers from unauthorised sites, but following the provision of a transit site in the area this reduced to an average of around £5,000 per year. The transit site cost around £425,000 to build. As such, with a saving of over £190,000 per year in eviction costs, the cost of developing the transit site has already paid for itself.

Environmental

41. The identification of a wide range of need within an area will inform the number of additional pitches that may be required to accommodate Gypsies and Travellers. It is in the interests of the authority to allocate an appropriate amount of land based on need, to ensure that Gypsy and Traveller sites are provided in sustainable and appropriate locations. The consequence of 'under provision' (which may occur if a narrower definition is used) is that Gypsies and Travellers may continue to camp in inappropriate locations e.g. school playing fields, Green Belt land, because there are not enough authorised places to live. When an authority is producing Development Plan Documents (DPDs) it will be required to consult on the locations of any sites, thus ensuring that the environmental and sustainability impact of a site being developed is considered.

Social

42. The presence of Gypsies and Travellers is most likely to be a source of tension within an area, where they are on unauthorised sites. The use of a broad definition should result in the provision of enough land to accommodate the wide range of need within an area and is likely to remove the need to camp on unauthorised land – in turn this should improve community relations in an area. Whilst the creation of permanent sites is often contentious and results in strong local opposition, one study⁷ suggested that the fears of people were not realised when a permanent site was established. People's fears were usually based on their experience of unauthorised encampments, not official sites. Those living on well established and managed sites often have good relations with the local community and take part in wider community schemes e.g. neighbourhood watch. The provision of accommodation on a stable long term basis also means that Gypsies and Travellers living on sites are much more likely to have better access to schools, healthcare and other services.

Option 3 – Using a narrower planning definition for the accommodation assessment

⁷ *Neighbours' Views of Official sites for Travelling People*. Planning Exchange 1996.

Economic

43. If the planning definition of Gypsies and Travellers was used then local housing authorities would be required to assess a narrower range of need than under option 2. Local authorities may make some cost savings in comparison to option 2 since they would be required to reach a smaller target audience when assessing need and producing strategies to meet that need – although it may be difficult and time-consuming to distinguish between those Gypsies and Travellers who should have their needs assessed and those who shouldn't. However, using a narrow definition may fail to capture some need – for example Gypsies and Travellers who are currently travelling and have a provable need for pitches on appropriate land but don't fall within the planning definition. As the pitch numbers identified by the accommodation assessment feed into the wider planning process this could result in under provision of appropriate land, and in turn mean that unauthorised camping and development continues. Enforcing against this camping costs money and is a repeat cost which is likely to exceed any saving made by having a narrower definition.

Environmental

44. Although using a planning definition will result in additional sites being provided in appropriate locations, it is not likely to be enough to cater for the range of need for sites that may exist – for example among Gypsies and Travellers who may have stopped travelling due to a lack of authorised sites rather than for the reasons set out in the planning definition. Under provision could result in continued levels of unauthorised camping and development, which often occurs in inappropriate locations, and therefore has a negative impact on the environment.

Social

45. As highlighted above, additional provision of authorised sites should reduce the levels of unauthorised camping and thus contribute towards better community relations. Although again, using a narrower definition to identify need for sites may result in under provision for the reasons stated above. The continued presence of unauthorised sites is likely to give rise to community tensions. Again as highlighted earlier, those Gypsies and Travellers that have no authorised place to live are likely to have poorer access to services than those living on authorised sites.

Small Firms' Impact Test (SFIT)

46. At present, unauthorised camping by Gypsies and Travellers sometimes occurs on business premises e.g. farm land, car parks etc. This can negatively impact on businesses since unauthorised camping may affect the operation of a business and the owners of premises may have to pay legal costs to remove Gypsies and Travellers from the site and may also have to pay eviction costs, should bailiffs be required. Therefore the greater the reduction in unauthorised camping, the more likely the positive impact on small businesses. The Government believes that the use of a broader definition for the purposes of the Housing Act 2004 is most likely to result in the greatest reduction in unauthorised camping and therefore have the greatest benefit for small firms.

47. Some Gypsies and Travellers themselves may run small businesses from their place of residence. Therefore in terms of the wider policy framework, a broad definition of 'Gypsies and Travellers' should result in an appropriate level of new sites being delivered, some of which may have adjoining business premises. The provision of new sites should therefore have a positive impact on the small businesses run by Gypsies and Travellers in that there will be a continuity of premises.

48. The Small Business Service has been consulted and is content with the above assessment of impact.

Competition assessment

49. This proposal affects public services and therefore has no impact on competition.

Enforcement, sanctions and monitoring

50. The purpose of the new mechanisms that have been put in place is to mainstream the needs of Gypsies and Travellers into the same systems that are used for the rest of the population.

51. Pitch numbers identified from local accommodation assessments will go forward to the Regional Planning Body for consideration. The Regional Planning Body will then provide a strategic overview of need in the region and the Regional Spatial Strategy will set out pitch numbers for each local authority to deliver. Even if councils fail to complete accommodation assessments and produce pitch numbers, they will still be expected to allocate land within their areas for Gypsy and Traveller sites, subject to the level of need in the region. It is therefore in the interests of local authorities to accurately identify the level of need within their own area to inform revisions to the Regional Spatial Strategy.

52. Local housing strategies must include information on special needs groups, including, where appropriate, Gypsies and Travellers. Whilst most local housing authorities voluntarily produce local housing strategies, section 87 of the Local Government Act 2003 provides the Secretary of State not only with the power to compel a local housing authority to produce a housing strategy, but also to impose requirements on the content of that strategy where he sees fit to do so.

53. In the context of the wider policy framework, if local planning authorities fail to address Gypsy and Traveller site provision, the Secretary of State has powers under the Planning and Compulsory Purchase Act 2004 to direct councils to address this issue in their Development Plan Documents (DPD). In order to identify an appropriate amount of land that needs to be allocated for Gypsy and Traveller caravan sites, the local authority will have to have an understanding of the level of need in the area and therefore would have to carry out an accommodation assessment to inform the production of a DPD.

Implementation and Delivery Plan

54. Regulations will be prepared and made by the Department for Communities and Local Government which define the term Gypsies and Travellers for the purposes of section 225 of the Act. Sections 225 and 226 of the Act will be commenced by Order, thus placing a duty on local authorities to assess the needs of Gypsies and Travellers and plan strategically to meet those needs and giving the Secretary of State power to issue guidance to local housing authorities regarding those duties.

55. Progress by local authorities in terms of conducting Gypsy and Traveller accommodation assessments will be monitored by the Regional Implementation Team of the Gypsy and Traveller Unit and the Government Offices.

Post-Implementation Review

56. The Gypsy and Traveller Unit has a dedicated resource based in the Government Offices of each of the three regions where there are significant levels of unauthorised camping and development. Members of the Regional Implementation team will be working with local authorities

and planning and housing colleagues within the Government Offices to monitor progress on accommodation assessments, strategy preparation and addressing site provision more generally.

57. The Government has produced draft guidance to assist local authorities when carrying out accommodation assessments and a final version of the guidance will be published in early 2007. Guidance on preparing strategies will also be issued in due course.

58. The success of the wider policy framework, of which accommodation assessment is an essential part, will be monitored through a number of means. DCLG will be monitoring the take up and spend of Gypsy and Traveller Sites Grant, which will result in additional social provision. As local planning authorities begin to allocate appropriate land in their Development Plan Documents and provide new authorised sites we would expect to see the levels of unauthorised camping and development decrease. This will be monitored through the Gypsy and Traveller Caravan Count, conducted by local authorities on behalf of DCLG and through the Government Offices as Development Plan Documents are submitted for approval.

Summary and Recommendation

Option	Total cost per annum Economic, environmental, social	Total benefit per annum Economic, environmental, social
A - Do nothing	<p><u>Economic</u></p> <p>- Needs of Gypsies and Travellers not identified and therefore met. Enforcement costs of LAs in dealing with unauthorised sites remain high, including legal costs. (At least £6 million nationally but likely to be much more. For example, one council estimated it spent £200,000 per annum on dealing with unauthorised encampments. Other councils have spent millions evicting from sites and clean up costs)</p> <p><u>Environmental</u></p> <p>- Gypsies and Travellers continue to camp on and develop unsuitable land.</p>	<p><u>Economic</u></p> <p>- Local authorities do not have to dedicate resource to conducting Gypsy and Traveller accommodation needs assessments and preparing strategies. (Between £5000 and £10,000 per authority)</p>

	<p><u>Social</u> Lack of needs being identified and met means Gypsies and Travellers continue to experience high levels of social exclusion and poor health and education outcomes.</p> <p>Continued presence of Gypsies and Travellers on unauthorised sites fuels community tension.</p>	
B - Use broad definition	<p><u>Economic</u> - Local authorities may also mean they have to introduce more robust ethnic monitoring systems to ensure that they have accurate data on their Gypsy and Traveller populations, including those in housing.</p> <p>Staff time/resource spent on preparing for GTAA's and preparing strategies to meet need.</p>	<p><u>Economic</u> - Staff time/resource spent on enforcement is reduced as broad assessment of need and delivery strategy is likely to reduce incidence of unauthorised camping. (Bristol council estimated that it saved £190,000 per year in enforcement activity by providing a transit site)</p> <p><u>Environmental</u> Needs assessment to feed into site delivery. Therefore the more sites delivered the less likely unauthorised camping on unsustainable sites with associated problems such as fly-tipping.</p> <p><u>Social</u> Identifying a wide range of need and providing for it appropriately should reduce the need for unauthorised camping. Well established sites are more likely to foster better relations between settled communities and Gypsies and Travellers. Those Gypsies and Travellers on authorised sites should have better access to services and therefore there should be improved health and educational outcomes.</p>
Use planning definition	<p><u>Economic</u> If camping on unauthorised sites continues then staff time will continue be spent on enforcement and associated</p>	<p><u>Economic</u> Smaller target audience may save money in conducting GTAA and may call for less co-operation between housing</p>

	<p>legal costs</p> <p><u>Environmental</u> Failure to plan to meet the needs of those Gypsies and Travellers that don't fall within the narrow planning definition may result in continued levels of unauthorised camping resulting in damage to the environment.</p> <p><u>Social</u> Using the narrower definition that only applies for planning policy will mean that some members of the Gypsy and Traveller community may not have their needs identified which may result in continued difficulty in accessing appropriate services and sites.</p>	<p>and planning departments to identify range of need.</p>
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59. As a result of consultation, a variation of option 2 is being recommended, as set out below:

“gypsies and travellers”⁸ means—

- (a) persons with a cultural tradition of nomadism or of living in a caravan; and
- (b) all other persons of a nomadic habit of life, whatever their race or origin, including—
 - (i) such persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age, have ceased to travel temporarily or permanently; and
 - (ii) members of an organised group of travelling showpeople or circus people (whether or not travelling together as such).

60. Whilst this covers the same groups as the preferred option that was consulted on, as a result of responses to the consultation, the wording of the definition has changed.

61. The definition has changed as a result of consultation to specifically state the inclusion of travelling showpeople. Whilst their inclusion within the proposed definition was implicit, they were not stated as a specific group. Some respondents thought that they shouldn't be included as they are not traditionally grouped with Gypsies and Travellers, others including the Showmen's Guild of Great Britain welcomed the inclusion of travelling showpeople. The Department thought it important to specifically state the inclusion of travelling showpeople since they face many of the same issues as Gypsies and Travellers in terms of shortage of land for caravan sites and it makes sense for local authorities to include travelling showpeople when undertaking Gypsy and Traveller accommodation needs assessments. That said, it is recognised that the needs identified may be slightly different and will have to be planned for separately. However, not including them

⁸ This is how the definition will appear in the regulations since the primary legislation uses the term in lower case.

in the assessment would have meant their needs would continue to be overlooked in the same way as traditional Gypsies and Travellers have been.

62. The definition has been separated out to show more clearly the distinct groups covered by the definition. One of the issues raised in consultation was that some groups within the definition are treated differently in terms of planning policy e.g. separate planning advice relates to travelling showpeople. Therefore by stating the specific groups included within the definition, the interface with the planning system is more apparent. This is particularly important since the needs identified from this specific group might be slightly different from those that are more traditionally included in the term Gypsies and Travellers.

63. As outlined in the summary of responses, one of the key issues raised in relation to the consultation exercise was from respondents that thought that the definition should be confined to ethnic Gypsies and Travellers and shouldn't include the wider group of nomadic people. This issue is explored further in the Race Equality Impact Assessment attached to this document.

64. Some respondents to the consultation suggested that it would be easier to have one statutory definition of Gypsies and Travellers that applied for all purposes. The Department has explored this option and concluded that it is not possible for a number of reasons (further explanation can be found in the summary of responses document which can be accessed at:

www.communities.gov.uk/

65. The Government believes that using the definition set out at paragraph 58, will ensure that local authorities have a full understanding of the need amongst their ethnic Gypsy and Traveller population and other nomadic people and can plan appropriately to meet that need. Ultimately the identification of need will feed into the delivery of more caravan sites in appropriate and sustainable locations which should remove the need to camp in unauthorised locations.

Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed ...Meg Munn.....

Date 27th November 2006

Meg Munn

Parliamentary Under Secretary of State

Department for Communities and Local Government

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RACE EQUALITY IMPACT ASSESSMENT

1. POLICY DESCRIPTION

Title of policy to be Assessed:

1. Statutory definition of 'Gypsy and Traveller'⁹ for the purpose of section 225 of the Housing Act 2004 (the Act).

Brief description of policy to be Assessed:

2. Section 225 of the Act will place a specific duty on local housing authorities to assess the accommodation needs of Gypsies and Travellers and plan strategically to meet those needs. The Act gives the Secretary of State the power to make regulations defining what Gypsies and Travellers means. The Government consulted on a proposed definition earlier this year. Section 226 of the Act gives the Secretary of State power to issue guidance to local housing authorities regarding the duties imposed by section 225.
3. The duty in section 225 was introduced, because although local authorities are under a duty to assess the housing needs of the general population, in practice, the accommodation needs of Gypsies and Travellers have been overlooked, resulting in a lack of appropriate accommodation i.e. caravan sites.
4. The following definition was consulted upon

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 dependents' educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism and/or caravan dwelling.

5. As a result of responses received the Government will now adopt the following definition in regulations:

"gypsies and travellers" means—

- (c) persons with a cultural tradition of nomadism or of living in a caravan; and
- (d) all other persons of a nomadic habit of life, whatever their race or origin, including—
 - (i) such persons who, on grounds only of their own or their family's or dependant's educational or health needs or old age, have ceased to travel temporarily or permanently; and
 - (ii) members of an organised group of travelling showpeople or circus people (whether or not travelling together as such).

Aims of policy to be assessed:

6. The Government's preferred formulation of Gypsies and Travellers that was consulted upon purposefully captures a wider audience than any definition determined only in terms of race, in

⁹ The Housing Act 2004 uses the term 'gypsies and travellers', however as a result of concerns raised in consultation, the use of the term will be capitalised throughout this document, to recognise the ethnicity of many members of the group covered by the definition. However, the Government recognises that some that fall within the definition will not be ethnic Gypsies and Travellers.

order to ensure that local authorities assess a wide range of accommodation need in relation to a group of people whose needs have previously been overlooked. The aim of the original definition was to cover all those of a nomadic habit of life, whatever their race or origin, including those that may have stopped travelling for education, health or age reasons and all ethnic Gypsies and Travellers (as defined by having a cultural tradition of nomadism or of living in a caravan).

Who will be affected by this policy?

7. The main groups affected by this policy are:

- Romany Gypsies and Irish Travellers
- Other groups with a nomadic way of life including travelling showpeople
- Local Authorities
- Regional Housing Boards & Regional Planning Bodies
- Organisations working with Gypsies and Travellers

ASSESSMENT ANALYSIS

Could this policy have a disproportionate effect on different ethnic groups?

8. As ethnic Gypsies and Irish Travellers are likely to form the majority of those encompassed by the definition, then it is likely to have a disproportionate effect on ethnic Gypsies and Irish Travellers.

Detailed Policy Considerations

9. Case law has recognised Romany Gypsies and Irish Travellers as distinct ethnic groups and as such they are protected by Race Relations legislation. The proposed definition in this document has no effect on the ethnic status of Gypsies and Irish Travellers and they remain protected under Race Relations legislation.
10. The definition is designed to clarify who should be treated as a Gypsy or Traveller for the purpose of undertaking accommodation assessments and producing housing strategies (as outlined in the Housing Act 2004). The definition impacts upon ethnic Gypsies and Travellers, it has been broadened beyond this group to include all groups who lead a nomadic way of life or have ceased to travel due to the health or educational needs of themselves or their families, including travelling showpeople, who have not traditionally been grouped with Gypsies and Travellers.
11. Some Gypsies and Travellers have expressed concerned that they have been left out of policy considerations because they don't currently pursue a nomadic way of life even though they are ethnic Gypsies and Travellers. The definition therefore recognises that some people that have pursued a nomadic way of life in the past but no longer do so because of educational, and health reasons. The definition has also sought to include all people with a cultural tradition of nomadism or living in a caravan regardless of their current lifestyle or reasons for stopping travelling.

Supporting Evidence

12. At present around 25% of Gypsy and Traveller caravans are on unauthorised sites. The Government has introduced a new policy framework designed to increase the number of authorised Gypsy and Traveller sites by compelling authorities to assess the needs of Gypsies and Travellers and planning strategically to meet that need and compelling them to allocate

land in their development plan documents (DPDs) for additional caravan pitches in line with need.

13. Regulations made under the Housing Act will define the group of people whose accommodation needs must be assessed, under section 225 of the Act.
14. A lack of appropriate sites for Gypsies and Travellers is likely to be a significant contributory factor the poor educational and health outcomes experienced by Romany Gypsies and Irish Travellers. Frequent moving by those Gypsies and Travellers with no authorised place to station their caravan disrupts access to education, health and other services. For example,
 - In 2005, 43% of all pupils achieved 5+ A*-C at GCSE including English and Maths, compared to 21% of Irish Traveller pupils and 9.1% of Gypsy/Roma pupils.
 - Average life expectancy is 12 years less for women and 10 years less for men than the settled population
 - 41.9% reporting limiting long-term illness – compared to 18.2% of the settled population
 - 17.6% of Gypsy and Traveller mothers have experienced the death of a child – compared to 0.9% in the settled population

Consultation Methods.

15. A consultation paper was sent to all local housing authorities, a range of Registered Social Landlords, related groups and organisations, bodies representing Gypsy and Traveller communities and the CRE for comment. The document was also made available on the DCLG website and alternative forms of the document such as audio were available on request.
16. During the consultation period and beyond, the Department sought views from stakeholders, particularly Gypsies and Travellers, on the proposed definition, as part of wider engagement on other issues. The consultation document posed the following questions:

Consultation Question

- Does the proposed definition capture the right groups of people?
- Are there any unjustifiable disproportionate impacts on any ethnic minorities?

POST CONSULTATION

What possible differential impacts on equality groups were identified through consultation?

- 17. A number of Gypsy and Traveller representative groups commented that the definition should be confined to ethnic Gypsies and Travellers and should not include a wider group of nomadic people. This view was expressed on the basis that ethnic Gypsies and Travellers have been discriminated against for decades and their needs have been overlooked on the basis of their lifestyle and culture. Some consultees thought that manipulating a definition to include other groups that are not ethnic Gypsies and Travellers is unhelpful. Respondents argue that mainstream housing and planning systems should deal with other needs for similar types of accommodation for non recognised ethnic groups.

- 18. Respondents argued that living in caravans was intrinsically linked to their ethnicity but that for other nomadic people it was a lifestyle choice.

- 19. Another response suggested that by broadening a definition to include other non-ethnic Gypsies and Travellers, the ability of the wider planning system to deliver sites for ethnic Gypsies and Travellers would be compromised. Concern was expressed that Gypsy and Traveller accommodation needs assessments would identify a wider range of need than if a definition was confined to ethnic groups but that not all identified need could be met. It was suggested that as a result of a broad definition there would be increased competition for scarce sites and ethnic Gypsies and Travellers were worried that this would mean that they might lose out and remain at a disadvantage to the wider population in terms of the ability to access appropriate accommodation

ACTION TO ADDRESS DIFFERENTIAL DIVERSITY IMPACTS

If Assessment has indicated that a policy will have a differential impact, how would you categorise it?

Please tick.

Significant impact	<input type="checkbox"/>
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Moderate impact	[x]	The definition which is proposed will have a differential impact
Low impact	[]	

20. The use of a broad definition means that a wide range of need will be assessed and need may be identified from both ethnic and non ethnic Gypsies and Travellers and the Government recognises that this will have a differential impact on ethnic Romany Gypsies and Irish Travellers.
21. However, the way in which need is prioritised and planned for is a matter for the local authority. Once a need has been identified, the local authority must then prioritise that need accordingly and produce a strategy showing how the local authority plans to meet that need. However, in prioritising need, local authorities will need to take their duties under the Race Relations Act into account including the need to promote race equality and good race relations. Local authorities may also wish to consider cultural issues such as 'cultural aversion' to bricks and mortar housing when prioritising need (although it is unlawful to allocate pitches on ethnic grounds). The Government will issue guidance to local authorities on preparing accommodation strategies including a delivery angle and will include advice on prioritising need and reiterate local authorities' duties to promote race equality in that guidance.
22. It is also important to note that even if an ethnic definition was used, need for caravan sites amongst other travellers and nomadic people would still exist and there would still be competition for the sites which will be delivered. The Government believes it is important to identify the range of need from the outset and plan properly to meet that need.
23. Finally, if the majority of those covered by the definition are ethnic Gypsies and Irish Travellers then we would expect the majority of sites to cater for ethnic Gypsies and Irish Travellers. We will monitor the policy as outlined below to assess the impact of the broader definition on Romany Gypsies and Irish Travellers.

How will you monitor the Diversity Effects of this policy in the future?

Action	Date	Responsible Person
Local authorities and RSLs are asked to provide details of the ethnic status of those living on sites, on a voluntary basis in the bi-annual caravan count. Where this information is provided it can be used to assess the increase in provision for ethnic Gypsies and Travellers compared to other travellers included within the broad legislative definition.	Bi-annual basis (January and July Caravan Count)	Gypsy and Traveller Unit
We are working with ONS to ensure that Romany Gypsies and Irish Travellers are specified ethnic groups in the next census. This will provide baseline information on the number of ethnic Gypsies and Travellers in the country and their accommodation status.		Gypsy and Traveller Unit
Monitoring of applications for Gypsy and Traveller Sites Grant from Local Authorities and Registered Social Landlords will provide information as to who is intended to occupy a site. This information can be used to assess the number of new sites which are being delivered for different types of Traveller.		Gypsy and Traveller Unit

