

Explanatory Memorandum to the Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (Wales) Regulations 2007.

This Explanatory Memorandum has been prepared by the Inclusion Unit, Communities Directorate, and is laid before the National Assembly for Wales.

- (i) **Description.**

The Statutory Instrument will set out the meaning of “Gypsies and Travellers” for the purpose of section 225 of the Housing Act 2004. Section 225 will place a duty on Local Authorities to assess the accommodation needs of Gypsy Travellers. Section 226 will subsequently place a further duty on Local Authorities to consider these needs.
- (ii) **Matters of special interest to the Subordinate Legislation Committee.**

None.
- (iii) **Legislative Background.**

Section 225(5)(a) of the Housing Act 2004 states that the meaning Gypsies and Travellers has the meaning given by the appropriate national authority. The appropriate national authority is defined under section 261(1)(b) of the 2004 Act as being the National Assembly for Wales in relation to Wales, whose functions are now exercisable by the Welsh Ministers by virtue of Schedule 11, paragraph 30 of the Government of Wales Act.

The Statutory Instrument is subject to the negative resolution procedure.
- (iv) **Purpose and Intended Effect of the Legislation.**

The regulations will set out the meaning of Gypsies and Travellers for the purpose of sections 225 of the Housing 2004. The definition will allow Local Authorities to better understand their responsibilities in relation to section 225 of the Housing Act 2004.

This section places a duty on local housing authorities to carry out an assessment of the accommodation needs of Gypsy Traveller communities residing in or resorting to their district. The Accommodation Needs Assessment will inform the development of Local Housing Strategies and Local Development Plans and will assist Local Authorities in identifying sites for Gypsy Travellers. The Accommodation Needs Assessments will allow proper consideration to be given to the accommodation needs of Gypsy Travellers and result in any provision being needs based rather than imposed. Details of groups affected are listed in the Regulatory Impact Assessment (attached). Primarily this will bring Gypsy

Travellers into line with other minority groups and allow them equal access to needs based accommodation and associated services as well as providing a definition that can be used in the production of strategies where Gypsy Travellers are identified and considered.

The Instruments will reflect what has already been commenced in England.

(v) **Implementation.**

It is intended that regulations will come into force on 14th December 2007.

Similar legislation was introduced in England on 2nd January 2007.

Implementation in Wales was planned for February 2007. This was postponed due to the delay in all legal processes incurred by the implementation of the Fire Regulations in Wales.

(vi) **Consultation.**

In 2006 the Welsh Assembly Government conducted a full consultation exercise on the definition of Gypsies and Travellers which would enable sections 225 and 226 of the Housing Act 2004 to be enacted. The definition used in the consultation exercise was the same definition used in England. The majority of responses to the consultation were content with proposed definition of Gypsies and Travellers.

In November 2006, the Minister for Social Justice and Regeneration approved the draft definition as per SF/EH/0479/06. The agreed definition is as detailed below.

“Gypsies and Travellers” 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 family’s or dependant’s educational or health needs or old age, have ceased to temporarily or permanently; and
 - ii) members of an organised group of travelling show people or circus people (whether or not travelling together as such).

Title of Proposal

1. Regulations setting out the meaning of “Gypsies and Travellers” for the purposes of section 225 of the Housing Act 2004.

Options.

Option 1: Do Nothing.

2. If the Welsh Assembly Government chooses to ‘do nothing’ then regulations prescribing Gypsies and Travellers will not be made. This will in turn impact on the viability of commencing the relevant sections of the Housing Act 2004. If sections 225 and 226 of the Housing Act 2004 are commenced without first defining Gypsies and Travellers in regulation, this would mean that Local Authorities would have to determine for themselves what constitutes a Gypsy Traveller individual or group. This could potentially lead to inconsistencies between authorities and inevitably some groups will be omitted from any needs assessment.
3. If the meaning of Gypsies and Travellers is not defined in regulations then it is difficult to see any benefit to commencing sections 225 and 226 of the Housing Act 2004.
4. If sections 225 and 226 of the Housing Act 2004 are not commenced then there would be no duty on Local Authorities to assess the needs of Gypsy Travellers and then consider these identified needs. Failure to commence the sections would result in a continued lack of engagement and consideration for Gypsy Travellers by Local Authorities.
5. Should the definition not be made in regulation it is possible that much of the Gypsy Traveller community will continue to be overlooked and subsequently excluded when Local Authorities are developing accommodation related policies. The community will not have an opportunity to contribute to policy development on accommodation issues that will directly affect them. To ‘do nothing’ would result in a sector of the population being undefined and the long term impact would be a continued lack of suitable accommodation provision for Gypsy Traveller communities.

Option 2: Introduce Regulations as Drafted.

6. The proposed definition (see Consultation, paragraph v₁) will have considerable impacts on an otherwise marginalised community.
7. The definition aims to be broad enough to ensure that Local Authorities consider the needs of all Gypsy Travellers and understand the wide

range of needs that exists amongst this group. Understanding the wide range of needs will help Local Authorities develop wider policies and consider the needs of Gypsy Travellers in these.

8. Introducing this definition in regulation would allow a full understanding of the requirements of section 255 and 226 of the Housing Act 2004. These sections will place a duty on Local Authorities to assess the accommodation needs of Gypsies and Travellers and consider these identified needs.
9. The inclusive definition of Gypsies and Travellers will help ensure that the entirety of this group are engaged and consulted about their housing needs and requirements and these needs can then be considered in any decision making processes.
10. An inclusive definition will help empower the Gypsy Traveller community.

Costs and Benefits

Sectors and Groups Affected.

11. Local Housing Authorities will be responsible for adopting the definition of Gypsies and Travellers and undertaking the duty to carry out an Accommodation Needs Assessment of Gypsy Travellers as per section 225 of the Housing Act 2004.
12. Local Authorities will be responsible for adapting ethnic monitoring procedures to reflect the definition in a housing context.
13. Once the meaning of Gypsies and Travellers is defined in regulation Local Authorities will have a duty to ensure that all elements of the Gypsy Traveller community is engaged and consulted.
14. Gypsy Traveller groups will be positively affected by the definition in terms of inclusion.
15. Gypsy Traveller communities will benefit from undergoing an Accommodation Needs Assessment (as per section 225) and the associated provision of sites as a result.
16. The settled community will be largely unaffected by the meaning of Gypsies and Travellers being defined in regulation but may be affected by the subsequent provision of any Gypsy Traveller sites.
17. Health and social care sectors may also be affected by an increase in demand for services in any area where site provision develops.
18. National Park Authorities may be affected where any site provision develops and should be consulted when Local Authorities are planning provision for Gypsies and Travellers.

Race Equality Assessment.

19. Local Authorities will have to adopt the housing definition of Gypsies and Travellers and ethnic monitoring processes for housing will have to be altered to reflect this.
20. The subsequent commencement of sections 225 and 226 of the Housing Act 2004 will place a duty on Local Authorities to consider the Housing needs of Gypsies and Travellers.
21. Under sections 225 and 226 of the Housing Act 2004, Local Authorities will have to give the same consideration to Gypsies and Travellers as to any other minority group when considering accommodation needs, regardless of race or ethnicity. This will potentially help to reduce racial tensions between Gypsy Travellers and members of the settled community and encourage social cohesion.
22. Introducing the meaning of Gypsies and Travellers in regulation and the duty to consider the housing needs of Gypsies and Travellers and plan for these needs will help to eliminate unlawful discrimination against the Gypsy Traveller community.
23. The regulation and subsequent sections of the Housing Act 2004 could potentially improve the accommodation provision and condition for a group living in some of the poorest forms of accommodation with limited access to services. This will have a significant benefit for Gypsy Traveller communities and allow equality of opportunity to access services.

Health Impact Assessment

24. The regulations are aimed at defining Gypsies and Travellers for the purpose of section 225 of the Housing Act 2004. The entire purpose behind sections 225 of the Housing Act and the subsequent section 226, is to improve living conditions for the Gypsy Travellers and improve health and welfare for the community. There is considerable evidence to show that the quality of housing directly impacts the quality of health, therefore these sections will have a positive knock on effect on the health, well being and welfare of the community. Failure to define the meaning of Gypsies and Travellers in regulation will make it difficult for Local Authorities to ensure inclusion and ensure that they have provided the correct services for a wide enough target group.
25. A duty to consider the accommodation needs of Gypsies and Travellers, the duty to provide for such and the improved monitoring of the community will have a positive impact on health, welfare, infant mortality and access to services for disabled and older people. This proposal may consequently lead to improvements in health outcomes both in terms of the physical and mental health of Gypsies and Travellers in Wales.

26. Those in settled communities who are subject to unauthorised encampments should therefore be relieved from any inconvenience brought on by any associated problems.

Breakdown of Costs and Benefits.

27. The costs and benefits of setting out the meaning of Gypsies and Travellers in regulations are difficult to quantify. The costs and benefits incurred refer more to the associated sections 225 to which the definition relates.
28. As detailed in paragraph 2, the definition is an important precursor to the commencement of sections 225 and 226 being enacted. Should the definition not be set out in regulation, the commencement of related sections of the Act would have limited value and consequences detrimental to the health and well being of Gypsies and Travellers.
29. Many Local Authorities in Wales are already undertaking Accommodation Needs Assessments (in line with section 225) and considering the accommodation needs of Gypsies and Travellers (in line with section 226) but without the correct definition, we cannot be sure that these assessments are inclusive. The costs of this proposal will be minimal and any such costs will be outweighed by the benefits.

Economic Benefits

Economic Benefits to Local Authorities

30. The potential establishment of any residential Gypsy Traveller sites resulting from the Accommodation Needs Assessment (as per section 225 of the Housing Act 2004) will mean that fewer resources would be devoted to dealing with unauthorised encampments and fewer associated move on costs, including Local Authority and Police time.
31. There would also be fewer costs associated with anti-social behaviour in respect to unauthorised encampments and costs associated with enforcement.
32. Some Local Authorities may have several plots of under used land. It may be feasible to establish Gypsy Traveller sites on this land. This has the potential to generate rental income from otherwise under utilised land. The feasibility of such an approach would be established using the new Planning Circular 'WAG30/2007, Planning for Gypsy and Traveller Caravan Sites' and Site Design Guidance to be published by the Welsh Assembly Government next year, following a consultation exercise.
33. Setting out the meaning of Gypsies and Travellers in regulation will clearly highlight to Local Authorities which groups should be included in

the Accommodation Needs Assessment and prevent the waste of resources in relation to the Assessment and any associated provision.

34. Undertaking the Accommodation Needs Assessment will allow Local Authorities to effectively plan and allocate resources based on the evidence of needs. Planning in this way will help to reduce the level of unnecessary or unwanted services and associated resources.

Economic Benefits to Gypsies and Travellers

35. Local Authorities which make site provision for Gypsies and Travellers will reduce the pressure and financial burden on Gypsies and Travellers to purchase their own land.

Economic Benefits to Other Groups

36. Where sites are established, this should result in increased demand for the services of local shops and businesses, bringing direct economic benefits.
37. The reduction of unauthorised encampments will be beneficial to the surrounding settled community. The perceived cost of unauthorised encampments will no longer be passed on to home owners and areas previously suffering from encampments may see improvements in house prices.

Economic Costs

Economic Costs to Local Authorities.

38. Again it is difficult to identify the potential costs to Local Authorities associated with setting out the meaning of Gypsies and Travellers in regulation. The costs can be linked to the subsequent parts of the Act to which the definition relates.
39. Local Authorities will have to undertake an Accommodation Needs Assessment for Gypsies and Travellers. Local Authorities may argue that there is a cost incurred from this however In 2005/06 Local Authorities in Wales were provided with a total of £220,000 to assist them in undertaking their Local Housing Market Assessments. The Accommodation Needs Assessments for Gypsies and Travellers should have formed part of this. Any perceived costs should be off set by this money.
40. Some Local Authorities have already undertaken their Accommodation Needs Assessment for Gypsies and Travellers but without the definition some Gypsy Travellers may have been excluded from this consultation. Where Local Authorities have neglected to include some sectors of the Gypsy Traveller community the Accommodation Needs Assessment may have to be revised. As above, the cost of this should largely be met

by the money that was awarded to undertake the Local Housing Market Assessment.

41. Local Authorities will be required to consider provision for any identified needs of Gypsies and Travellers. This may include refurbishing existing sites or establishing new ones. The cost of refurbishing sites can partly be met (to a level of 75%) through the Welsh Assembly Government's Gypsy and Traveller Site Refurbishment Grant. Applications to the Welsh Assembly will need to show that the Accommodation Needs Assessment has been completed and evidence consultation. Local Authorities that comply with sections 225 and 226, in addition to meeting other grant criteria, will be eligible for this grant to improve existing sites. This will improve not only the site but have added value for the surrounding area.
42. Local Authorities will have to maintain sites but this can partly be met by rental incomes. It is possible for well managed and maintained sites to be self sustaining.

Economic Costs to Gypsies and Travellers.

43. Local Authorities may seek to pass on any additional costs to Gypsy and Traveller residents and therefore increase pitch rental.

Economic Costs to Other Groups.

44. Local Authorities may also seek to pass on any additional expenditure through the increase in costs for the provision of services. These increases may be passed on through Council Tax.

Economic Local Authority On-Going Costs.

45. After the initial costs of the Accommodation Needs Assessment (already offset by the Welsh Assembly Government) and the initial start up costs of sites, rental income of good standard sites should subsidise the costs of running and maintaining the site.
46. The Accommodation Needs Assessment will have to be updated and family growth patterns and travelling patterns of Gypsies and Travellers monitored to adapt or expand sites or provision as necessary. However, any future costs should be subsumed by the cost of undertaking the Local Housing Market Assessments.

Social Benefits

Social Benefits to Local Authorities.

47. Setting out the meaning of Gypsies and Travellers in regulation and the consequent duty on Local Authorities to take account of the housing needs for Gypsy Travellers and consider these, contributes towards the

mainstreaming of Gypsy Traveller policy in the provision of services. Actively promoting equality of opportunity and equal access to services for Gypsy Travellers may in turn help the authority to relieve social tensions and encourage social inclusion.

48. Providing for Gypsy Traveller accommodation needs will reduce the level of unauthorised encampments and in turn this will reduce the level of hostility felt towards Gypsy Travellers and reduce the level of anti-social behaviour. There will also be a reduction in associated costs including enforcement.

Social Benefits to Gypsy Travellers.

49. As discussed in points 24-26, there will be health benefits to Gypsy Travellers
50. In addition, Gypsy Travellers will be able to develop more permanent social networks where permanent sites exist and allow links to be formed with others parts of the settled community including schools and doctors allowing for better integration and social inclusion.
51. Equal opportunities to access services for Gypsy Travellers may help reduce tensions within the wider community and encourage social inclusion.

Social Benefits to Other Groups.

52. Members of the settled community may experience more social cohesion once the meaning of Gypsies and Travellers is set in regulation and where Gypsy Travellers are settled on permanent accommodation social tensions may be reduced,.

Social Costs

Social Costs to Local Authorities.

53. It is difficult to identify any social costs that the Local Authority may incur as a direct result of setting out the meaning of Gypsies and Travellers in regulations although in respect of site provision, Local Authorities should consult as much as possible with local residential and commercial neighbours when considering potential locations.

Social Costs to Gypsy Travellers

54. In terms of residential sites Gypsy Travellers may encounter some hostility from the settled community but generally hostility is more apparent where unauthorised encampments occur. No social costs to Gypsy Travellers can be identified as a result of setting out the meaning of Gypsies and Travellers.

Social Costs to Other Groups.

55. Some members of the settled community may feel some resentment towards the Local Authority for considering and providing for the accommodation needs of Gypsy Travellers and resentment may occur.

Environmental Benefits

56. If the meaning of Gypsies and Travellers is not set out in regulation and sections 225 and 226 are not enacted then the ability of planning authorities to deliver appropriate land for sites might be compromised and unauthorised encampments will continue.
57. In addition, the provision of official Gypsy Traveller sites could potentially contribute to a reduction in fly-tipping and general waste from unauthorised encampments. This would benefit the Gypsy Traveller community, the Local Authority and the settled community.
58. The utilisation of under used land or brown field sites for Gypsy Traveller provision would be aesthetically pleasing especially where its previous use has resulted in industrial debris.
59. The use of permanent residential Gypsy Traveller sites has a lower carbon footprint than settled communities in bricks and mortar accommodation and Gypsy Travellers will only use the materials they need. This results in a very low level of household wastage.

Environmental Costs

60. It is difficult to identify any environmental costs but careful consideration should be given to the location of any potential sites. Local Authorities should consider the provision of waste and rubbish collection from any sites, as well as recycling to limit the environmental impact of a site.
61. In planning any potential Gypsy Traveller sites, Local Authorities should take into account any National Parks within the area, any Sites of Special Scientific Interest or protected land on or near proposed locations. Local authorities should also be careful to consider the use of any identified land in terms of flora, fauna or habitats that may be disturbed. Properly planned and designed sites in an appropriate location are likely to have a lesser environmental impact compared to an unauthorised site.

Post Implementation Review

62. Monitoring will be undertaken via the Local Authority plans including the Local Development Plans, Race Equality Schemes and other documents that use the housing definition to assess and plan for Gypsies and Travellers.
63. Any application to the Welsh Assembly Government for funding relating to Gypsy Traveller sites will be reviewed in light of the meaning of Gypsies and Travellers and sections 225 and 226.
64. Welsh Assembly Government officers provide input to the draft Local Housing Strategies. Any strategy that does not adopt the meaning of Gypsies and Travellers and does not complete and evidence an Accommodation Needs Assessment for Gypsy Travellers as part of their Local Housing Market Assessment will be viewed as incomplete and will be returned to the Local Authority.

Summary

65. The actual costs and benefits of the option 2 against option 1 can be identified but are hard to quantify in the short term.
66. Many of the costs and benefits are intangible and cannot be put into figures while others are based on local circumstances. The outcomes will be dependant on local occurrence of and the level of need for Gypsies and Travellers.
67. The social, health and economic benefits to Gypsies and Travellers laid out in option 2 far out weigh any potential costs incurred by the Local Authorities. The Welsh Assembly Government has gone some way to offsetting these costs by providing guidance and financial support to Local Authorities and will continue to explore ways of supporting Local Authorities. The planned publication of the Site Design Guidance and Site Management Guidance will also support Local Authorities in fulfilling their duties.
68. To do nothing, as in option 1, would result in the meaning of Gypsies and Travellers remaining undefined and consequently the accommodation needs of Gypsy Travellers being unmet or incomplete in some Local Authorities. The current situation is unacceptable and could be greatly improved; therefore it is proposed that option 2 be pursued.