

Traveller Law Reform Bill

*These notes refer to the Traveller Law Reform Bill
as brought from the House of Commons on
—date—*

TRAVELLER LAW REFORM BILL

EXPLANATORY NOTES

INTRODUCTION

These explanatory notes relate to the Traveller Law Reform Bill. They have been prepared in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill.

The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

The Bill gives effect in England and Wales to proposals contained in the document ‘*Gaining Ground: Law Reform for Gypsies and Travellers*’ (1999)¹. ‘*Gaining Ground*’ was itself the product of over two years of dialogue between the Gypsy and Traveller communities and the statutory and non-statutory agencies whose responsibilities directly impinge upon the Traveller way of life.

The main purpose of the Bill is to tackle the social exclusion of Gypsies and Travellers by amending unfair and discriminatory statutory provisions and by seeking to ensure that appropriate provision is made available for their accommodation and educational needs.

The Bill seeks to overcome the political constraints which restricted the effectiveness of Part II of the Caravan Sites Act 1968² (which sought to ensure that there was adequate accommodation for Gypsies). Enforcement of the Bill’s accommodation obligations relies primarily upon court and planning inspector action in individual cases, rather than upon strategic political action.

¹ (ISBN 0 900458 98 4) (University of Hertfordshire Press)

² Repealed by s80 Criminal Justice and Public Order Act 1994.

OVERVIEW OF THE BILL

The main body of the Bill is arranged as follows:

- *Clauses 1-2* create a new body known as the Gypsy and Traveller Accommodation Commission (GTAC) whose principle task is to ensure that there is adequate accommodation for Gypsies and Travellers in England and Wales.
- *Clauses 3-4* oblige local housing authorities to take steps to ‘facilitate’ adequate provision of accommodation for Gypsies and Travellers.
- *Clauses 5-6* require local housing authorities to develop accommodation programmes detailing their strategy for achieving their new accommodation obligations.
- *Clause 7* clarifies the status of guidance issued by Secretaries of State and GTAC.
- *Clause 8* establishes the rights and responsibilities of Gypsies and Travellers to live a nomadic way of life.
- *Clause 9* clarifies the scope of the Race Relations Act 1976 as it applies to Gypsies and Travellers.
- *Clauses 10-12* require local education authorities to develop strategic programmes to improve the educational attainment of Gypsies and Travellers.
- *Clause 13* recasts the criminal eviction powers of the police in relation to mass trespass to ensure they are proportionate and contain ‘due process’ protection for trespassers.
- *Clauses 14–15* widen the powers of the Housing Corporation to enable it to provide grant support for the construction of accommodation for Gypsies and Travellers.
- *Clause 16–17* equalise the protection from eviction rights of Gypsies on public caravan sites with persons living on private caravan sites.
- *Clause 18* provides courts with increased discretionary powers when making orders for possession of land in the ownership of public authorities.
- *Clauses 19, 20, 21 and 22* deal with ‘repeals’, the application of the Bill to Wales, its financial implications and commencement.

COMMENTARY ON CLAUSES

Clause 1: The Gypsy and Traveller Accommodation Commission

This clause establishes the Gypsy and Traveller Accommodation Commission. Its specific objectives, powers and duties are contained in clause 2. More details concerning the constitution of the Commission can be found in Schedule 1.

Subsection (1) establishes the Commission for the purpose of carrying out the functions that are provided for in the rest of the Bill.

Subsection (2) is a money clause making provision for the payment of the Commission’s expenses. It is likely however that the creation of the Commission will result in a substantial net saving to the public purse. The Commission will assume responsibility for many functions already being discharged by other bodies; such as the unit within the Department for Transport Local Government and the Regions presently responsible for co-ordinating the bi-annual Gypsy caravan count and responding to individual Development Plan proposals. Furthermore, research by the Traveller Law Research Unit of Cardiff Law School suggests that costs born by the public as a result of inadequate site provision may exceed the cost of making the necessary provision.

Subsection (3) refers to Schedule 1 which details the Commission’s composition and constitution (ie appointment and tenure of officers, consultation and reporting obligations).

The Commission will have not less than 10 or more than 15 officers, of whom at least half must be Gypsies or Travellers. The Schedule provides for the appointment of staff including a chief executive.

Clause 2: The Gypsy and Traveller Accommodation Commission: general functions

This deals with the general powers and duties of the Gypsy and Traveller Accommodation Commission.

Subsection (1) declares that the Commission's basic statutory obligation is the promotion of equality of opportunity for Gypsies and Travellers. In pursuance of this duty, the Commission is required to issue guidance on specified matters, including measures for consultation and the adequacy and suitability of existing accommodation arrangements. In particular the Commission must keep under review the adequacy of local authority accommodation proposals for Gypsies and Travellers in their Development Plans and their accommodation programmes (under clause 5).

Subsection (2) provides that the Commission may in addition provide advice to the government or governmental agencies on specified matters and undertake or support research initiatives connected with the Commission's basic functions.

Subsection (3) enables the Commission to charge for its services in appropriate cases.

Subsection (4) the definition of Gypsies and Travellers is widened for the purposes of this clause to include, not only nomadic persons, but also those who have subsequently settled into housing or other permanent accommodation (such as residence on a permanent caravan site).

Part II

Substantive provisions

Clause 3: The duty of local authorities to facilitate the provision of sites for Gypsies and Travellers.

This clause creates a new duty on district, unitary, London borough and metropolitan borough councils to 'facilitate' the provision of adequate accommodation for Gypsies and Travellers.

Subsection (1) This clause is based upon the repealed s6 Caravan Sites Act 1968 but it incorporates two material changes, namely:

- it replaces the former obligation on county councils by placing the duty on district councils; and
- giving greater scope to fulfil the duty, by making it a duty '*to provide or facilitate the provision of*'.

The overwhelming majority of respondents to the 1992 consultation exercise that preceded the abolition of the s6 duty insisted that there must be some statutory authority ultimately responsible for site provision. This fact alone justifies the reinstatement of a 'duty to provide'. The new duty is placed upon district rather than county councils since they are the relevant planning authorities. The duty 'to facilitate' enables local authorities to comply with their statutory obligation by a variety of measures, and not solely by building public

sites themselves. It should encourage private and public/private initiatives. Local authorities can comply by 'tolerating' and/or 're-securing' traditional stopping places, providing grants for self-build sites, ensuring sufficient planning applications are granted, as well as supporting the construction by registered social landlords of sites (with the benefit of Housing Corporation financial support if needs be, under clause 15).

The use of the phrase 'adequate and suitable' accommodation means that the accommodation must be of a sufficient standard [in relation to which the Gypsy and Traveller Accommodation Commission may issue guidance under clause 2(1)(b)(ii)]. Additionally the accommodation need not be caravan-focussed; there being considerable support from a number of respondents to the concept of group housing as pioneered in Northern Ireland as well as the idea of low impact dwellings in more rural settings.

Subsection (2) This provision existed in the 1968 Act but was not replicated in the amendment of s24 of the 1960 Act and is therefore here revived. It strengthens the general duty of 'co-operation' between local authorities in subsection (3); local authorities may, for example, decide to co-fund the construction of regional transit sites for long-distance Travellers.

Subsections (3 & 4) The obligation upon local authorities to co-operate is spelt out in this sub-section; it most obviously applies to the district and county council relationship. This provision (and sub-section (4) derives from s27 Children Act 1989). This provision is one of the measures in the Bill designed to encourage local authorities to take a responsible and positive approach to site provision. A local authority that fails to cooperate may find its enforcement powers impaired, since this fact would be, by clause 6(1)(d) a material factor that a court or planning inspector must take into account when determining proceedings of planning applications involving that authority.

Subsection (5) The definition of accommodation is widely drawn to emphasise the range of accommodation that should be made available, not merely permanent caravan sites, but also temporary sites and 'bricks and mortar' accommodation of the Group Housing type being developed in Northern Ireland.

Clause 4: Provision of Caravan Sites by local authorities.

This clause deals with necessary amendments required to the 1960 Act consequent upon the re-imposition of the duty to provide sites.

Subsections (1 & 2) In addition to the provision of working areas for residents on sites, the clause includes the provision of play space for Traveller children and services directed towards ensuring the accommodation is safe and environmentally healthy.

Subsection (3) The present definition of a Gypsy in s24 of the 1960 Act is amplified by making clear that a person does not lose his or her Gypsy / Traveller status merely because of their residence on a permanent site (or an intention to reside in permanent accommodation). This amendment avoids the vicious circle of Gypsies and Travellers being forced by circumstances (lack of sites, children in school or old age etc) to settle down permanently and then because of this fact losing their legal status as Gypsies / Travellers.

Clause 5: Gypsy and Traveller accommodation programmes

This clause derives from s10 of the Irish Housing (Traveller Accommodation) Act 1998. Best Value dictates that local authorities should prepare strategic plans to ensure that they meet their statutory responsibilities. The failure of a local authority to prepare an adequate programme (or its failure to take steps to achieve its objectives) will by clause 6(1)(d) be a material factor that a court or planning inspector must take into account when determining proceedings of planning applications involving that authority.

The preparation of accommodation programmes will become a local authority function for the purpose of the best value provisions of the Local Government Act 1999. Accordingly the Secretary of State may issue specific guidance under s26 of that Act.

Clause 6: Accommodation programmes as material considerations

This clause constitutes one of the major enforcement mechanisms in the Bill. Instead of relying upon political enforcement (which was the case with the 1968 Act) Gypsies and Travellers will be able to use the failure of individual authorities in proceedings involving those authorities. For example, in an appeal against a planning refusal or as a defence against eviction from local authority land an individual Gypsy or Traveller may rely upon that authority's breach of statutory duty as a material factor to which the court/Inspector must have regard in reaching the decision as to whether to allow their appeal / defence. Thus authorities who actively pursue accommodation programmes should be able to restrict unlawful camping and development to a greater degree than those who take no such action. At present those authorities which act responsibly believe that they are penalised by the so called 'honey pot' effect, namely that Gypsies and Travellers migrate to their areas away from 'intolerant' authorities.

Clause 7: Guidance issued by the Secretary of State.

Subsection (1) stipulates that the Gypsy and Traveller Accommodation Commission will be the final arbiter of what constitutes 'adequate' and 'suitable' accommodation in any particular area. This provision again removes from the political arena an assessment which has previously been highly political and subject to considerable abuse. Under the 1968 Act the Secretary of State frequently designated local authority areas, not because they had provided adequate accommodation, but because it was 'expedient'; and on no occasion was a designation withdrawn because of an authority's failure to provide extra sites to accommodate the natural growth in Gypsy communities

Subsection (2) makes explicit the requirement that courts must have regard to guidance issued by the Secretary of State or the Gypsy and Traveller Accommodation Commission in all situations. It remedies the anomalous situation created by *R v Brighton Council ex p Marmont* (1998) and *R v Hillingdon LBC ex p McDonagh* (1998) which suggested that the duty to follow governmental good practice guidance did not apply to certain forms of enforcement action.

Part III

The rights and duties of Gypsies and Travellers

Clause 8: The rights and duties of Gypsies and Travellers

The right of Gypsies and Travellers to a ‘*nomadic way of life*’ is specifically acknowledged by this clause and then placed clearly in the context of it being subject to the obligations in Article 8(2) of the European Convention on Human Rights. The clause adopts the actual wording of this Article, which states in effect, that the enjoyment of any such right to private and family life, and respect for one’s home brings with it a concomitant duty to respect the human rights and reasonable community interests of others.

Part IV

Amending provisions

Equal opportunities

Clause 9: Non-discrimination

The amendment adopts the wording inserted into the Northern Irish legislation by section 5 Race Relations (Northern Ireland) Order 1997 which specifically acknowledges that Irish Travellers constitute a racial group for the purposes of domestic Race Relations legislation. On the same basis therefore Scottish and Welsh Gypsy and Traveller communities are also acknowledged as meeting the Act’s definitional requirements.

Education

Clause 10: Traveller Education Plans

This clause seeks to implement the OFSTED recommendation contained in ‘*The Education of Travelling Children*’ (March 1996) para 46 that Local Education Authorities (LEA’s) publish a policy document concerning the provision of education services to Travelling children; and that the document provide ‘a clear message to educational establishments in a LEA about the needs and rights of Traveller children’.

The proposed clause is modelled upon section 527A of the Education 1996 which concerns the duty on LEA’s to prepare plans relating to children with behavioural difficulties; this is not intended as a pejorative association, but merely a convenient model for a clause requiring the production of such policy documents. The proposed amendments to the School Standards and Framework Act 1998 will require local education authorities to prepare effective strategic programmes (as part of their educational development plans) which will ensure that the educational needs of Gypsies and Travellers (of whatever age and including vocational training) are satisfied.

Clause 11: Grants for the education of Gypsies and Travellers.

Clause 11 seeks to achieve the objective of recommendations 2.11 and 2.13 of the ‘reform proposals for education in England’ set out in *Gaining Ground* and extend this reform to include Wales. Recommendation 2.11 states: ‘3-year project status should be removed in

favour of much longer-term funding; Recommendation 2.13 states ‘The focus of funding should be extended to include vocational training, and it should recognise that outreach services are invaluable as school attendance is not appropriate for all children’.

The power to make grants for the support of Traveller Education Services is found in section 488 of the 1996 Act and the conditions as to the payment of these grants are prescribed in section 489.

Clause 12: Grants in respect of special provision for ethnic minorities

Clause 12 amends s490 of the Education Act 1996 by widening its scope to enable grant support paid under this section to be used for the educational support of Gypsies and Travellers, notwithstanding that not all such Gypsies and Travellers would otherwise come within the definition of an ethnic minority for the purposes of section 11 Local Government Act 1966.

Criminal Justice

Clause 13: Criminal trespass provisions

This clause essentially re-applies the ‘mass trespass’ provisions of the Public Order Act 1986, but with additional safeguards.

Subsection (1) The amendment adopts the wording of s39 of the 1986 Act with a number of material changes, including that:

- the number of persons is specified as being at least 12;
- the reference to ‘*damage to land*’ is deleted and any damage to property must be ‘significant’; the use of ‘*abusive*’ language ceases to be a material factor, although reference to ‘threatening language’ is retained;
- the new provision makes specific and detailed requirement for an actual notice to be served [under 61(1)];
- there is an additional defence under s61(4), namely that the person is not a trespasser (this appeared in the 1986 Act but was dropped from the 1994 Act);
- the 1988 Act is specified in 61(9) of the 1994 Act and this statute is substituted for that referred to in the 1986 Act, save only that reference to the situation in Scotland is deleted (ie section 7(2) Valuation and Rating (Scotland) Act 1956);
- in the definitions clause ‘*senior police officer*’ is defined as being (*inter alia*) a person above the rank of a constable.

Subsection (2) inserts a new section (*section 61A*) which clarifies and particularises the content of a ‘direction’ under section 61. This new ‘notice’ provision is transcribed with necessary alterations from s79 of the Criminal Justice and Public Order Act 1994.

In addition to changing the words “local authority” to “police officer” the provision prescribes with greater precision the information that must be included in any direction that a police officer issues. At present there is no description as to the minimum contents of this statement. Since non-compliance may lead to arrest and imprisonment justice requires that it be in writing and contain certain essential information.

Where a direction is served on persons who have not caused any damage or used any threatening words or behaviour, then reasons must also be given in writing as to why it is necessary for such persons to be directed to leave the land.

Caravan Site Accommodation

Clause 14: Registration as a social landlord

Clauses 14 and 15 have been drafted with the purpose of removing the existing discrimination against Gypsies and Travellers in relation to public grant support for the construction of caravan sites. At present public funds are available for the provision of 'bricks and mortar' accommodation by registered social landlords (formerly known as housing Associations) but not for caravan site accommodation. A specific grant for this purpose existed under section 70 of the Local Government, Planning and Land Act 1980 but was repealed by s80 of the Criminal Justice and Public Order Act 1994.

Clause 14 accordingly enables charitable organisations whose objects include the provision of Gypsy and Traveller sites to be eligible for registration as social landlord within the meaning of section 2 of the Housing Act 1996. This then links up with the following amendment under clause 15.

Clause 15: Housing Corporation grant support.

Clause 15 makes the necessary amendments to the 1996 Act to empower the Housing Corporation to make grants to registered social landlords, to enable them to provide and manage caravan sites. At present the only accommodation they can support is housing.

Clause 16: Security of tenure

This clause is a limited measure that seeks to equalise the security of tenure rights of Gypsies and Travellers who live on public Gypsy sites with those of persons who live on private caravan sites protected by the Mobile Homes Act 1983. The provision is 'limited' in that the security of tenure rights under the 1983 Act are themselves the subject of considerable criticism³. Whilst any difference in treatment between the rights of mobile homes owners based upon Gypsy status appears to be contrary to articles 8 and 14 of the European Convention on Human Rights (and is therefore removed by this clause) there remains a need to bring tenure provisions on sites into line with general tenure provisions in other public accommodation (ie rented council housing). Such a significant change is beyond the scope of this Bill, but does require detailed examination.

Clause 17: Protection from eviction and harassment.

This clause is a further limited measure to remove legislative discrimination against Gypsies and Travellers in relation to protection from eviction and harassment. At present they constitute the only group of persons in publicly provided accommodation whose occupation rights are not protected by the Protection from Eviction Act 1977.

³ See for instance Hansard (House of Commons) 19 July 2000 column 68WH, Hilton Dawson MP, 'Park Homes' debate.

Possession proceedings

Clause 18: The Court's discretion in relation to land in the ownership of public authorities.

This clause amends section 89 Housing Act 1980 to:

(1) provide courts with the power, in appropriate cases, to refuse relief to a local authority that has failed to comply with its obligations under Part II of the Act; and

(2) bring domestic law into line with the decision of the European Court of Human Rights requirements in *Chapman v UK* (2001) where it held, unanimously, that eviction action involving a Gypsy caravan amounted to an interference under Article 8 not merely with the enjoyment of a home, but also of private and family life where what was at stake was a traditional way of life. It follows that such action, when undertaken by a public authority must be 'proportionate'. Section 89 Housing Act 1980 as presently drafted, does not differentiate between the acts of a public authority and that of private individuals and in relation to public authorities imposes a test not of 'proportionality' but of 'exceptional hardship' (and even then the court's power is absolutely circumscribed).

Clause 18 accordingly introduces the required proportionality test and adopts the same definition of a '*public authority*' as in s6 Human Rights Act 1998.

Part V

Miscellaneous and General

Clause 19: Repeals

This clause repeals those legislative provisions which are not only contrary to the European Convention on Human Rights but which are also unnecessary in that alternative (convention compliant) laws already exist to deal with the mischief which they seek to address.

Section 62 of the Criminal Justice and Public Order Act 1994

This provision enables a police constable to seize and impound a Gypsy or Traveller's living vehicle. Whilst such an act, *prima facie*, involves an interference with a person's rights under Article 8 and Article 1 of the First Protocol, as well as amounting to a determination of that person's civil rights to occupy their home, it is attended by none of the procedural safeguards required by Articles 8(2) or 6(1). If in any particular situation seizure is essential, then domestic provisions already exist to enable this, for instance in a civil suit (enforceable if needs be by bailiff / sheriff officers).

Sections 77 – 79 of the Criminal Justice and Public Order Act 1994

This provision empowers local authorities to direct unauthorised campers to leave land. The power is available regardless of whether alternative sites have been provided by the local authority; regardless of whether the occupation is causing any annoyance or interference with the rights of others; and regardless of whether any danger or other community interest is in issue. If third party rights are affected by the encampment then there is abundant domestic law to deal with this; ie trespass, planning enforcement, the Highways Act 1980, s61 Criminal Justice and Public Order Act 1994 and public health legislation.

Clause 20: Wales.

This clause extends the Bill to Wales where the National Assembly of Wales will have the power to issue guidance / directions.

Clause 21: Financial provision

This 'money clause' enables Parliament to pay funds to cover any such additional expenses as may be incurred by local authorities in the implementation of this Bill. Provision is already made for the costs attributable to the Gypsy and Traveller Accommodation Commission expenses in clause 1(2). By ensuring that all local authorities make adequate arrangements to meet the legitimate needs of Gypsies and Travellers, the Bill may make a significant contribution to reducing the substantial public expenditure that results from a lack of suitable accommodation. This conclusion is supported by research conducted by the Traveller Law Research Unit of Cardiff University Law School (2001).

Clause 22: Commencement provisions

This clause provides (amongst other things) that once the Act has received Royal Assent it is for the Secretary of State in England and the National Assembly of Wales to determine when it will actually come into effect.