



# Implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller sites

## Consultation





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authority Gypsy and Traveller sites  
**Consultation**

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# Introduction

## Background

1. Gypsies and Travellers currently occupy pitches on local authority sites under licences under the Caravan Sites Act 1968 (referred to throughout this document as “the CSA”). The CSA provides limited protection from eviction and harassment. In particular, in order to evict a Gypsy or Traveller from one of their sites, a local authority need only give twenty eight days’ notice to terminate the licence. If the resident does not leave the authority can seek a possession order from the court. The court does not have the opportunity to consider the reasons for the eviction and, if proved, consider whether it is reasonable to grant the order.
2. In 2004, in the case of *Connors v United Kingdom*, the European Court of Human Rights ruled that the lack of procedural safeguards to eviction on local authority Gypsy and Traveller sites breached article 8 of the European Convention for Human Rights, which provides a right to respect for private, family and home life.
3. Amendments made to the CSA by the Housing Act 2004 now enable the courts to suspend a possession order given on a local authority site.

## The Housing and Regeneration Act

4. Section 318 of the Housing and Regeneration Act 2008 (“referred to throughout this document as “the HRA”) will amend the definition of a protected site in the Mobile Homes Act 1983 (referred to throughout this document as “the MHA”) to remove the exclusion for local authority Gypsy and Traveller sites. This means that the MHA will apply to these sites. It will mean that residents on local authority Gypsy and Traveller sites will have the same rights and responsibilities as residents living in similar accommodation, such as private Gypsy and Traveller sites and park homes sites.

## The Mobile Homes Act

5. Under the MHA, residents occupy pitches under agreements that consist of:
  - a number of implied terms, which are the rights and responsibilities set out in Part 1 of Schedule 1 to the MHA; and
  - express terms, which are the details of the agreement between the site owner and resident, which are not set out in the MHA.

6. The MHA will improve security of tenure for Gypsies and Travellers on local authority sites. In order to evict a resident under the MHA the site owner must apply to the court for the agreement to be terminated, and seek a possession order. In order for an agreement to be terminated the site owner must satisfy the court that either:
- a term of the agreement has been breached, the resident has been given the opportunity to remedy the breach, but has not done so within a reasonable time; or
  - the resident is not living in the mobile home (a term which means the same as a caravan – throughout this document we refer to caravans rather than mobile homes) as their only or main residence; or
  - the condition of the caravan is having a detrimental impact on the amenity of the site.

The site owner will also need to satisfy the court that it is reasonable to terminate the agreement.

7. The MHA also gives site owners and residents other rights and responsibilities, including:
- the right for a member of a resident's family living with them to inherit (or succeed to) their agreement if they die
  - the right for the resident to pass on (or assign) their agreement with the site owner's approval, if they sell their caravan or give it to a member of their family
  - the responsibility on the site owner to provide certain information on request
  - the responsibility on the resident to maintain their caravan in a sound state of repair, and the site owner to make certain repairs to the pitch and maintain the common areas of the site
  - the responsibility on the site owner to consult on improvements and management
  - the responsibility on the site owner to review the rent annually, with changes subject to certain requirements
  - the right for the site owner or resident to ask the court to consider various matters arising under the MHA.

Further details of these rights and responsibilities are in the consolidated version of the MHA at Annex B. Many of them are already likely to be given as a matter of good practice.



## Consultation

8. Communities and Local Government has held a number of consultation events across the country with both local authorities and Gypsies and Travellers to explain the provisions of the MHA, and seek feedback on applying them to local authority Gypsy and Traveller sites. Feedback from these events is available on the Gypsy and Traveller Knowledge Network (Housing and Regeneration Bill consultation process forum) on the Improvement and Development Agency's Community of Practice website at [www.communities.idea.gov.uk](http://www.communities.idea.gov.uk). The feedback from these events has helped inform this consultation paper.
9. Many other issues were raised at these events which were outside the scope of the MHA. A good many of them related to site management, and we are considering these in producing the final version of our good practice guidance on managing Gypsy and Traveller sites. The draft version of the guidance is available on our website at: [www.communities.gov.uk/publications/housing/guidancemanagementgypsies](http://www.communities.gov.uk/publications/housing/guidancemanagementgypsies).
10. This consultation document seeks views on:
  - whether some of the provisions of the MHA need to be amended for local authority Gypsy and Traveller sites
  - how we should move from a position where existing residents have licences under the CSA to agreements under the MHA
  - the other transitional provisions that we may need in applying some of the provisions of the MHA to existing residents.

## Impact Assessment

11. An impact assessment was prepared for section 318 of the HRA which included assumptions about the costs and benefits of applying the provisions of the MHA to local authority Gypsy and Traveller sites. The two options that we set out for dealing with the issues raised about assignment (see paragraphs 25 – 30) will affect that assessment. We have revised the assessment, which now includes the costs and benefits of these two options. The revised assessment is at Annex C.

## Moving forward

12. Section 318 of the HRA will be brought into force by order. This order will include the amendments to the implied terms or other provisions of the MHA considered necessary for local authority Gypsy and Traveller sites following this consultation, and the transitional provisions for existing residents. The order will be laid before

Parliament for approval by both the House of Commons and the House of Lords.

13. Communities and Local Government is establishing a working group of local authority officials and residents on their Gypsy and Traveller sites to prepare a model agreement. This will include standard express terms on issues that are not covered by the implied terms of the MHA which could be included in agreements on local authority Gypsy and Traveller sites.
14. Section 318 of the HRA applies to England and Wales. The National Assembly for Wales is responsible for bringing the clause into force, and making any amendments to the implied terms and other provisions of the MHA in Wales.

## Responding to this consultation

15. A summary of the issues on which we are consulting is at Annex A. A list of consultees to whom this paper has been sent is attached at Annex D. The consultation paper is also available on our website at [www.communities.gov.uk](http://www.communities.gov.uk). Further hard copies can be obtained from:

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16. Responses to this consultation, to be received by *19 December 2008*, should be sent to:

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17. A copy of the consultation criteria is at Annex E.
18. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Regulations 2004).
19. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Communities and Local Government.

# Part 1

## Applying the Mobile Homes Act provisions to local authority Gypsy and Traveller sites

20. Removing the exclusion in the MHA for local authority Gypsy and Traveller sites will ensure that residents living in similar accommodation have the same rights and responsibilities. However, at the consultation events that we held, stakeholders raised concerns about the impact that some of the provisions of the MHA may have on local authority Gypsy and Traveller sites. This part of the consultation paper explains these provisions, the concerns raised, and sets out possible options for amending them where we believe this is necessary.

### Assignment

21. The implied terms (paragraphs 8 and 9 of Part 1 of Schedule 1) of the MHA enable a resident that either sells their caravan, or gives it to a family member, to pass on (or assign) the agreement to live in the caravan on the pitch to the person that buys it or it is given to, providing the site owner approves of that person. Where the caravan is sold, the site owner can claim a commission up to a maximum fixed by law. This maximum is currently set at 10 per cent of the sale price by the Mobile Homes (Commissions) Order 1983 (SI 1983 No 748).
22. Turnover on many local authority Gypsy and Traveller sites is low, and it is not unusual to meet residents that have lived on their site for 20 or 30 years. This is often likely to be a result of concern that the shortage of sites means they will not be able to get a pitch on another site if they leave, or a desire to ensure access to schools and healthcare for their family. Traditionally, Gypsies and Travellers travel with their caravans to different sites, and we would expect this to continue to be the way in which the vast majority of Gypsies and Travellers move to a different site. However, the right to assign the agreement will provide another option for Gypsies or Travellers on local authority sites seeking to move. Some stakeholders have welcomed this.
23. However, a significant proportion of stakeholders have raised a number of concerns about the impact of assignment on local authority Gypsy and Traveller sites, including:

- that, given the shortage of authorised Gypsy and Traveller sites this could potentially lead to pitches being occupied by those able to pay the most for a caravan, rather than those most in need of a pitch. Currently households in around a quarter of Gypsy and Traveller caravans do not have an authorised place to stop and are therefore effectively homeless. We have established a new framework to increase authorised site provision, however, we recognise that it will take time for this need to be addressed
  - that this will cut across local authority allocation policies. Our site management guidance recommends that, as with other forms of social accommodation, local authorities should have schemes setting out policies and procedures for allocating pitches, and that priority for allocation of a suitable pitch should be given to those in greatest need
  - the circumstances in which the site owner may refuse approval of the person to whom the resident proposes to assign the agreement. If the resident feels that approval is being withheld unreasonably they can apply to the court for an order requiring the site owner to give approval. The issue of the circumstances in which it is reasonable for approval to be withheld are therefore for interpretation by the courts.
  - whether it is appropriate for a local authority to charge commission on the sale of a caravan – although many local authorities said that they would not charge commission.
24. Communities and Local Government agrees that the current shortage of authorised sites for Gypsies and Travellers raises particular issues about the impact of a right to assign agreements. We have identified two potential options for dealing with this.

## Option one

### Do not apply assignment

25. Under this option we would specify that the implied terms dealing with assignment did not apply to local authority Gypsy and Traveller sites.
26. The advantage of this option is:
- **Clarity.** No resident on a local authority Gypsy and Traveller site would have the right to assignment under the MHA – although some local authorities may decide to include this right to assign, or something similar, in the express terms of their agreements.

27. However, the disadvantage of this option is:

- **Potential future inconsistency.** If in future, in light of increased levels of site provision, it was considered appropriate to give Gypsies and Travellers on local authority sites this right of assignment, it would only be possible to give this right to those moving onto sites after this change was made, and not existing residents on these sites. Although local authorities could add an express term to existing agreements with the agreement of the resident, if a local authority did not want to do this it could potentially result in different residents on the same site having different rights.

## Option two

### Impose requirements on approval

28. Under this option the implied terms on assignment would be amended to require that, in considering whether to approve a person to whom a resident on one of their Gypsy and Traveller site proposed to assign an agreement, the local authority must consider the needs of other Gypsies and Travellers in their area, as well as the proposed assignee.

29. The advantage of this option is:

- **Local discretion.** Local authorities would be able to take decisions on assignment based on current local circumstances. If there were Gypsies and Travellers in the area in greater need than the person to whom it was proposed to sell the caravan and assign the agreement, the local authority could withhold approval for that person. If the proposed assignee's need was greater than other Gypsies and Travellers in the area, or if an authority did not have waiting lists for pitches on its site/s, then it could approve the proposed assignee.

30. The disadvantage of this option is:

- **Possible mobility restrictions.** If a local authority withholds approval for a proposed assignee because there are other Gypsies and Travellers in the area in greater need, a resident's plans to move to a different caravan on a different site, or purchase a new caravan and move to a different site may be frustrated. However, residents could check with the local authority about the current situation in relation to need in the area before making any such plans. Even without a requirement for local authorities to consider need, plans may be frustrated if approval for a proposed assignee is withheld for other reasons.

**Question 1:** Which of these two options do you think the Government should pursue to deal with the issues raised by the right to assignment on local authority Gypsy and Traveller sites?

Please explain why.

## Succession

31. We are aware that, if a resident on one of their Gypsy and Traveller sites dies, many local authorities will already pass on the licence under which they occupied the pitch to a spouse or member of their family that was living with them at the time they died (succession), even though the CSA does not require them to do this.
32. The provisions (section 3) of the MHA mean that if a resident dies then their spouse (this includes a civil partner) will inherit the agreement to live in the caravan on that pitch, if they are living with them when they die. If there is no spouse living with a resident when they die then the agreement can be inherited by another member of their family living with them when they die.
33. The MHA defines a member of a resident's family as being a spouse, civil partner, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece. This right of succession will ensure that a bereaved family do not also lose their home.
34. However, in order to avoid potential disputes about whether a family member was living with a resident at the time they died, the local authority will need to ensure that it is aware of who is living on the pitches on its sites. Some licences under the CSA may already include terms requiring residents to inform the local authority if others come to live with them after the licence is given, and local authorities may want to include this as an express term in agreements under the MHA.
35. Where there is no spouse or family member living with a resident when they die, the MHA enables the person that inherits the caravan (either through a will or, if there is no will, under the law of intestacy) to sell it, and assign the agreement to live in the caravan on the pitch, to the person that buys it, with the approval of the site owner. The rules about selling caravans on site (see paragraph 21) will apply to this sale. Alternatively, the person that inherits the caravan may choose to remove it from the site, enabling the site owner to allocate the pitch to someone else. The person that inherits the caravan does not have the right to live in it on the pitch, or to give it to a member of their family to live in on the pitch, unless the site owner agrees that they can.

36. The right for a person who inherits a caravan on a local authority Gypsy and Traveller site to sell it and assign the agreement raises similar issues to the general right to assign, which are set out in paragraph 23. **We propose that the provisions (sections 3(3)(b) and 4) of the MHA relating to succession where no family member is living with a resident when they die should not be applied to local authority Gypsy and Traveller sites, whichever option we decide to pursue in respect of assignment generally.**
37. This is because the person that inherits the caravan does not have the right to live in it on the pitch unless the site owner agrees. This means that if they do not remove the caravan from the site or seek to sell it and assign the agreement, or the site owner withholds approval of the person to whom they propose to assign the agreement, the caravan could potentially remain empty on the pitch at a time when there is a shortage of authorised sites. This situation should not arise under the general right to assign as a site owner can seek to terminate the agreement if the resident is not living in the caravan as their only or main residence.
38. If in future, in light of increased levels of site provision, it was considered appropriate to give a person that inherits a caravan on a local authority Gypsy and Traveller site the right to sell it and assign the agreement, this would apply to existing residents from the date of the change, as well as those moving onto sites afterwards. This is because, unlike the general right to assignment, the provisions on succession are in the MHA itself and not the implied terms.

**Question 2:** Do you agree with the proposal that the provision in the MHA relating to succession, where no family member is living with a resident when they die, should not be applied to local authority Gypsy and Traveller sites, whichever option we pursue in respect of assignment generally?

## Jurisdiction

39. In addition to the termination of agreements, under the MHA, the courts are able to consider a number of matters:
- applications by residents for a written statement from site owners, where this has not been provided as required
  - applications by site owners or residents to vary or delete an express term of the agreement
  - applications by site owners or residents to include further implied terms in the agreement on certain matters



- applications by residents to approve a person to whom a caravan is to be sold or given and the agreement assigned, where the site owner has not responded, or where refusal to give consent is considered unreasonable
- applications by site owners to change the pitch fee where the resident does not agree with the change.

The court also has a general power to determine any question arising under the MHA or an agreement to which it applies, and entertain any proceedings under the Act.

40. The MHA defines the court as the county court, or where both the site owner and the resident have agreed to this, an arbitrator.
41. Some stakeholders have raised concerns that residents could be prevented from taking disputes to the county court through the inclusion of an express term in the agreement requiring any disputes to go to arbitration by someone appointed by the site owner. They also feel that a resident should not be prevented from taking a dispute to the county court if arbitration does not resolve the dispute to their satisfaction.
42. Although it is not known how many agreements under the MHA include express terms requiring disputes to be settled by arbitration, it is understood to be a small minority. However, the Government is aware of concerns about the use of such terms in agreements.
43. **The Government recently consulted on proposals for a new approach for resolving disputes and to proceedings under the MHA. Its preferred option, subject to the views of consultees, is to transfer jurisdiction for all the matters set out in paragraph 39, to the residential property tribunal (RPT). Applications to terminate agreements would still be dealt with by the county courts.**
44. An RPT is a specialist housing tribunal with a wealth of experience in adjudicating on disputes and in carrying out other functions in connection with housing and landlord and tenant matters. Proceedings relating to the termination of an agreement would remain with the county courts, as the RPT's have never had jurisdiction on possession proceedings. The county courts have longstanding experience in hearing housing and land possession cases.
45. **If the Government decides to proceed with this option, it also proposes that agreements should not be permitted to bind site owners and residents to resolve disputes through arbitration.**

46. The Government does not, however, propose to prohibit the use of arbitration where the site owner and resident agree in writing at the time of the dispute to submit it to arbitration, as this agreement, the terms of reference for arbitration, and the arbitrator will have been agreed freely by both. It also feels that if site owners and residents agree to settle through arbitration, they should be bound by that decision, and should not be able to apply to the county court for the dispute to be re-heard if they are unhappy with the result – although they will be able to appeal a decision on the grounds provided for in the Arbitration Act 1996.

## The condition of the caravan and site

47. The implied terms (paragraphs 21 and 22 of Part 1 of Schedule 1) of the MHA place certain responsibilities on the resident and site owner in relation to the condition of the caravan and the site. The resident must keep their caravan in a sound state of repair, and the site owner could seek to terminate an agreement if the caravan is having a detrimental impact on the amenity of the site. Both the resident and the site owner are also responsible for keeping the pitch, and the communal areas of the site respectively, in a clean and tidy condition.
48. Several stakeholders have asked what would be considered a sound state of repair or a clean and tidy condition. Current licences under the CSA may include terms setting out the responsibilities of the local authority and resident in respect of the caravan, pitch and site. **We will include guidance on repair and maintenance issues likely to be common across sites in the final version of our site management guidance.** However, this may need to differ between sites depending on their particular characteristics.

## Re-siting a caravan

49. The implied terms (paragraph 10 of Part 1 of Schedule 1) of the MHA enable the site owner to require a resident to move their caravan to another pitch on the site, for example where they need to carry out repairs to the pitch.
50. We are aware from the bids that we receive for Gypsy and Traveller Site Grant that the repair and improvement works necessary to some local authority sites can be extensive. In some instances it has been necessary to move residents to another site whilst the works are carried out. **We therefore propose to amend this implied term to enable local authorities to require a resident on one of their Gypsy and Traveller sites to move their caravan to a pitch on another site, as well as another pitch on the same site.**

**Question 3:** Do you agree with the proposal to amend the implied terms to enable local authorities to require a resident on one of their Gypsy and Traveller sites to move their caravan to a pitch on another site, as well as another pitch on the same site, for example when they need to carry out repairs to the pitch?

## Site owner's responsibility for repairs

51. The implied terms (paragraph 22 of Part 1 of Schedule 1) of the MHA require the site owner to repair the base (or hardstanding) on which the caravan is stationed. However, on local authority Gypsy and Traveller sites amenity blocks that include a kitchen and bathroom, and possibly also include a day room will usually be provided. Caravans are essentially used as sleeping accommodation.
52. **We therefore propose to amend this implied term to clarify that local authorities will continue to be responsible for repairing any amenities provided by them on the pitch, as well as the base. We also propose to amend the definition of "essential repair and emergency works" in the implied term about re-siting the caravan (see paragraphs 49 – 50) to specify that these works include repairs to amenities provided by the local authority, as well as the base. Do you agree?**

**Question 4:** Do you agree with the proposal to amend the implied terms to clarify that local authorities will continue to be responsible for repairing any amenities provided by them on the pitch as well as the base?

**Question 5:** Do you agree with the proposal to amend the definition of "essential repair and emergency work" in the implied terms to specify that these works include repairs to amenities provided by the local authority, as well as the base?

## Residents' associations

53. The implied terms (paragraphs 22(f) of Schedule 1 of Part 1) of the MHA require the site owner to consult any qualifying residents' associations about all matters relating to the operation and management of the site, and any improvements to it, as well as individual residents. The implied terms (paragraph 28 of Part 1 of Schedule 1) define a qualifying residents' association.

54. Where there is a residents' association on a local authority Gypsy and Traveller site, but it does not meet the definition of a qualifying residents' association, we would still expect local authorities to consult it on the management and operation of the site, and improvements to it, as a matter of good practice, as set out in our site management guidance.

## Written communications

55. Several stakeholders raised concerns about the various provisions in the MHA requiring written communications – for example, the requirement for the site owner to give the resident a written statement of the terms of the agreement, or to write setting out any proposed changes to the pitch fee or improvements to the site – given the low levels of literacy in the Gypsy and Traveller community.
56. The requirement for these communications to be written is important to both the site owner and resident being able to prove that responsibilities have been met in the event of a dispute. However, we would also expect local authorities to also consider using other means to communicate with Gypsies and Travellers on their sites. For example, our site management guidance suggests that the local authority explain the terms of licences or agreements verbally, or provide an audiotape or video version.

## Part 2

### Moving from licences to agreements

57. As explained in paragraph 5, under the MHA pitches are occupied under an agreement that consists of the implied terms in Part 1 of Schedule 1 to the MHA, and any other express terms. Twenty eight days before the agreement is made (or less if the prospective resident gives written consent) the site owner must provide a written statement including the implied terms, express terms and some specific details about the parties to the agreement and the pitch. *The Mobile Homes (Written Statement) (England) Regulations 2006* prescribe a form for these statements.
58. The provisions of the MHA will apply to Gypsies and Travellers that move onto local authority sites after section 318 of the HRA is brought into force from the date of their agreement, and the local authority will need to provide the written statement required by the MHA 28 days before the agreement is made (or less where the prospective resident agrees to this).
59. If local authorities want terms from their licences under the CSA that are not covered by, and do not contradict, the implied terms of the MHA – for example covering behaviour on site, or absence from it – to apply to Gypsies and Travellers that move onto their sites after section 318 of the HRA is brought into force, they will need to include them as express terms in agreements.
60. As explained in paragraph 13, Communities and Local Government is establishing a working group to prepare a model agreement for local authority Gypsy and Traveller sites that will include standard express terms which could be included in agreements.
61. The provisions of the MHA will also need to be applied to existing residents of local authority Gypsy and Traveller sites. They will be applied to those with a licence to occupy a pitch under the CSA immediately before section 318 of the HRA comes into force. They will not be applied to Gypsies and Travellers living on local authority sites without a licence.
62. Gypsies and Travellers may be living on a local authority site without a licence if the licence has been terminated by the local authority but the resident has not yet left. In these circumstances the local authority will need to apply to the court for a possession order. This follows the general rule that changes to any legislation should not interfere with action taken under preceding legislation before the change was made.

63. Some Gypsies and Travellers may have never had a licence to occupy the site, for example if they are occupying communal parts of the site because of the shortage of authorised sites, without the agreement of the local authority.
64. This part of the consultation considers how we should move from a position where existing residents have licences under the CSA to agreements under the MHA. We have identified two possible options, which fall at either end of the spectrum.

## Option one

### Requiring new agreements to be made

65. Under this option, local authorities would be required to make agreements under the MHA with existing licence holders by a specified date.
66. If a local authority failed to make an agreement by the specified date, we would also provide that residents with licences immediately before the date when section 318 of the HRA came into force would be deemed to have an agreement under the MHA from the specified date, and that terms in their licences which did not conflict with the implied terms in the MHA would be deemed express terms of the agreement. The 6 month period during which either the site owner or resident can apply to the court to vary or delete an express term of the agreement would start on the specified date.
67. Requiring agreements to be made under the MHA has a number of advantages:
  - **Clarity.** Gypsies and Travellers and local authorities will have one document which contains all the terms applicable to the occupation of the pitch
  - **Consistency.** All Gypsies and Travellers living on a site – whether they were living there before section 318 of the HRA came into force, or have moved on since – will have the same documentation relating to their agreement
  - **Ease.** It will be easy to apply the timebound rights and responsibilities in the MHA – for example the responsibility on the site owner to provide the written statement 28 days before the agreement is made, and the right of either the site owner or resident to ask the court to change or delete any express term, or add further implied terms, within 6 months of the agreement being made.
68. The disadvantage of this option is:
  - **Additional work.** This will involve additional work for local authorities. They will need to review their licences and consider which terms that are not covered by the implied terms under the MHA, and do not contradict them, should be included in agreements as express terms. An estimate of the cost of this work is included in the Impact Assessment prepared for this consultation.

69. However, local authorities will need to undertake this work for Gypsies and Travellers moving onto their sites after the clause is brought into force anyway. The model agreement that the working group will be seeking to prepare should help to reduce the burden associated with making agreements.
70. **This is the Government's preferred option for moving from licences under the CSA to agreements under the MHA.**

## Option two

### Licences deemed to be agreements

71. Under this option, all licences current immediately before the date on which section 318 of the HRA is brought into force would be deemed to be agreements to which the MHA applies from this date. They would therefore include the implied terms in the MHA. The responsibility on the site owner to provide a written statement of the terms of the agreement would not be applied as residents should already have copies of their licence (which would effectively form the express terms). The right for the site owner or resident to go to court to delete or vary an express term of the agreement would also not be applied as the terms in the licence would not have changed.
72. The advantage of this option is:
- **No additional work.** This will not involve additional work for local authorities.
73. The disadvantages of this option are:
- **Confusion.** The terms which apply to the occupation of the pitch will be set out in both the licence and the MHA. Any terms in the licence which contradict the implied terms in the MHA would still appear in the licence, even though they were no longer valid under the provisions (section 2(1)) of the MHA. This could lead to confusion over terms, particularly given the low literacy rates among the Gypsy and Traveller community.
  - **Inconsistency.** Gypsies and Travellers already living on local authority sites, and those moving onto them after the clause was commenced would have different documentation relating to their occupation of the pitch.

**Question 6:** Which of the two options above do you think is the better option for moving from licences under the CSA to agreements under the MHA? Do you agree with the assessment of the advantages and disadvantages of each option? Is there a further option that we have not identified?

## Part 3

### Other transitional provisions

74. Whichever option is pursued for moving from licences under the CSA to agreements under the MHA, further transitional provisions will be needed to set out how some of the implied terms in the MHA will apply to existing residents on local authority Gypsy and Traveller sites. Paragraph 62 explains the position where Gypsies and Travellers are living on local authority sites without licences. This part of the consultation paper highlights circumstances in which transitional provisions may be needed, and proposes what they might be.

#### Notice of termination of licence expiring after agreement

75. As explained in paragraph 1, under the CSA local authorities are required to give four weeks notice to terminate a licence. If a local authority has given this notice, but it does not expire until after the date by which local authorities must make agreements, or licences are deemed to be agreements, under the MHA, the resident will still have a licence and the local authority would have to make an agreement with them.
76. We agree that this should be the case. However, the proposals set out in paragraph 81 may also apply in these circumstances.

#### Breaches of licence relevant to the agreement

77. The implied terms (paragraph 4 of Part 1 to Schedule 1) of the MHA enable a site owner to terminate the agreement if the court is satisfied one of its terms has been breached, the resident has been given the opportunity to remedy the breach but has not done so within a reasonable time, and the court considers it reasonable.
78. As explained in paragraph 59, terms in licences may also be covered by an agreement – either through the implied or express terms. **Where a term of the licence has been breached and the local authority has written to the resident before the agreement is made, asking them to remedy this breach within a certain timescale** (as recommended in our good practice guidance on site management) **we propose that the local authority should be able to apply to the court to terminate the agreement once it is made. The local authority should be able to do this without writing to the resident again as the implied terms of the agreement would require. However, the local authority would only be able**



**to do this where the term of the licence that had been breached was also in the agreement.**

**Question 7:** Do you agree with this approach to breaches of licence relevant to the agreement?

## Overpayments

79. The implied terms (paragraph 7 of Part 1 of Schedule 1) of the MHA enable residents whose agreements have been terminated to claim back any payments made to the site owner under the agreement, for example the pitch fee, which cover the period after the agreement is terminated. **We propose that residents should also be able to use this implied term to recover any payments made under a licence that might cover the period after an agreement is terminated.**

**Question 8:** Do you agree with the proposal that residents should also be able to use the implied terms to recover any payments made under a licence that might cover the period after an agreement is terminated?

## Pitch fees

80. The implied terms (paragraphs 16 to 20 of Part 1 of Schedule 1) of the MHA require the pitch fee to be reviewed annually, on the review date, and include a presumption that the pitch fee will not change by more than the percentage increase or decrease in the retail price index (RPI) since the last review date.
81. **We propose that if a licence includes a review date for the pitch fee, this date should continue to be the review date in the agreement.** The first time the pitch fee is reviewed under the agreement, the last review date for the purposes of calculating the change in the RPI would therefore be a year previously. **If a licence does not include a review date for the pitch fee then we propose that the last review date for the purposes of calculating the change in the RPI should be a year prior to whatever review date is included in the agreement.**

**Question 9:** Do you agree with the proposal that if a licence includes a review date for the pitch fee, this date should continue to be the review date in the agreement. Do you also agree that if no review date is included in a licence then the last review date for the purposes of calculating the change in RPI should be a year prior to whatever review date is included in the agreement?

82. Currently, housing benefit for local housing authority (district and unitary council) sites is paid by rent rebate, which means rents are met in full. For county council sites, however, housing benefit is determined through a rent allowance. This means that rents will normally be referred to the Rent Officer for a determination of whether they are reasonable, usually by comparison to the local reference rent. Since the local reference rent excludes the influence of housing benefit on the market, the majority of Gypsy and Traveller sites will not be included. The local reference rent is more likely to be based on the rents obtainable on private sites in the area such as those on park home sites. However, the rents for park home sites will not include the higher management costs associated with Gypsy and Traveller sites, and so the effect of determining housing benefit through rent allowance is that some county council sites are operating at a loss.
83. The Department for Work and Pensions (DWP) has written to interested parties outlining their proposal to resolve this anomaly.
84. The Government would not want county councils to be unable to benefit from the resolution of this anomaly to ensure that their pitch fees better cover the costs of operating their sites because of the presumption in the implied terms about changes to pitch fees and the RPI. **We therefore propose to delay applying the implied term (paragraph 20 of Part 1 of Schedule 1) in the MHA that makes the presumption about pitch fee changes and the RPI to Gypsy and Traveller sites owned by county councils until after DWP has made the changes necessary to resolve this anomaly.** Residents on county council owned sites would still be able to disagree with any proposed new pitch fee.

**Question 10:** Do you agree with the proposal to delay applying the implied term in the MHA that makes the presumption about pitch fee changes and the RPI to Gypsy and Traveller site owned by county councils until after the DWP has made the changes necessary to resolve this anomaly?

## Improvements proposed before agreement

85. Under the implied terms (paragraph 22 (e) and 24 of Part 1 of Schedule 1) of the MHA site owners are required to consult residents about improvements to the site giving them notice in writing of the proposed improvements and taking into account any representations.

86. Improvements may have been proposed, but not yet made to a local authority Gypsy and Traveller site on the date by which local authorities must make agreements, or licences are deemed to be agreements, under the MHA. **Where the local authority has already consulted the residents on the proposed improvements prior to this we propose that they should not have to consult on them again, as the implied terms would require. Do you agree?** Local authorities should be consulting on improvements as a matter of good practice and if they are applying for Gypsy and Traveller Site Grant for the improvements they will have to provide evidence of this consultation.

**Question 11:** Do you agree that where a local authority has already consulted residents on proposed improvements to a site prior to an agreement being made they should not have to consult them again, as the implied terms would require?

**Question 12:** Do you think there are any other implied terms under the MHA which may require transitional provisions?

# Annex A

## Summary of issues for consultation

### Applying the Mobile Homes Act provisions to local authority Gypsy and Traveller sites

#### Assignment (paragraphs 21 – 30)

We have identified two options for dealing with the issues raised about assignment by the current shortage of authorised sites:

- do not apply the right of assignment to local authority Gypsy and Traveller sites; or
- require that in considering whether to approve a proposed assignee, local authorities must consider the needs of Gypsies and Travellers in their area as well as those of the proposed assignee.

**Question 1:** Which of these two options do you think the Government should pursue to deal with the issues raised by the right to assignment on local authority Gypsy and Traveller sites? Please explain why.

#### Succession (paragraphs 31 – 38)

Where there is no spouse or family member living with a resident when they die, the MHA enables the person that inherits the caravan (either through a will or, if there is no will, under the laws of intestacy) to sell it and assign the agreement.

**Question 2:** Do you agree with the proposal that the provision in the MHA relating to succession, where no family member is living with a resident when they die, should not be applied to local authority Gypsy and Traveller sites, whichever option we decide to pursue in respect of assignment generally?

## Re-siting a caravan (paragraphs 49 – 50)

**Question 3:** Do you agree with the proposal to amend the implied terms to enable local authorities to require a resident on one of their Gypsy and Traveller sites to move their caravan to a pitch on another site, as well as another pitch on the same site, for example when they need to carry out repairs to the pitch?

## Site owners responsibility for repairs (paragraphs 51 – 52)

**Question 4:** Do you agree with the proposal to amend the implied terms to clarify that local authorities will continue to be responsible for repairing any amenities provided by them on the pitch as well as the base (or hardstanding)?

**Question 5:** Do you agree with the proposal to amend the definition of “essential repair and emergency work” in the implied terms to specify that these works include repairs to amenities provided by the local authority, as well as the base (or hardstanding)?

## Moving from licences to agreements (paragraphs 57 – 73)

We have identified two options for moving from a position where existing residents have licences under the CSA to one where they have agreements under the MHA:

- local authorities would be required to make agreements under the MHA with existing licence holders by a specified date. If a local authority failed to make an agreement by the specified date, residents would be deemed to have agreements from that date which include the terms of their licence; or
- all existing licences would be deemed to be agreements to which the MHA applies from the date section 318 of the HRA is brought into force.

**Question 6:** Which of the two options do you think is the better option for moving from licences to agreements? Do you agree with the assessment of the pros and cons of each option? Is there a further option which we have not identified?

## **Breaches of licence relevant to the agreement (paragraphs 77 – 78)**

Where a term of the licence has been breached and the local authority has written to the resident before the agreement is made, asking them to remedy this breach within a certain timescale, we propose that the local authority should be able to apply to the court to terminate the agreement once it is made, without writing to the resident again as the implied terms would require. However, the local authority would only be able to do this where the term of the licence that had been breached was also in the agreement.

**Question 7:** Do you agree with this approach to breaches of a licence relevant to the agreement?

## **Overpayments (paragraph 79)**

**Question 8:** Do you agree with the proposal that residents should also be able to use the implied terms to recover any payments made under a licence that might cover the period after an agreement is terminated?

## **Pitch fees (paragraphs 80 – 84)**

**Question 9:** Do you agree with the proposal that if a licence includes a review date for the pitch fee, this date should continue to be the review date in the agreement? Do you also agree that if no review date is included in a licence then the last review date for the purposes of calculating the change in RPI should be a year prior to whatever review date is included in the agreement?

**Question 10:** Do you agree with the proposal to delay applying the implied term in the MHA that makes the presumption about pitch fee changes and the RPI to Gypsy and Traveller site owned by county councils until after the DWP has made the changes necessary to resolve the anomaly in the way housing benefit is paid for these sites?

## Improvements proposed before agreement (paragraphs 85 – 86)

**Question 11:** Do you agree that where a local authority has already consulted residents on proposed improvements to a site prior to an agreement being made they should not have to consult them again, as the implied terms would require?

**Question 12:** Do you think there are any other implied terms under the MHA which may require transitional provisions?

# Annex B

## Further details of rights and responsibilities under the Mobile Homes Act 1983

Set out below is a consolidated version of the Mobile Homes Act (1983) followed by a consolidated version of Schedule 1 of the Act which sets out the implied terms of an agreement. This is not a complete copy of the Act and should not be used as such.

### The Mobile Homes Act (1983)

This is the main body of the Act. Of particular relevance to this consultation is section 3 on succession and section 5 which provides a definition of “the court” and of a family member (within the MHA). Section 5 also includes the definition of “protected sites” which will be amended by the HRA, removing the exclusion for local authority Gypsy and Traveller sites.

#### 1. Particulars of agreements

(1) This Act applies to any agreement under which a person (“the occupier”) is entitled—

- (a) to station a mobile home on land forming part of a protected site; and
- (b) to occupy the mobile home as his only or main residence.

(2) Before making an agreement to which this Act applies, the owner of the protected site (“the owner”) shall give to the proposed occupier under the agreement a written statement which—

- (a) specifies the names and addresses of the parties;
- (b) includes particulars of the land on which the occupier is to be entitled to station the mobile home that are sufficient to identify that land;
- (c) sets out the express terms to be contained in the agreement;
- (d) sets out the terms implied by section 2(1) below; and



(e) complies with such other requirements as may be prescribed by regulations made by the appropriate national authority.

(3) The written statement required by subsection (2) above must be given—

(a) not later than 28 days before the date on which any agreement for the sale of the mobile home to the proposed occupier is made, or

(b) (if no such agreement is made before the making of the agreement to which this Act applies) not later than 28 days before the date on which the agreement to which this Act applied in made.

(4) But if the proposed occupier consents in writing to that statement being given to him by a date (“the chosen date”) which is less than 28 days before the date mentioned in subsection (3)(a) or (b) above, the statement must be given to him not later than the chosen date.

(5) If any express term—

(a) is contained in an agreement to which this Act applies, but

(b) was not set out in a written statement given to the proposed occupier in accordance with subsection (2) to (4) above,

the term is unenforceable by the owner or any person within section 3(1) below.

This is subject to any order made by the court under section 2(3) below.

(6) If the owner has failed to give the occupier a written statement in accordance with subsections (2) to (4) above, the occupier may, at any time after the making of the agreement, apply to the court for an order requiring the owner—

(a) to give him a written statement which complies with paragraphs (a) to (e) of subsection (2) (read with any modifications necessary to reflect the fact that the agreement has been made), and

(b) to do so not later than such date as is specified in the order.

(7) A statement required to be given to a person under this section may be either delivered to him personally or sent to him by post.

(8) Any reference in this section to the making of an agreement to which this Act applies includes a reference to any variation of an agreement by virtue of which the agreement becomes one to which this Act applies.

(9) Regulations under this section—

- (a) shall be made by statutory instrument;
- (b) if made by the Secretary of State, shall be subject to annulment in pursuance of a resolution of either House of Parliament; and
- (c) may make different provision with respect to different cases or descriptions of case, including different provision for different areas.

## **2. Terms of agreements**

(1) In any agreement to which this Act applies there shall be implied the terms set out in Part 1 of Schedule 1 to this Act; and this subsection shall have effect notwithstanding any express term of the agreement.

(2) The court may, on the application of either party made within the relevant period, order that there shall be implied in the agreement terms concerning the matters mentioned in Part 2 of Schedule 1 to this Act.

(3) The court may, on the application of either party made within the relevant period, make an order—

- (a) varying or deleting any express term of the agreement;
- (b) in the case of any express term to which section 1(6) above applies, provide for the term to have full effect or to have such effect subject to any variation specified in the order.

(3A) In subsections (2) and (3) above “the relevant period” means the period beginning with the date on which the agreement is made and ending—

- (a) six months after that date, or
- (b) where a written statement relating to the agreement is given to the occupier after that date (whether or not in compliance with an order under section 1(6) above), six months after the date on which the statement is given;

and section 1(8) above applies for the purposes of this subsection as it applies for the purposes of section 1.

(4) On an application under this section, the court shall make such provision as the court considers just and equitable in the circumstances.

(5) The supplementary provisions in Part 3 of Schedule 1 to this Act have effect for the purposes of paragraphs 8 and 9 of Part 1 of that Schedule.

## 2A. Power to amend implied terms

(1) The appropriate national authority may by order make such amendments of Part 1 or 2 of Schedule 1 to this Act as the authority considers appropriate.

(2) An order under this section—

(a) shall be made by statutory instrument;

(b) may make different provision with respect to different cases or descriptions of case, including different provisions for different areas;

(c) may contain such incidental, supplementary, consequential, transitional or saving provisions as the authority making the order considers appropriate.

(3) Without prejudice to the generality of subsections (1) and (2), an order under this section may—

(a) make provision for or in connection with the determination by the court of such questions, or the making by the court of such orders, as are specified in the order;

(b) make such amendments of any provision of this Act as the authority making the order considers appropriate in consequence of any amendment made by the order in Part 1 or 2 of Schedule 1.

(4) The first order made under this section in relation to England or Wales respectively may provide for all or any of its provisions to apply in relation to agreements to which this Act applies that were made at any time before the day on which the order comes into force (as well as in relation to such agreements made on or after that day).

(5) No order may be made by the appropriate national authority under this section unless the authority has consulted—

(a) such organisations as appear to it to be representative of interest substantially affected by the order; and

(b) such other persons as it considers appropriate.

(6) No order may be made by the Secretary of State under this section unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

## 3. Successors in title

(1) An agreement to which this Act applies shall be binding on and enure for the benefit of any successor in title of the owner and any person claiming through or under the owner or any such successor.

(2) Where an agreement to which this Act applies is lawfully assigned to any person, the agreement shall enure for the benefit of and be binding on that person.

(3) Where a person entitled to the benefit of and bound by an agreement to which this Act applies dies at a time when he is occupying the mobile home as his only or main residence, the agreement shall enure for the benefit of and be binding on—

(a) any person residing with that person ( “the deceased” ) at that time being—

(i) the widow, widower or surviving civil partner of the deceased; or

(ii) in default of a widow, widower or surviving civil partner so residing, any member of the deceased’s family; or

(b) in default of any such person so residing, the person entitled to the mobile home by virtue of the deceased’s will or under the law relating to intestacy but subject to subsection (4) below.

(4) An agreement to which this Act applies shall not enure for the benefit of or be binding on a person by virtue of subsection (3)(b) above in so far as—

(a) it would, but for this subsection, enable or require that person to occupy the mobile home; or

(b) it includes terms implied by virtue of paragraph 5 or 9 of Part 1 of Schedule 1 to this Act.

#### **4. Jurisdiction of the court**

The court shall have jurisdiction to determine any question arising under this Act or any agreement to which it applies, and to entertain any proceedings brought under this Act or any such agreement.

#### **5. Interpretation**

(1) In this Act, unless the context otherwise requires—

“the appropriate national authority” means—

(a) in relation to England, the Secretary of State; and

(b) in relation to Wales, the National Assembly for Wales;

“the court” means—

(a) in relation to England and Wales, the county court for the district in which the protected site is situated or, where the parties have agreed in writing to submit any

question arising under this Act or, as the case may be, any agreement to which it applies to arbitration, the arbitrator;

(b) in relation to Scotland, the sheriff having jurisdiction where the protected site is situated or, where the parties have so agreed, the arbiter;

“local authority” has the same meaning as in Part I of the Caravan Sites and Control of Development Act 1960;

“mobile home” has the same meaning as “caravan” has in that Part of that Act;

“owner”, in relation to a protected site, means the person who, by virtue of an estate or interest held by him, is entitled to possession of the site or would be so entitled but for the rights of any persons to station mobile homes on land forming part of the site;

“planning permission” means permission under Part III of the Town and Country Planning Act 1990 or Part III of the Town and Country Planning (Scotland) Act 1997;

“protected site” does not include any land occupied by a local authority as a caravan site providing accommodation for gipsies or, in Scotland, for persons to whom section 24(8A) of the Caravan Sites and Control of Development Act 1960 applies but, subject to that, has the same meaning as in Part I of the Caravan Sites Act 1968.

(2) In relation to an agreement to which this Act applies—

(a) any reference in this Act to the owner includes a reference to any person who is bound by and entitled to the benefit of the agreement by virtue of subsection (1) of section 3 above; and

(b) subject to subsection (4) of that section, any reference in this Act to the occupier includes a reference to any person who is entitled to the benefit of and bound by the agreement by virtue of subsection (2) or (3) of that section.

(3) A person is a member of another’s family within the meaning of this Act if he is his spouse, civil partner, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece; treating—

(a) any relationship by marriage or civil partnership as a relationship by blood, any relationship of the half blood as a relationship of the whole blood and the stepchild of any person as his child; and

(b) an illegitimate person as the legitimate child of his mother and reputed father;

or if they live together as husband and wife or as if they were civil partners.

## **Implied terms – Part 1 of Schedule 1 to Mobile Homes Act 1983 (as amended)**

This consolidated version of Part 1, Schedule 1 of the Act is set out below and includes the amendments made to Schedule 1 by the Housing Act 2004 and the Mobile Homes Act 1983 (Amendment of Schedule 1) (England) Order 2006(1).

Implied terms are contractual terms which are implied by statute into the agreement between a resident and a site owner which permits the resident to station his or her mobile home or caravan on the site and occupy it as a residence. These terms implied by the Mobile Homes Act 1983 (the 1983 Act) constitute the minimum rights and obligations that all residents have.

### ***Duration of agreement***

1. Subject to paragraph 2 below, the right to station the mobile home on land forming part of the protected site shall subsist until the agreement is determined under paragraph 3, 4, 5 or 6 below.

### ***Owner's estate or interest***

2.

(1) If the owner's estate or interest is insufficient to enable him to grant the right for an indefinite period, the period for which the right subsists shall not extend beyond the date when the owner's estate or interest determines.

(2) If planning permission for the use of the protected site as a site for mobile homes has been granted in terms such that it will expire at the end of a specified period, the period for which the right subsists shall not extend beyond the date when the planning permission expires.

(3) If before the end of a period determined by this paragraph there is a change in circumstances which allows a longer period, account shall be taken of that change.

### ***Termination by occupier***

3. The occupier shall be entitled to terminate the agreement by notice in writing given to the owner not less than four weeks before the date on which it is to take effect.

### ***Termination by owner***

4. The owner shall be entitled to terminate the agreement forthwith, if on the application of the owner, the court—

(a) is satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; and

(b) considers it reasonable for the agreement to be terminated.

5. The owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the court—

(a) is satisfied that the occupier is not occupying the mobile home as his only or main residence; and

(b) considers it reasonable for the agreement to be terminated.

6.

(1) the owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the court is satisfied that, having regard to its condition, the mobile home—

(a) is having a detrimental effect on the amenity of the site; or

(b) the court considers it reasonable for the agreement to be terminated.

(2) Sub-paragraphs (3) and (4) below apply if, on an application under sub-paragraph (1) above—

(a) the court considers that, having regard to the present condition of the mobile home, paragraph (a) of that sub-paragraph applies to it, but

(b) it also considers that it would be reasonably practicable for particular repairs to be carried out on the mobile home that would result in sub-paragraph (1)(a) not applying to it, and

(c) the occupier indicates that he intends to carry out those repairs.

(3) In such a case the court may make an order adjourning proceedings on the application for such period specified in the order as the court considers reasonable to allow the repairs to be carried out.

The repairs must be set out in the order.

(4) If the court makes such an order, the application shall not be further proceeded with unless the court is satisfied that the specified period has expired without the repairs having been carried out.

### ***Recovery of overpayments by occupier***

7. Where the agreement is terminated as mentioned in paragraph 3, 4, 5 or 6 above, the occupier shall be entitled to recover from the owner so much of any payment made by him in pursuance of the agreement as is attributable to a period beginning after the termination.

### ***Sale of mobile home***

#### **8.**

(1) The occupier shall be entitled to sell the mobile home, and to assign the agreement, to a person approved of by the owner, whose approval shall not be unreasonably withheld.

(1A) The occupier may serve on the owner a request for the owner to approve a person for the purposes of sub-paragraph (1) above.

(1B) Where the owner receives such a request, he must, within the period of 28 days beginning with the date on which he received the request—

(a) approve the person, unless it is reasonable for him not to do so, and

(b) serve on the occupier notice of his decision whether or not to approve the person.

(1C) The owner may not give his approval subject to conditions.

(1D) If the approval is withheld, the notice under sub-paragraph (1B) above must specify the reasons for withholding it.

(1E) If the owner fails to notify the occupier as required by sub-paragraphs (1B) (and, if applicable, sub-paragraph (1D)) above, the occupier may apply to the court for an order declaring that the person is approved for the purposes of sub-paragraph (1) above; and the court may make such an order if it thinks fit.

(1F) It is for the owner—

(a) if he served a notice as mentioned in sub-paragraph (1B) (and, if applicable, sub-paragraph (1D)) and the question arises whether he served the notice within the required period of 28 days, to show that he did;

(b) if he did not give his approval and the question arises whether it was reasonable for him not to do so, to show that it was reasonable.

(1G) A request or notice under this paragraph—

(a) must be in writing, and

(b) may be served by post.

(2) Where the occupier sells the mobile home, and assigns the agreement, as mentioned in sub-paragraph (1) above, the owner shall be entitled to receive a commission on the sale at a rate not exceeding such rate as may be specified by an order made by the appropriate national authority.



(2A) Except to the extent mentioned in sub-paragraph (2) above, the owner may not require any payment to be made (whether to himself or otherwise) in connection with the sale of the mobile home, and the assignment of the agreement, as mentioned in sub-paragraph (1) above.

(3) An order under this paragraph—

(a) shall be made by statutory instrument which (if made by the Secretary of State) shall be subject to annulment in pursuance of a resolution of either House of Parliament; and

(b) may make different provision for different areas or for sales at different prices.

**Note: The maximum rate is currently fixed at 10% by the Mobile Homes (Commissions) Order 1983 (S.I. 1983/748)**

### ***Gift of mobile home***

#### **9.**

(1) The occupier shall be entitled to give the mobile home, and to assign the agreement, to a member of his family approved by the owner, whose approval shall not be unreasonably withheld.

(2) Sub-paragraphs (1A) to (1G) of paragraph 8 above shall apply in relation to the approval of a person for the purposes of sub-paragraph (1) above as they apply in relation to the approval of a person for the purposes of sub-paragraph (1) of that paragraph.

(3) The owner may not require any payment to be made (whether to himself or otherwise) in connection with the gift of the mobile home, and the assignment of the agreement, as mentioned in sub-paragraph (1) above.

### ***Re-siting of mobile home***

#### **10.**

(1) The owner shall be entitled to require that the occupier's right to station the mobile home is exercisable for any period in relation to another pitch forming part of the protected site ("the other pitch") if (and only if)—

(a) on the application of the owner, the court is satisfied that the other pitch is broadly comparable to the occupier's original pitch and that it is reasonable for the mobile home to be stationed on the other pitch for that period; or

(b) the owner needs to carry out essential repair or emergency works that can only be carried out if the mobile home is moved to the other pitch for that period, and the other pitch is broadly comparable to the occupier's original pitch.

(2) If the owner requires the occupier to station the mobile home on the other pitch so that he can replace, or carry out repairs to, the base on which the mobile home is stationed, he must if the occupier so requires, or the court on the application of the occupier so orders, secure that the mobile home is returned to the original pitch on the completion of the replacement or repairs.

(3) The owner shall pay all the costs and expenses incurred by the occupier in connection with his mobile home being moved to and from the other pitch.

(4) In this paragraph and in paragraph 13 below, "essential repair or emergency works" means—

- (a) repairs to the base on which the mobile home is stationed;
- (b) works or repairs needed to comply with any relevant legal requirements; or
- (c) works or repairs in connection with restoration following flood, landslide or other natural disaster.

### ***Quiet enjoyment of the mobile home***

**11.** The occupier shall be entitled to quiet enjoyment of the mobile home together with the pitch during the continuance of the agreement, subject to paragraphs 10, 12, 13 and 14.

### ***Owner's right of entry to the pitch***

**12.** The owner may enter the pitch without prior notice between the hours of 9 a.m. and 6 p.m.—

- (a) to deliver written communications, including post and notices, to the occupier; and
- (b) to read any meter for gas, electricity, water, sewerage or other services supplied by the owner.

**13.** The owner may enter the pitch to carry out essential repair or emergency works on giving as much notice to the occupier (whether in writing or otherwise) as is reasonably practicable in the circumstances.

**14.** Unless the occupier has agreed otherwise, the owner may enter the pitch for a reason other than one specified in paragraph 12 or 13 only if he has given the occupier at least 14 clear days' written notice of the date, time and reason for his visit.

**15.** The rights conferred by paragraphs 12 to 14 above do not extend to the mobile home.

**The pitch fee**

**16.** The pitch fee can only be changed in accordance with paragraph 17, either—

- (a) with the agreement of the occupier, or
- (b) if the court, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee.

**17.**

(1) The pitch fee shall be reviewed annually as at the review date.

(2) At least 28 clear days before the review date the owner shall serve on the occupier a written notice setting out his proposals in respect of the new pitch fee.

(3) If the occupier agrees to the proposed new pitch fee, it shall be payable as from the review date.

(4) If the occupier does not agree to the proposed new pitch fee—

- (a) the owner may apply to the court for an order under paragraph 16(b) determining the amount of the new pitch fee;

- (b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the court under paragraph 16(b); and

- (c) the new pitch fee shall be payable as from the review date but the occupier shall not be treated as being in arrears until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the court order determining the amount of the new pitch fee.

(5) An application under sub-paragraph (4)(a) may be made at any time after the end of the period of 28 days beginning with the review date.

(6) Sub-paragraphs (7) to (10) apply if the owner—

- (a) has not served the notice required by sub-paragraph (2) by the time by which it was required to be served, but

- (b) at any time thereafter serves on the occupier a written notice setting out his proposals in respect of a new pitch fee.

(7) If (at any time) the occupier agrees to the proposed pitch fee, it shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(8) If the occupier has not agreed to the proposed pitch fee—

- (a) the owner may apply to the court for an order under paragraph 16(b) determining the amount of the new pitch fee;
- (b) the occupier shall continue to pay the current pitch fee to the owner until such time as the new pitch fee is agreed by the occupier or an order determining the amount of the new pitch fee is made by the court under paragraph 16(b); and
- (c) if the court makes such an order, the new pitch fee shall be payable as from the 28th day after the date on which the owner serves the notice under sub-paragraph (6)(b).

(9) An application under sub-paragraph (8) may be made at any time after the end of the period of 56 days beginning with the date on which the owner serves the notice under subparagraph (6)(b).

(10) The occupier shall not be treated as being in arrears—

- (a) where sub-paragraph (7) applies, until the 28th day after the date on which the new pitch fee is agreed; or
- (b) where sub-paragraph (8)(b) applies, until the 28th day after the date on which the new pitch fee is agreed or, as the case may be, the 28th day after the date of the court order determining the amount of the new pitch fee.

## **18.**

(1) When determining the amount of the new pitch fee particular regard shall be had to—

- (a) any sums expended by the owner since the last review date on improvements—
  - (i) which are for the benefit of the occupiers of mobile homes on the protected site;
  - (ii) which were the subject of consultation in accordance with paragraph 22(e) and (f) below; and
  - (iii) to which a majority of the occupiers have not disagreed in writing or which, in the case of such disagreement, the court, on the application of the owner, has ordered should be taken into account when determining the amount of the new pitch fee;
- (b) any decrease in the amenity of the protected site since the last review date; and
- (c) the effect of any enactment, other than an order made under paragraph 8(2) above, which has come into force since the last review date.

(2) When calculating what constitutes a majority of the occupiers for the purposes of subparagraph (1)(a)(iii) each mobile home is to be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.

(3) In a case where the pitch fee has not been previously reviewed, references in this paragraph to the last review date are to be read as references to the date when the agreement commenced.

**19.** When determining the amount of the new pitch fee, any costs incurred by the owner in connection with expanding the protected site shall not be taken into account.

**20.**

(1) There is a presumption that the pitch fee shall increase or decrease by a percentage which is no more than any percentage increase or decrease in the retail prices index since the last review date, unless this would be unreasonable having regard to paragraph 18(1) above.

(2) Paragraph 18(3) above applies for the purposes of this paragraph as it applies for the purposes of paragraph 18.

***Occupier's obligations***

**21.** The occupier shall—

- (a) pay the pitch fee to the owner;
- (b) pay to the owner all sums due under the agreement in respect of gas, electricity, water, sewerage or other services supplied by the owner;
- (c) keep the mobile home in a sound state of repair;
- (d) maintain—
  - (i) the outside of the mobile home, and
  - (ii) the pitch, including all fences and outbuildings belonging to, or enjoyed with, it and the mobile home, in a clean and tidy condition; and
- (e) if requested by the owner, provide him with documentary evidence of any costs or expenses in respect of which the occupier seeks reimbursement.

### ***Owner's obligations***

#### **22.** The owner shall—

(a) if requested by the occupier, and on payment by the occupier of a charge of not more than £30, provide accurate written details of—

- (i) the size of the pitch and the base on which the mobile home is stationed; and
- (ii) the location of the pitch and the base within the protected site;

and such details must include measurements between identifiable fixed points on the protected site and the pitch and the base;

(b) if requested by the occupier, provide (free of charge) documentary evidence in support and explanation of—

- (i) any new pitch fee;
- (ii) any charges for gas, electricity, water, sewerage or other services payable by the occupier to the owner under the agreement; and
- (iii) any other charges, costs or expenses payable by the occupier to the owner under the agreement;

(c) be responsible for repairing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home;

(d) maintain in a clean and tidy condition those parts of the protected site, including access ways, site boundary fences and trees, which are not the responsibility of any occupier of a mobile home stationed on the protected site;

(e) consult the occupier about improvements to the protected site in general, and in particular about those which the owner wishes to be taken into account when determining the amount of any new pitch fee; and

(f) consult a qualifying residents' association, if there is one, about all matters which relate to the operation and management of, or improvements to, the protected site and may affect the occupiers either directly or indirectly.

**23.** The owner shall not do or cause to be done anything which may adversely affect the ability of the occupier to perform his obligations under paragraph 21(c) and (d) above.

**24.** For the purposes of paragraph 22(e) above, to "consult" the occupier means—

(a) to give the occupier at least 28 clear days' notice in writing of the proposed improvements which—

(i) describes the proposed improvements and how they will benefit the occupier in the long and short term;

(ii) details how the pitch fee may be affected when it is next reviewed; and

(iii) states when and where the occupier can make representations about the proposed improvements; and

(b) to take into account any representations made by the occupier about the proposed improvements, in accordance with paragraph (a)(iii), before undertaking them.

**25.** For the purposes of paragraph 22(f) above, to “consult” a qualifying residents’ association means—

(a) to give the association at least 28 clear days' notice in writing of the matters referred to in paragraph 22(f) which—

(i) describes the matters and how they may affect the occupiers either directly or indirectly in the long and short term; and

(ii) states when and where the association can make representations about the matters; and

(b) to take into account any representations made by the association, in accordance with paragraph (a)(ii), before proceeding with the matters.

### ***Owner's name and address***

#### **26.**

(1) The owner shall by notice inform the occupier and any qualifying residents’ association of the address in England or Wales at which notices (including notices of proceedings) may be served on him by the occupier or a qualifying residents’ association.

(2) If the owner fails to comply with sub-paragraph (1), then (subject to sub-paragraph (5) below) any amount otherwise due from the occupier to the owner in respect of the pitch fee shall be treated for all purposes as not being due from the occupier to the owner at any time before the owner does so comply.

(3) Where in accordance with the agreement the owner gives any written notice to the occupier or (as the case may be) a qualifying residents’ association, the notice must contain the following information—

(a) the name and address of the owner; and

(b) if that address is not in England or Wales, an address in England or Wales at which notices (including notices of proceedings) may be served on the owner.

(4) Subject to sub-paragraph (5) below, where—

(a) the occupier or a qualifying residents' association receives such a notice, but

(b) it does not contain the information required to be contained in it by virtue of subparagraph (3) above,

the notice shall be treated as not having been given until such time as the owner gives the information to the occupier or (as the case may be) the association in respect of the notice.

(5) An amount or notice within sub-paragraph (2) or (4) (as the case may be) shall not be treated as mentioned in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include receiving from the occupier the pitch fee, payments for services supplied or other charges.

(6) Nothing in sub-paragraphs (3) to (5) applies to any notice containing a demand to which paragraph 27(1) below applies.

## **27.**

(1) Where the owner makes any demand for payment by the occupier of the pitch fee, or in respect of services supplied or other charges, the demand must contain—

(a) the name and address of the owner; and

(b) if that address is not in England or Wales, an address in England or Wales at which notices (including notices of proceedings) may be served on the owner.

(2) Subject to sub-paragraph (3) below, where—

(a) the occupier receives such a demand, but

(b) it does not contain the information required to be contained in it by virtue of subparagraph (1),

the amount demanded shall be treated for all purposes as not being due from the occupier to the owner at any time before the owner gives that information to the occupier in respect of the demand.



(3) The amount demanded shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include receiving from the occupier the pitch fee, payments for services supplied or other charges.

### ***Qualifying residents' association***

#### **28.**

(1) A residents' association is a qualifying residents' association in relation to a protected site if—

- (a) it is an association representing the occupiers of mobile homes on that site;
- (b) at least 50 per cent of the occupiers of the mobile homes on that site are members of the association;
- (c) it is independent from the owner, who together with any agent or employee of his is excluded from membership;
- (d) subject to paragraph(c) above, membership is open to all occupiers who own a mobile home on that site;
- (e) it maintains a list of members which is open to public inspection together with the rules and constitution of the residents' association;
- (f) it has a chairman, secretary and treasurer who are elected by and from among the members;
- (g) with the exception of administrative decisions taken by the chairman, secretary and treasurer acting in their official capacities, decisions are taken by voting and there is only one vote for each mobile home; and
- (h) the owner has acknowledged in writing to the secretary that the association is a qualifying residents' association, or, in default of this, the court has so ordered.

(2) When calculating the percentage of occupiers for the purpose of sub-paragraph (1) (b) above, each mobile home shall be taken to have only one occupier and, in the event of there being more than one occupier of a mobile home, its occupier is to be taken to be the occupier whose name first appears on the agreement.

### ***Interpretation***

**29.** In this Schedule—

"pitch" means the land, forming part of the protected site and including any garden area, on which the occupier is entitled to station the mobile home under the terms of the agreement;

“pitch fee” means the amount which the occupier is required by the agreement to pay to the owner for the right to station the mobile home on the pitch and for use of the common areas of the protected site and their maintenance, but does not include amounts due in respect of gas, electricity, water and sewerage or other services, unless the agreement expressly provides that the pitch fee includes such amounts;

“retail prices index” means the general index (for all items) published by the Office for National Statistics or, if that index is not published for a relevant month, any substituted index or index figures published by that Office;

“review date” means the date specified in the written statement as the date on which the pitch fee will be reviewed in each year, or if no such date is specified, each anniversary of the date the agreement commenced; and

“written statement” means the written statement that the owner of the protected site is required to give to the occupier by section 1(2) of this Act.”

## Part 2 – Matters concerning which terms may be implied by court

### 1

Deleted

### 2

The sums payable by the occupier in pursuance of the agreement and the times at which they are to be paid.

### 3

The review at yearly intervals of the sums so payable.

### 4

The provision or improvement of services available on the protected site, and the use by the occupier of such services.

### 5

The preservation of the amenity of the protected site.

### 6

Deleted

### 7

Deleted

## Part 3 – Supplementary Provisions

### **Duty to forward requests under paragraph 8 or 9 of Part 1**

#### **1.**

(1) This paragraph applies to—

(a) a request by the occupier for the owner to approve a person for the purposes of paragraph 8(1) of Part 1 above (see paragraph 8(1A)), or

(b) a request by the occupier for the owner to approve a person for the purposes of paragraph 9(1) of Part 1 above (see paragraph 8(1A) as applied by paragraph 9(2)).

(2) If a person (“the recipient”) receives such a request and he—

(a) though not the owner, has an estate or interest in the protected site, and

(b) believes that another person is the owner (and that the other person has not received such a request),

the recipient owes a duty to the occupier to take such steps as are reasonable to secure that the other person receives the request within the period of 28 days beginning with the date on which the recipient receives it.

(3) In paragraph 8(1B) of Part 1 of this Schedule above (as it applies to any request within sub-paragraph (1) above) any reference to the owner receiving such a request includes a reference to his receiving it in accordance with sub-paragraph (2) above.

### **Action for breach of duty under paragraph 1**

#### **2.**

(1) A claim that a person has broken the duty under paragraph 1(2) above may be made the subject of civil proceedings in like manner as any other claim in tort for breach of statutory duty.

(2) The right conferred by sub-paragraph (1) is in addition to any right to bring proceedings, in respect of a breach of any implied term having effect by virtue of paragraph 8 or 9 of Part 1 above, against a person bound by that term.

# Annex C

## Impact assessment

Summary: Intervention & Options		
<b>Department /Agency:</b> Communities and Local Government	<b>Title:</b> Impact Assessment of improvements to security of tenure on local authority Gypsy and Traveller sites	
<b>Stage:</b> Consultation	<b>Version:</b> One	<b>Date:</b> 1 July 2008
<b>Related Publications:</b> Implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller sites: A consultation paper		

**Available to view or download at:**

<http://www.communities.gov.uk>

**Contact for enquiries:** Philip Davies

**Telephone:** 020 7944 8769

**What is the problem under consideration? Why is government intervention necessary?**

The European Court of Human Rights (ECtHR) ruled in 2004 in the case of *Connors v United Kingdom* that the lack of procedural safeguards to the eviction of Gypsies and Travellers from local authority (LA) sites breached article 8 of the European Convention on Human Rights (the right to respect for a person’s private, family and home life).

**What are the policy objectives and the intended effects?**

To provide the same procedural safeguards, and other rights and responsibilities, to Gypsies and Travellers on LA sites as Gypsies and Travellers on private sites, and occupants of other types of residential caravan sites, such as park home sites. Following a series of stakeholder events where concerns were raised about a particular aspect of Option B, we are seeking views on two further options – C and D.

**What policy options have been considered? Please justify any preferred option.**

- A. Do nothing.
- B. Amend the Mobile Homes Act 1983 to include LA Gypsy and Traveller sites. All the provisions of the 1983 Act would apply to these sites.
- C. Amend the Mobile Homes Act 1983 to include LA Gypsy and Traveller sites, but do not apply the right of assignment to these sites.
- D. Amend the Mobile Homes Act 1983 to include LA Gypsy and Traveller sites, but impose additional requirements on assignment on these sites.

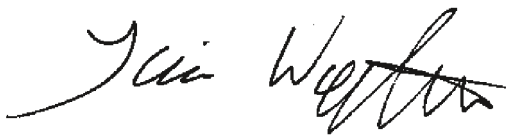
**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

Three years from implementation.

**Ministerial Sign-off** For Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

A handwritten signature in black ink, appearing to read 'Jacqui Weyler', written in a cursive style.

**Date:** 28 August 2008

Summary: Analysis & Evidence			
Policy Option: A		Description: Do nothing	
<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' No monetised costs identified
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ –		
	<b>Average Annual Cost</b> (excluding one-off)		
	£ –	<b>Total Cost (PV)</b> £ –	
Other <b>key non-monetised costs</b> by 'main affected groups' Gypsies and Travellers, LAs, courts, Government: perpetuation of problem and inevitable increase in challenges to possession actions and associated costs.			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' No monetised benefits identified
	<b>One-off</b>	<b>Yrs</b>	
	£ –		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ –	<b>Total Benefit (PV)</b> £ –	
Other <b>key non-monetised benefits</b> by 'main affected groups'			
<b>Key Assumptions/Sensitivities/Risks</b>			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £ –	<b>NET BENEFIT (NPV Best estimate)</b> £ –

What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		Current situation		
Which organisation(s) will enforce the policy?				
What is the total annual cost of enforcement for these organisations?		£		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£		
What is the value of changes in greenhouse gas emissions?		£		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase – Decrease)		
Increase of £	Decrease of £	<b>Net Impact £</b>		
Key:	<b>Annual costs and benefits: Constant Prices</b>	<b>(Net) Present Value</b>		

## Summary: Analysis & Evidence

Policy Option: B

Description: Amend Mobile Homes Act 1983 to include LA Gypsy and Traveller sites. All the provisions of the 1983 Act would apply to these sites

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' LAs: one off – transitional arrangements (6 days of LA officer time per site); ongoing – consultation on site improvements (5.5 days of LA officer time for 50% of sites every 3 years); dealing with matters arising under the 1983 Act (10 days of LA officer time for 24 cases per year). G&T: ongoing – payment of commission.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 180,880</b>	1	
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ 122,289</b>		<b>Total Cost (PV)</b> <b>£ 1,233,505</b>
Other <b>key non-monetised costs</b> by 'main affected groups' LAs and courts: applications to terminate agreements.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' LAs: ongoing – commission on assignment
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ –</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 70,500</b>		<b>Total Benefit (PV)</b> <b>£ 606,842</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Gypsies and Travellers: improved rights and responsibilities on LA sites. LAs and the courts: reduction in challenges to possession actions on grounds of breach of Convention rights.			

### Key Assumptions/Sensitivities/Risks

Net Present Value has been calculated over a period of 10 years and discount rate of 3.5%

<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £ –	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ –626,663</b>
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What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		2008/09		
Which organisation(s) will enforce the policy?		The courts		
What is the total annual cost of enforcement for these organisations?		£ see evidence		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£		
What is the value of changes in greenhouse gas emissions?		£		
Will the proposal have a significant impact on competition?		Yes/No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase – Decrease)		
Increase of £	Decrease of £	<b>Net Impact £</b>		
Key:	<b>Annual costs and benefits: Constant Prices</b>	<b>(Net) Present Value</b>		

## Summary: Analysis & Evidence

Policy Option: C

Description: Amend Mobile Homes Act 1983 to include LA Gypsy and Traveller sites but do not apply the right of assignment

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' LAs: one off – transitional arrangements (6 days of LA officer time per site); ongoing – consultation on site improvements (5.5 days of LA officer time for 50% of sites every 3 years); dealing with matters arising under the 1983 Act (10 days of LA officer time for 24 cases per year).
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£ 180,880	1	
	<b>Average Annual Cost</b> (excluding one-off)		
	£ 51,789		<b>Total Cost (PV)</b> £ 626,663
Other <b>key non-monetised costs</b> by 'main affected groups' LAs and courts: applications to terminate agreements.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups'
	<b>One-off</b>	<b>Yrs</b>	
	£ –		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£ –		<b>Total Benefit (PV)</b> £ –
Other <b>key non-monetised benefits</b> by 'main affected groups' Gypsies and Travellers: improved rights and responsibilities on LA sites. LAs and the courts: reduction in challenges to possession actions on grounds of breach of Convention rights.			

### Key Assumptions/Sensitivities/Risks

Net present value has been calculated over a period of 10 years and a discount rate of 3.5%.

<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £ –	<b>NET BENEFIT (NPV Best estimate)</b> £ –626,663
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What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		2008/09		
Which organisation(s) will enforce the policy?				
What is the total annual cost of enforcement for these organisations?		£ The courts		
Does enforcement comply with Hampton principles?		Yes/No		
Will implementation go beyond minimum EU requirements?		Yes/No		
What is the value of the proposed offsetting measure per year?		£		
What is the value of changes in greenhouse gas emissions?		£		
Will the proposal have a significant impact on competition?		Yes/No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase – Decrease)		
Increase of £	Decrease of £	<b>Net Impact £</b>		
Key:	<b>Annual costs and benefits: Constant Prices</b>	<b>(Net) Present Value</b>		

## Summary: Analysis & Evidence

Policy Option: D

Description: Amending the Mobile Homes Act 1983 to include LA Gypsy and Traveller sites but with additional requirements on assignment

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' LAs: one-off – transitional arrangements, 6 days of LA officer time per site; ongoing – consultation on site improvements, 5.5 days of LA officer time for 50% of sites every 3 years; dealing with matters arising under the 1983 Act, 10 days of LA officer time for 24 cases per year. G&T: ongoing – payment of commission.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ 180,880</b>	1	
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ 87,789</b>		<b>Total Cost (PV)</b> <b>£ 936,540</b>
Other <b>key non-monetised costs</b> by 'main affected groups' LAs and courts: applications to terminate agreements.			
<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' LAs: ongoing – commission from assignment.
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ –</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 36,000</b>		<b>Total Benefit (PV)</b> <b>£ 309,877</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Gypsies and Travellers: improved rights and responsibilities on LA sites. LAs and the courts: reduction in challenges to possession actions on grounds of breach of Convention rights.			
<b>Key Assumptions/Sensitivities/Risks</b> Net present value has been calculated over a period of 10 years and a discount rate of 3.5%.			
<b>Price Base Year</b>	<b>Time Period Years</b>	<b>Net Benefit Range (NPV)</b> £ –	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ -626,663</b>

What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		2008/09		
Which organisation(s) will enforce the policy?				
What is the total annual cost of enforcement for these organisations?		£ The courts		
Does enforcement comply with Hampton principles?		Yes/No		
Will implementation go beyond minimum EU requirements?		Yes/No		
What is the value of the proposed offsetting measure per year?		£		
What is the value of changes in greenhouse gas emissions?		£		
Will the proposal have a significant impact on competition?		Yes/No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A
<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase – Decrease)		
Increase of £	Decrease of £	<b>Net Impact £</b>		
Key:	<b>Annual costs and benefits: Constant Prices</b>	<b>(Net) Present Value</b>		

## Evidence Base (for summary sheets)

### Introduction

1. The rights and responsibilities of Gypsies and Travellers on local authority (LA) sites are currently covered by the Caravan Sites Act 1968. This provides limited protection from eviction and harassment. In particular, in order to evict a resident a LA need only give a minimum of 28 days notice to terminate the licence and obtain a court order for possession. The caravan counts undertaken in England and Wales in January 2007 show that there were 304 LA sites across England and Wales, providing 5,270 pitches and accommodating 7,113 caravans.
2. The European Court of Human Rights (ECtHR) ruled in 2004 in the case of *Connors v United Kingdom* that this lack of procedural safeguard to eviction breached article 8 of the European Convention on Human Rights (the right to respect for a person's private, family and home life).
3. The Housing Act 2004 provided additional protection, enabling the court to suspend the enforcement of a possession order against a Gypsy or Traveller on a LA site for up to 12 months.
4. The Housing and Regeneration Act 2008 includes a provision to amend the Mobile Homes Act 1983 to include LA Gypsy and Traveller sites, which will be brought into force by secondary legislation. The 1983 Act provides further protection to Gypsies and Travellers on private sites, and occupants on other types of residential caravan sites, such as park home sites. It places certain requirements on site owners and residents, and gives the courts jurisdiction to determine questions and entertain proceedings under it. There are a number of options available in terms of implementing the 1983 Act on LA Gypsy and Traveller sites.
5. **Option A: Do nothing** ie do not bring the clause into force. This will further perpetuate current problems and inevitably lead to an increase in challenges by Gypsies and Travellers to possession action taken against them by LAs on the grounds that their Convention rights are being breached, and the costs associated with these actions. The Government would come under increasing pressure, including from the Joint Committee on Human Rights and European Commission, to take action.
6. **Option B: Amend the Mobile Homes Act 1983 to include LA Gypsy and Traveller sites. All the provisions of the 1983 Act would apply to these sites.** This may have costs and benefits for Gypsies and Travellers, LAs, and the courts.

7. Gypsies and Travellers on LA sites will benefit from:
- the requirement for a LA to apply to the court and prove grounds and reasonableness to terminate their agreement to occupy the pitch;
  - the right for a member of a resident's family living with them to succeed their agreement if they die;
  - the ability to sell or gift their caravan, and assign their agreement (although see options C and D);
  - the requirement for a LA to provide certain information on request;
  - the requirement for a LA to make certain repairs to the pitch and maintain the common areas of the site;
  - the requirement for a LA to consult on improvements;
  - the ability for the court to consider various matters arising under the 1983 Act.
8. Costs may arise to Gypsies and Travellers on LA sites as a result of the requirement to pay up to 10% commission if they sell their caravan and assign their agreement (although see options C and D).
9. Costs may arise to LAs from the requirements to:
- provide a written statement of the terms of the agreement under which a caravan is stationed on a pitch;
  - apply to the court if they wish to terminate the agreement and prove grounds and reasonableness;
  - consider requests from residents for approval of a person to whom they wish to sell or gift their caravan and assign their agreement (although see options C and D);
  - provide certain information if requested by the resident, for example on the pitch and fees or other charges;
  - repair and maintain parts of the pitch and common areas;
  - consult on improvements to the site; and
  - review the pitch fee annually – changes are subject to certain requirements.

In many cases these requirements should not result in additional costs arising to LAs as they will already be following them or have procedures in place to deal with them.

10. Costs may also arise to both LAs and the courts from the courts dealing with matters arising under the 1983 Act for LA Gypsy and Traveller sites as well as the other types of site already covered by the Act.

11. LAs will benefit from the requirement on residents on their sites to pay up to 10% commission if they sell their caravan and assign their agreement (although see options C and D).
12. Options C and D vary in the approach to assignment applied to LA Gypsy and Traveller sites. As set out in paragraph 7 above, the Mobile Homes Act 1983 enables a resident that either sells their caravan, or gives it to a family member, to pass on (or assign) the agreement to live in the caravan on the pitch to the person that buys it or it is given to, providing the site owner approves of that person. Where the caravan is sold, the site owner can claim a commission up to a maximum fixed by law. This maximum is currently set at 10% of the sale price by the Mobile Homes (Commissions) Order 1983 (SI 1983 No 748). Amending the 1983 Act to include LA Gypsy and Traveller sites will ensure that residents living in similar accommodation have the same rights and responsibilities. However, at the consultation events we held, stakeholders raised concerns about the impact that assignment may have on LA Gypsy and Traveller sites. We are therefore seeking views on two further options.
13. **Option C: Amend the Mobile Homes Act 1983 to include LA Gypsy and Traveller sites but do not apply the right of assignment.** Gypsies and Travellers will not benefit from being able to sell or gift their caravan and assign their agreement, or have the cost of paying the commission (up to 10% of the value of the sale) on assignment. Local authorities will not benefit from receiving the commission payable by site residents on assignment.
14. **Option D: Amend the Mobile Homes Act 1983 to include LA Gypsy and Traveller sites but with additional requirements on assignment.** We estimate that Gypsies and Travellers will benefit from being able to sell or gift their caravan and assign their agreement in around half the cases per year estimated in option B, as LAs would have to assess the accommodation needs of other Gypsies and Travellers in their area in making a decision. But they will also only have the cost of paying half the commission estimated in option B. Likewise, LAs will only benefit from receiving half the commission estimated in option B.
15. These potential costs and benefits are considered in further detail below.

## Costs and benefits of each option

### Option A – Do nothing

16. There are no benefits arising from Option A. However, doing nothing will perpetuate the problem, and would inevitably lead to an increase in challenges to possession actions against Gypsies and Travellers on local authority sites. This would have costs for Gypsies and Travellers, local authorities, the courts and the Government.



## **Option B – Amend the Mobile Homes Act 1983 to include LA Gypsy and Traveller sites. All its provisions will apply to these sites**

### Annual costs

#### **ONE-OFF COSTS (TRANSITION) To LAs**

#### **Arrangements for applying the Mobile Homes Act 1983 to existing residents of LA sites.**

17. Under the Mobile Homes Act 1983 an agreement to station a caravan on a site will include certain terms implied by that Act, and any additional express terms. Site owners are required to provide a written statement including these terms and details specific to the agreement such as the parties to it, date, and particulars of the pitch. The form of the statement and implied terms are set out in regulations and authorities will need to add express terms and the details specific to the agreement.
18. Gypsies and Travellers on LA sites will currently have licences under the Caravan Sites Act 1968 which set out the terms under which they occupy their pitch. There will be terms in current licences which are not covered by the implied terms of agreements under the 1983 Act, and which LAs will want to include as express terms, for example relating to behaviour on site or short term absence from the site.
19. Two options for moving from a position where existing residents of LA Gypsy and Traveller site have licences under the Caravan Sites Act 1968 to agreements under the 1983 Act are set out in Part 2 of "Applying the Mobile Homes Act 1983 to local authority Gypsy and Traveller sites; a consultation paper." One of these options would require additional work by LAs. It would require LAs to make agreements with existing residents that include the implied terms of the 1983 Act, terms of current licences that do not conflict with them as express terms, and the details specific to the agreement, which in some cases may need to be gathered. This is the Government's preferred option and we provide here an estimate of the cost for LAs of implementing this option. We are establishing a working group of local authority officials and residents on their Gypsy and Traveller sites to prepare a model agreement, which may reduce the cost of this option.
20. In calculating annual costs for local authorities we have assumed that:
  - there will be one agreement per pitch;
  - there are currently 304 local authority Gypsy and Traveller sites in England and Wales (285 in England and 19 in Wales);

- There are 260 working days per year;
- average annual salaries of local authority employees dealing with Gypsy and Traveller site management are as follows:
- LA officer – £25,000. One day's work = £96
- LA administrative support officer – £20,000. One day's work = £77
- LA Lawyer – £30,000. One day's work = £115
- all existing licences for the same site will contain the same terms. Many LAs will own more than one site, and terms may be the same across all their sites;
- it could take 2 days for an LA officer dealing with Gypsy and Traveller site management issues to prepare an agreement for a site: £96 per day, 2 days, 304 sites = £58,368
- It could take 2 days for an LA lawyer to prepare an agreement for a site: £115 per day, 2 days, 304 sites = £69,920
- It could take 1 day of an LA officer's time to gather the pitch details required for the agreement for each site: £96 per day, 304 sites = £29,184;
- it could take 1 day of an LA Administrative Officer's time to insert the specific details for each pitch into the agreements for a site and distribute them to residents. £77 per day, 304 sites = £23,408.

**We therefore estimate that the cost to LAs of arrangements for applying the 1983 Act to existing residents, the one-off cost (transition) will be around £180,880.**

## **AVERAGE ANNUAL COST (EXCLUDING ONE-OFF) To LAs**

### **Agreements for new residents**

21. Under the 1983 Act, LAs will be required to make agreements with new residents and provide a written statement of the terms 28 days before hand, as set out in paragraph 17 above. As explained in paragraph 20 above, the express terms of agreements for the same site are likely to be the same.
22. LAs already provide new residents of their sites with a licence under the Caravan Sites Act 1968 which will cover its terms and details specific to the licence. **This requirement should not therefore impose any additional costs on LAs.**

### **Sale or gift of caravan and assignment of agreement**

23. Under the 1983 Act residents will be able to sell or gift their caravan, and assign their agreement to occupy the pitch, with the approval of the LA for the person to whom they wish to sell or gift and assign. LAs will need to respond to requests for approval within 28 days.
24. For park homes, to which the 1983 Act already applies, the re-assignment rate has been estimated at around 6% per year (*Economics of the Park Home Industry, ODPM, 2002*). However, current practice suggests that Gypsies and Travellers will be more likely to move their caravan/s to a different site, rather than sell or gift their caravan/s, assign their agreement to occupy the pitch, and buy or rent another caravan/s on a different site.
25. LAs will already be assessing applications for vacant pitches as they arise on sites, for example through seeking references, and should therefore have procedures in place to deal with the approval of a person to whom a current resident may wish to sell or gift their caravan and assign their agreement. Given the current practice mentioned in paragraph 24, the ability to sell or gift their caravan and assign the agreement is more likely to be another option available to those Gypsies and Travellers who may be seeking to move, rather than a stimulus encouraging more Gypsies and Travellers to move. **This requirement should not therefore impose any additional costs on LAs.**

### **Provision of information**

26. Under the 1983 Act, if requested by a resident, a LA will need to provide details about the pitch and base, including its size and location within the site. However, LAs will be able to charge up to £30 for these details. **This requirement should not therefore impose any additional costs on LAs.**
27. If requested by a resident, a LA must provide evidence in support or explanation of a new pitch fee, and charges for services or other costs or expenses payable under the agreement, free of charge. LAs will already be required by the 1983 Act to set out proposals for any change to pitch fees prior to the review date (see paragraph 33). Evidence such as bills, invoices or other documentation, should be readily available in relation to changes to pitch fees and charges for services. **Any costs associated with this requirement should therefore be nominal.**
28. LAs must inform residents, and any qualifying residents' association, of an address in England and Wales at which notices can be served on them. However, the regulations covering the form of the written statement will require an address for the LA to be included in the statement provided to residents, and so **this requirement should not therefore impose any additional costs on LAs above those estimated for the provision of these statements.**

## **Repairs and maintenance**

29. Under the 1983 Act LAs will be responsible for making certain repairs to pitches, and maintaining any services supplied by them to it, for example, utilities, and will also be required to maintain the common areas of the site. LAs are already responsible for repairs and maintenance on their sites, and this should be covered by pitch fees. However, we are aware that the way that housing benefit is paid to county council sites may mean that this is not the case on all sites, and this is considered further in paragraph 38. Where repairs are more substantial, they may be included in bids for refurbishment work under the Gypsy and Traveller Site Grant provided by Communities and Local Government, or the Gypsy and Traveller Site Refurbishment Grant provided by the Welsh Assembly Government. £97 million has been made available for the Grant in England between 2008-11, and £3 million in Wales between 2007-10.

## **Consultation**

30. Under the 1983 Act LAs will be required to consult residents about improvements to the site, and any qualifying residents association about matters relating to the operation and management of the site.
31. LAs should already be consulting residents of their sites about improvements and operation and management as a matter of good practice. LAs applying for the Gypsy and Traveller Site Grant in England or the Gypsy and Traveller Site Refurbishment Grant in Wales, to assist them in making improvements to their sites, are required to provide evidence of consultation with residents as part of their application. However, not all LAs will necessarily apply for grant to assist them with making improvements and since this will be a requirement we have estimated the cost of the process outlined in the 1983 Act.
32. We have assumed that:
- LAs will not apply for grant for improvements to 50% of sites (152);
  - improvements might be made to these sites on average once every 3 years (51 improvement schemes per year);
  - it could take an average of 5 days of an LA officer's time to prepare a letter to residents explaining the proposals for improvement and consider their responses. £96 per day, for five days = £480;
  - it could take half a day of an LA administrative support officer's time to distribute the letter: £77 per day for half a day = £39

**This could therefore lead to costs for LAs of £26,469 per year (£519 x 51).**

### **Rent reviews and pitch fee changes**

33. Under the 1983 Act LAs will need to review the pitch fee annually and provide written details of proposals for any changes 28 days before the review date. The majority of LAs are likely to review their rent periodically and will need to inform residents of any changes, **and so this requirement should not impose any additional costs on LAs.**
34. A pitch fee can be changed if the resident agrees, or if the site owner or resident applies to the court, and the court considers it reasonable. The potential cost of this requirement for the courts and LAs is considered in paragraphs 46 – 50 below.
35. In determining the amount of a new pitch fee, the 1983 Act requires particular regard to be had to sums spent on improvements to (but not expansion of) to the site, any decrease in the amenity of a site; and the effect of any enactment that has come into force since the last review.
36. The 1983 Act also contains a presumption that the pitch fee will only increase or decrease by a percentage no more than any percentage increase or decrease in the RPI since the last review date, unless this would be unreasonable having regard to factors such as any sums spent on improvements since the last review.
37. Communities and Local Government is currently working with the Department for Work and Pensions to consider how an anomaly in the way housing benefit is paid between county council and other types of local authority site might best be resolved. Currently, housing benefit payments for local housing authority sites are made through a rent rebate, and for county council sites through a rent allowance. This means county council rents are referred to the local Rent Officer for a determination of whether they are reasonable, which may be determined by comparison to the local reference rent, which may not take account of the costs of managing Gypsy and Traveller sites. This means that currently some county council sites may not be covering their operating costs.
38. The Government would not want county councils to be unable to benefit from the resolution of this anomaly to ensure that their pitch fees better cover the costs of operating their sites because of the presumption in the implied terms about changes to pitch fees and the RPI. We therefore propose to delay applying provision in the 1983 Act that makes the presumption about pitch fee changes and RPI to Gypsy and Traveller sites owned by county councils until after DWP has made the changes necessary to resolve this anomaly. **The presumption about RPI and pitch fees should not therefore impose additional costs nor bring additional benefits to LAs.**

## To LAs and the courts

### Termination of agreements

39. To terminate an agreement under the 1983 Act, a LA will need to apply to the court and satisfy it that one of the grounds set out in the Act is met, and that it is reasonable to terminate the agreement.
40. Currently, under the Caravan Site Act 1968, LAs need only give 28 days notice to terminate the agreement, and seek a possession order from the court if the resident does not leave. So the requirement to prove grounds and reasonableness may give rise to additional costs for both LAs and the courts.
41. However, in practice it is unlikely to be as straightforward as the 1968 Act suggests, to get a possession order, because:
  - many Gypsies and Travellers are likely to challenge possession actions against them on the grounds that their Convention rights are being breached, and seek a declaration of incompatibility between the legislation and the Convention, which will involve additional work and costs for LAs, the courts *and Government*. The Secretary of State will usually also intervene in these cases to try to prevent a declaration of incompatibility being made, which will involve additional work and cost for the Government;
  - some LAs may already be seeking to prevent challenge in this way by avoiding taking summary possession action, as advised in our draft site management guidance.
42. Communities and Local Government does not collect information on LA possession actions against Gypsies and Travellers on their sites. However, using information from a legal firm that specialises in Gypsy and Traveller cases, and deals with the majority of possession actions, we have estimated that 24 possession actions a year may go to court. There may be additional cases where Gypsies and Travellers have not engaged legal services.
43. Where possession action is challenged it will usually be transferred to the High Court because of the issues around Convention rights. Some cases will go on to the Court of Appeal and the House of Lords.
44. The impact of LAs being required to apply to the court and prove grounds and reasonableness in order to terminate an agreement may be that:
  - additional possession actions arise where LAs believe they can prove grounds and reasonableness against Gypsies and Travellers who may not currently seek legal

- advice and leave a site when they receive notice to terminate their licence;
  - fewer possession actions arise because LAs do not believe they can prove grounds and reasonableness against Gypsies and Travellers against whom they would currently not need to;
  - fewer possession actions will end up in the higher courts as a result of the fact that issues around Convention rights and requests for declarations of incompatibility in this respect should not arise.
45. **Taking all these factors into consideration, we believe that overall this requirement should not therefore impose additional costs for LAs as, due to case law, there will be very few challengeable actions. The Ministry of Justice has agreed that the amendment to the 1983 Act should not have a significant impact on the work of the courts and legal aid.**

#### **Other matters considered by the courts**

46. Under the 1983 Act, the courts are able to consider a number of other matters:
- applications by residents for a written statement from owners, where this has not been provided as required;
  - applications by owners or residents to vary or delete any express term of the agreement within 6 months of the date it is made;
  - applications by residents to approve a person to whom a caravan is to be sold or gifted and the agreement assigned, where the owner has not responded within 28 days, or where conditions imposed or refusal to give consent is considered unreasonable;
  - applications by owners to change the pitch fee where the resident does not agree with this;
  - determination of any question arising under the Act or agreement to which it applies.
47. Additional costs may arise to LAs and the courts from having to deal with these matters for LA Gypsy and Traveller sites as well as sites to which the 1983 Act already applies.
48. Communities and Local Government has estimated that the courts will deal with around 160 cases relating to park homes every year, excepting cases relating to the termination of agreements, which are covered in paragraphs 39 – 45 above. There are an estimated 2,000 park home sites in England and Wales. This means that there will be cases relating to less than 1% (0.08%) of park home sites in court every year.

49. If we apply the estimate that 0.08% of park home sites will be involved in court cases under the 1983 Act every year to LA Gypsy and Traveller sites, then 24 additional court cases (0.08% of 304 LA sites) would result from including LA Gypsy and Traveller sites in the scope of the 1983 Act.
50. We have assumed that each case will take:
- one day in court for an LA officer and LA lawyer: using the salary costs outlined in paragraph 20 above £96 + £1115 = £1211;
  - an average of 4 days of work by both an LA officer and a LA lawyer beforehand: £96 for 4 days = £384 and £1115 for four days = £4460.

**These 24 additional court cases could therefore lead to additional costs of around £25,320 a year for LAs (£1211 + £384 + £4460 x 24). As set out in paragraph 44, the Ministry of Justice has agreed that the amendment to the 1983 Act should not have a significant impact on the work of the courts and legal aid.**

## To Gypsies and Travellers

### Commission on assignment

51. Under the 1983 Act LAs will be able to charge up to 10% commission if a Gypsy or Traveller on one of their sites sells their caravan and assigns the agreements to live on the pitch. As mentioned in paragraph 24 above, the re-assignment rate for park homes has been estimated at around 6% per year (around 5,000 park homes). An average of 89% of these re-assignments will be on sale, with the remaining 11% on gifting the park home to a family member, which does not attract commission. The average value of a park home on re-assignment is £35,000 (reflecting the sharp depreciation in value of mobile accommodation – the average value of a new park home is £62,000) (*Economics of the Park Homes Industry, OPDM, 2002*).
52. As set out in paragraph 24 above, current practice suggests that Gypsies and Travellers will be more likely to move their caravan/s to a different site, rather than sell or gift their caravan/s, assign their agreement to occupy the pitch and buy or rent another caravan/s on a different site. We have therefore assumed that the re-assignment rate for pitches on Gypsy and Traveller sites would be around 1% per year. We have used pitch rather than caravan numbers for the purposes of this estimate as, although there would normally be one park home per pitch, there is an average of 1.7 caravans per pitch on a Gypsy and Traveller site. There are currently 5270 pitches on LA sites in England and Wales. This means that there may be around 53 re-assignments every year (one pitch for around every 6 sites).



53. If we apply the same ratio of sales to gifts as for park homes 47 of these re-assignments may be on sale. If we assume the average value of a new 20 foot trailer is around £30,000, and the average value on re-sale may be around £15,000, then the average commission per sale would be £1,500. **Gypsies and Travellers may therefore pay around £70,500 in commission payments per year (£1,500 x 53 assignments).**
54. The cost of the additional court cases in paragraph 50 (£25,320), consultation in paragraph 32 (£26,469), and commission payable on assignment will bring **the average annual cost of Option B to £122,289.**

## Annual benefits

### **AVERAGE ANNUAL BENEFIT (EXCLUDING ONE-OFF)**

55. Gypsies and Travellers will benefit from the additional rights and responsibilities outlined in paragraph 7.

### **To LAs**

#### **Commission on assignment**

56. Under the 1983 Act LAs will be able to charge up to 10% commission on the sale of a caravan and assignment of an agreement to occupy the pitch it is stationed on. The £70,500 cost to Gypsies and Travellers of this calculated in paragraph 53 above will be a benefit to LAs.

### **Option C – Amending the Mobile Homes Act 1983 to include LA Gypsy and Traveller sites but not applying the right to assignment to these sites**

57. **The annual one-off (transition) costs for option C are the same as for option B (£180,880).**
58. **The average annual costs for consultation and other matters considered by the courts for option C are the same as option B (£26,469 and £25,320 respectively).**
59. A significant proportion of stakeholders have raised a number of concerns about the impact of assignment on local authority Gypsy and Traveller sites, which are set out in paragraph 23 of “Applying the Mobile Homes Act 1983 to local authority Gypsy and Traveller sites: a consultation paper”. The Government has proposed two options for dealing with this in this consultation paper. The first option (paragraphs 25 – 27 of the consultation paper, and option C in the “Summary: Intervention and Options” and “Summary: Analysis and Evidence” section of this Impact Assessment) is to specify that the implied terms dealing with assignment do not apply to local

authority Gypsy and Traveller sites. **If there is no opportunity for assignment on these sites then there will not be any cost to Gypsies and Travellers in paying commission on assignment, and LAs will not receive the benefit of these commission payments.**

60. **The average annual cost for option C will therefore be £51,789, and there will not be an annual average benefit.**

**Option D – Amend the Mobile Homes Act 1983 to include LA Gypsy and Traveller sites, but impose additional requirements on assignment on these sites**

61. **The annual one-off (transition) costs for option D are the same as for option B (£180,880).**
62. **The average annual costs for consultation and other matters considered by the courts for option D are the same as option B (£26,469 and £25,320 respectively).**
63. The second option (paragraphs 28 – 30 of the consultation paper, and option D in the “Summary: Intervention and Options” and “Summary: Analysis and Evidence” section of this Impact Assessment) is to amend the implied terms on assignment to require that in considering whether to approve a person to whom a resident on a Gypsy and Traveller site proposes to assign an agreement, the LA must consider the needs of other Gypsies and Travellers in their area, as well the needs of the proposed assignee. This is likely to reduce the number of assignments made on LA Gypsy and Traveller sites. If we assume that this reduces the number of assignments estimated in option B by half, there may be around 27 assignments every year. Applying the same ratio of sales to gifts as in option B, 24 assignments may be on sale. Using the same average values for trailers as in option B (£15,000), **Gypsies and Travellers may pay around £36,000 in commission payments per year (£1,500 x 24 assignments). This £36,000 cost to Gypsies and Travellers will be a benefit to LAs.**
64. **The average annual cost for option D will therefore be £87,789 and the average annual benefit will be £36,000.**

## Monitoring and enforcement

65. The rights and responsibilities imposed by the Mobile Homes Act 1983 are enforced by the courts. Paragraphs 39 – 45 and 46 – 50 explain that site owners and residents can ask the court to enforce specific rights and responsibilities under the Act, and that there is also a general power for them to ask the court to determine any question arising under the Act or an agreement to which it applies. They also consider the cost to the courts as the enforcement body.
66. Communities and Local Government will monitor implementation of this policy through the National Association of Gypsy and Traveller Officers (NAGTO – the organisation for local authority officers working with Gypsies and Travellers who will be leading on implementation in their authorities) and through the Forum that we hold with representatives of the various Gypsy and Traveller groups that we hold three times a year. We will undertake an evaluation of the policy and review this impact assessment three years after implementation.

### Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	Yes	Yes
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

## Annexes

### Competition assessment

1. The proposal to amend the Mobile Homes Act 1983 to remove the specific exclusion for local authority Gypsy and Traveller sites will ensure that all Gypsies and Travellers have the same rights and responsibilities whether they live on a private or socially rented site. The shortage of accommodation for Gypsies and Travellers (caravan count data shows that around 25% of Gypsy and Traveller caravans do not have an authorised place to stop) means that turnover on sites is often low. There is not a “market” for site accommodation in the way that there is for conventional housing. The proposal does not raise any competition concerns.

### Small firms impact test

1. The proposal to amend the Mobile Homes Act 1983 will improve the rights and responsibilities of Gypsies and Travellers on local authority sites. The proposals will therefore not impose or reduce costs on small businesses.

### Race equality

1. Gypsies and Travellers on local authority (LA) sites currently have only limited protection from eviction and harassment under the Caravan Sites Act 1968. The caravan counts undertaken in England and Wales in January 2007 show that there were 304 LA sites across England and Wales, providing 5,270 pitches and accommodating 7,113 caravans.
2. Gypsies and Travellers on private sites, and occupants of other types of residential caravan sites, such as park home sites, have further protection under the Mobile Homes Act 1983. The caravan counts undertaken in England and Wales in January 2007 show that there are 6,663 Gypsy and Traveller caravans on private sites, although many of these are likely to be family sites rather than commercial sites run by private organisations or individuals. It is also estimated that there are around 78,000 park homes on sites across England and Wales.
3. The proposal to amend the Mobile Homes Act 1983 to remove the specific exclusion for local authority Gypsy and Traveller sites, and provide the same rights and responsibilities as others living on residential caravan sites will therefore directly impact on Gypsies and Travellers on local authority sites.
4. These will include Romany Gypsies and Irish Travellers, which are recognised racial groups under race relations legislation, as well as other groups with a nomadic habit of life, as set out in the definition of the term Gypsies and Travellers under section 225 of the Housing Act 2004 (see the Housing (Assessment of Accommodation Needs) (Meaning of Gypsies and Travellers) (England) Regulations 2006, SI 2006/3190). The proposal will therefore have a disproportionate impact on Romany Gypsies and Irish Travellers.

5. This proposal will improve the rights and responsibilities of Romany Gypsies and Irish Travellers on LA sites, ensuring that all those living on residential caravan sites have the same rights and responsibilities, irrespective of their racial group.

### **Disability equality**

1. The Disability Rights Commission suggests that a proposal is likely to require a full Disability Equality Impact Assessment if:
  - the policy is a major one in terms of scale or significance for an authority's activities;
  - although the policy is minor it is likely to have a major impact on disabled people in terms of the number affected or the seriousness of the likely impact or both.
2. The proposal will affect LA Gypsy and Traveller sites. The caravan counts undertaken in England and Wales in January 2007, showed that there were 304 LA sites, providing 5,270 pitches and accommodating 7,113 caravans. Gypsies and Travellers on LA sites will therefore make up a very small percentage of a LA's population, and consequently the proposal is unlikely to be a major one in terms of scale or significance for their activities.
3. Although Communities and Local Government does not have figures on the number of disabled Gypsies and Travellers, the Disability Rights Commission estimates that one in five adults will have a disability. Therefore, around 1,400 Gypsy and Traveller caravans on LA sites may include a disabled adult affected by this proposal.
4. The proposal will improve the rights and responsibilities of disabled Gypsies and Travellers on LA sites, ensuring they have the same rights and responsibilities as both disabled and non-disabled residents of other types of residential caravan site.

### **Gender impact**

1. Communities and Local Government does not have information on the number of men and women resident on LA Gypsy and Traveller sites. The Women and Equality Unit estimate that 51% of the population are female and 49% are male.
2. The proposal will apply equally to both male and female residents of LA Gypsy and Traveller sites, ensuring they have the same rights and responsibilities as both male and female residents of other types of residential caravan sites.

### **Health**

1. Gypsies and Travellers have poor health outcomes compared to the settled population. For example:
  - the average life expectancy of Gypsies and Travellers is 12 years less for women and 10 years less for men than the settled population;

- 41.9% of Gypsies and Travellers have reported a 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.
2. Currently, the ability for LAs to evict Gypsies and Travellers from their sites quickly, by terminating the licence agreement with 28 days notice and seeking a possession order if they do not leave, may have a detrimental impact on Gypsies and Traveller's health, by making it difficult for them to maintain contact with health services, and increasing stress and related behaviours.
  3. Improving security of tenure by requiring the LA to satisfy the court that one of a number of grounds for possession has been met, and that it is reasonable to terminate the agreement, may help to alleviate these difficulties and contribute to an improvement in health outcomes for Gypsies and Travellers.

### **Legal Aid**

1. We have carried out a Legal Aid Impact Test and the Ministry of Justice has agreed that there should not be a significant impact on Legal Aid.

### **Human Rights**

1. This proposal responds to the European Court of Human Rights (ECtHR) judgment in the case of *Connors v United Kingdom* in 2004 that the lack of procedural safeguards to eviction on local authority Gypsy and Traveller sites breached article 8 of the Convention (right to respect for private, family and home life).

### **Rural proofing**

1. The proposal will improve the rights and responsibilities of Gypsies and Travellers living on local authority sites whether they are in rural or urban areas. The proposal will not have a different impact on rural areas because of particular rural circumstances or needs.

# Annex D

## Key stakeholder organisations consulted

(Please note this is not an exhaustive list)

All local authorities in England

Local Government Association

National Association of Gypsy and Traveller Liaison Officers

All Party Parliamentary Group on Gypsy and Traveller Law Reform

Traveller Law Reform Project

London Gypsy and Traveller Unit

Friends, Families and Travellers

Irish Traveller Movement in Britain

Gypsy Council for Education, Culture, Welfare and Civil Rights

Gypsy Council

Derbyshire Gypsy Liaison Group

Leeds Gypsy and Traveller Exchange

Northern Network of Travelling people

We're Talking Homes

Leicestershire Gypsy Council Liaison Group

South West Alliance of Nomads

UK Association of Gypsy Women

Irish Community Care Merseyside

Community Law Partnership

National Travellers Action Group

National Federation of Gypsy and Traveller Liaison Groups

East Anglian Gypsy Council

Leeds Justice for Travellers

Equality and Human Rights Commission

Citizens Advice Bureau

Romany Gypsy and Irish Traveller Southern Network

Thames Valley Gypsy Association

Canterbury Gypsy and Traveller Support Group

Hull Gypsy and Traveller Exchange

Avon Traveller Support Group

# Annex E

## Consultation criteria

The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

The full consultation code may be viewed at:

[www.cabinet-office.gov.uk/regulation/Consultation/Introduction.htm](http://www.cabinet-office.gov.uk/regulation/Consultation/Introduction.htm)

Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

Albert Joyce

Communities and Local Government Consultation Co-ordinator

Zone 6/H10

Eland House

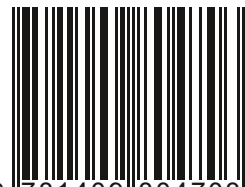
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