

The Traveller Law Reform Bill

A Brief Guide

A report and draft Bill prepared by the Traveller Law Research Unit at Cardiff Law School with grant support from the Joseph Rowntree Charitable Trust concerning the reform of the law in England and Wales as it applies to Gypsies and Travellers.

The Report comprises:

- 1) A brief explanation as to the genesis of the Bill and guide to its main provisions.
- 2) The draft Bill.
- 3) A technical 'Explanatory Memorandum' which details the legal and policy objectives of each clause to the Bill.

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The Traveller Law Research Unit (TLRU) was created in March 1995 and is a specialist research unit within the Law School of Cardiff University. The Unit has undertaken research for a number of charitable foundations and aims to promote law reform and provide services of benefit to Travelling people.

TLRU would like in particular to thank:

- 1) the very substantial number of people who have given up much of their valuable time to contribute to the preparation of the Bill – from the formulation of proposals, through attendance at the regional meetings where the various draft clauses in the Bill were considered (and sometimes consigned to the bin) and by submitting detailed written analysis and criticism of the emerging draft clauses;
- 2) the Joseph Rowntree Charitable Trust for its generous financial support without which the consultation process and the drafting of the Law Reform Bill would not have been possible; and
- 3) Cardiff Law School, who have continued to fund the core infrastructure costs of the Unit and provided substantial academic and personal support for its activities.

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I Introduction

The Traveller Law Reform Bill is the product of over four years of discussion and collaboration by Gypsies and Travellers and their representative organisations and service providers in the United Kingdom.

The process formally commenced in 1997 when a proposal was made to create a common 'platform' to take forward the reform debate. The concept behind such a collaborative grouping was explained at a meeting in August that year:

[A] 'platform' is not owned by any organisation: it is not an organisation in itself: it is, rather, the space between organisations. A platform does not restrict participating organisations, or remove their differences. A platform exists whilst there is a common purpose in a particular area. It has limited objectives and ceases to exist when those objectives have been realised. In the present instance, the common platform is one for the promotion of law and policy reform: based upon equality, valuing diversity, promoting integration not assimilation and built upon Traveller representation¹.

This reform process has already produced a law reform document published as *Gaining Ground: Law Reform for Gypsies and Travellers* (1999)² and been accompanied by a number of significant and positive governmental policy changes, including such matters as:

- planning development advice³;
- DETR advice concerning toleration of unauthorised encampments⁴;
- NHS guidance specifically drawing attention to the health care of Travellers⁵;
- amendments to the housing repair grants regime to include caravans on publicly-owned Gypsy sites⁶;
- ministerial endorsement concerning the 'best value' implications for local authority site provision and toleration policies⁷; and
- voting rights for Travellers⁸.

Clearly, however, there have also been a number of negative developments, most notably in the tenor of political comment and press coverage of Gypsy and Traveller issues: the stigmatisation of Gypsies and Travellers, essentially as an evil underclass.

¹ Per Niall Crowley (then Projects Manager, Pavee Point Travellers Centre, Dublin; now Chief Executive Officer of The Equality Authority in Ireland). Luke Clements and Penny Smith (1997) *Traveller Law Reform: TLRU and TLRU Conference and Consultation Report*, Traveller Law Research Unit, Cardiff Law School, p. 1.

² Rachel Morris and Luke Clements (eds.) (1999) *Gaining Ground: Law Reform for Gypsies and Travellers*, University of Hertfordshire Press, Hatfield.

³ Ministerial advice issued by Nic Raynsford MP (May 1998) and Chris Mullin MP (Sept 1999), Department of the Environment, Transport and the Regions, London.

⁴ October 1998.

⁵ HSC 2000/10 & LAC (2000) 9.

⁶ 1998 SI 2998.

⁷ Speech, DETR Minister Nic Raynsford MP, 29 October 1998.

⁸ See *Travellers' Times* magazine, TLRU, Cardiff Law School, Issue 9, August 2000.

As the Institute for Jewish Policy Research has noted ‘in many European countries which now have a minimal Jewish presence, Roma have taken over the role of principal scapegoat’⁹.

In 1999 the Joseph Rowntree Charitable Trust generously agreed to support a limited research project which would seek to promote further consultation and discussion amongst Gypsies and Travellers, their representative organisations and service providers, with a view to distilling some of the reform proposals into a draft parliamentary Bill.

Gaining Ground had itself been preceded by two years of detailed discussions involving a wide section of the Gypsy and Traveller communities as well as their representative organisations and service providers in the United Kingdom¹⁰. In drafting and re-drafting of the Bill a further 18 months of consultation and discussion has occurred via regional meetings, private correspondence and oral submissions, culminating in the annual Traveller Law Reform Conference on 19 September 2000 in London.

⁹ Institute of Jewish Policy Research (1996) *The Roma/Gypsies of Europe: a persecuted people*.

¹⁰ For a description of this consultation process see the preface and Appendixes 1 & 2 to *Gaining Ground*. Although individuals and organisations from throughout the UK contributed to the process, the Traveller Law Reform Bill applies only to England and Wales due to the different constitutional arrangements in Northern Ireland and Scotland.

II Recent legislative reforms

Over the last 50 years domestic legislation has significantly curtailed the traditional way of life of Gypsies and Travellers. The Town and Country Planning Act 1947, the Highways Act 1959 and the Caravan Sites and Control of Development Act 1960 removed many of the stopping places and site options that had been available to previous generations.

A positive attempt to ameliorate some of the adverse effects of this trend – via the Caravan Sites Act 1968¹¹ – was peremptorily terminated by the Criminal Justice and Public Order Act 1994. This Act repealed both the duty in the 1968 Act to provide Gypsy sites and the Exchequer grant that had been available to fund the construction of these sites.

Three basic assertions were advanced as justification for the 1994 repeals, namely that:

1. Gypsies and Travellers occupied a privileged position under domestic law.
2. The public provision of sites as required by the Caravan Sites Act 1968 had failed.
3. The cost of providing sites was more expensive than would be the cost of not providing sites.

Each of these assertions is incorrect.

1. The 'privileged position' assertion.

In 2000 the Organisation on Security and Co-operation in Europe (OSCE) produced a report which (amongst other things) reviewed the UK's legal treatment of Gypsies and Travellers. The relevant extract from this report (which is at p13 below) catalogues the substantial legal prejudice experienced by Gypsies and Travellers in this country and concludes:

In the face of these difficulties, the itinerant life style which has typified the Gypsies is under threat. As Justice Henry observed when he cited the need for the policy embodied in Britain's Caravan Sites Act 1968 (now abandoned) of making adequate provision for caravan sites: "If there are not sufficient sites where gypsies may lawfully stop, then they will be without the law whenever and wherever they stop. This will result either in them being harried from place to place, or in them being allowed to remain where they should not lawfully be"¹².

¹¹ An Act which originated as a Private Members Bill, introduced by Eric Lubbock MP, now Lord Avebury.

¹² R. v. Hereford and Worcester CC ex parte Smith (1988) transcript, pp. 24-25.

2. The 'failure of the 1968 Act' assertion.

As has been noted elsewhere¹³, the site provision obligation under the Caravan Sites Act 1968 achieved a great deal, in the face of substantial local opposition.

The Gypsy caravan count of 22 March 1965 analysed in *Gypsies and other Travellers*¹⁴ recorded 3,400 caravans (in England and Wales) accommodating 15,000 persons¹⁵. Only ten council sites existed at that time, accommodating just 4% of all Travelling people. The report did not record the number of Gypsies on 'unauthorized' sites, but only 29 licensed private Gypsy sites were recorded and it is likely that the 'unauthorized' figure was almost 80%¹⁶. The last Gypsy counts before the abolition of Part II of the Caravan Sites Act 1968 recorded 13,329 caravans in England and Wales; of these, 6,063 were on a total of 324 council sites and 3,204 on private licensed sites, while 4,062 (approx 30%) were on 'unauthorized' sites. Despite the apparent quadrupling of Gypsy caravan numbers in the intervening period, the unauthorized encampment figure had reduced from 80% to 30%.

3. The 'cost of site provision' assertion.

The consultation paper preceding the 1994 legislation emphasised the cost to the public purse of providing sites for Gypsies, indicating that (since 1970) this had amounted to £56 million¹⁷. No research however existed to assess whether the cost to the public purse of not providing sites would be any less. Local authorities, the police, and government departments (even if one ignores the cost to private individuals and businesses) expend substantial sums of money evicting Gypsies and Travellers who have nowhere lawful to site their caravans. Research by the Traveller Law Research Unit at Cardiff Law School¹⁸ indicates that from the perspective of 'Best Value' a national site provision strategy may be significantly more cost effective than the present programme.

¹³ See for instance Lord Avebury, *Gaining Ground*, p xiii; and Luke Clements, *Traveller Law Reform*, in (1997) *Traveller Law Reform: TLAST and TLRU Conference and Consultation Report*, Chapter 6.

¹⁴ Ministry of Housing and Local Government / Welsh Office (1967), HMSO, London.

¹⁵ The report emphasized – as did the subsequent 'Cripps Report' (John Cripps CBE for Department of the Environment / Welsh Office (1976) *Accommodation for Gypsies: A Report on the Working of the Caravan Sites Act 1968*, HMSO, London) – that this count was considered an underestimate.

¹⁶ Extrapolated from Table 3.3 page 20 of the report and Ministry of Housing and Local Government Circular 26/66 paragraph 1(e).

¹⁷ This assertion is of course in itself objectionable; 'cost effectiveness' is not the basis of providing accommodation for homeless people—it is the role of society to provide for the homeless, whether or not it is an economically profitable exercise.

¹⁸ Rachel Morris and Luke Clements (2001) *The Cost of Unauthorised Encampments*, TLRU, Cardiff Law School, forthcoming. This research explores the costs of not providing sites.

III The purpose and structure of the Bill

Many of the clauses in the Bill make important amendments to remove discriminatory statutory provisions. The Bill's most significant innovation, however, concerns the extent to which it seeks to remove from the political stage, decisions concerning site provision and site toleration. In effect it creates self-enforcing provisions; measures which do not depend upon 'political will' for their subsequent enforcement.

A major weakness of the Caravan Sites Act 1968 lay in the fact that it relied upon local politicians to approve sites in their areas and Ministers to use their powers of enforcement (under section 9) against recalcitrant authorities. Given the extent of prejudice against Gypsies and Travellers, the failure of this aspect of the 1968 Act is hardly surprising. Local authorities initially failed to approve sites, surrendering to local opposition, and Ministers failed to use their available powers. The 1968 Act only began to 'bite' when the High Court found against individual authorities, and in particular quashed eviction proceedings taken by authorities that had failed to provide sites¹⁹.

Under the Bill, the Gypsy and Traveller Accommodation Commission will be responsible for collecting data on the accommodation requirements of Gypsies and Travellers and for issuing guidance to authorities as to what provision they should make. If an authority fails to facilitate the provision of sufficient sites (or fails to co-operate with other authorities in this endeavour or fails to provide adequate planning policies in its Development Plan), then these failures are 'material considerations' for courts and planning inspectors. This means that authorities which fail to take appropriate action may be penalised; effectively a reversal of the present unsatisfactory state of affairs.

Rather than becoming a wide ranging Quango, the Gypsy and Traveller Accommodation Commission will have specifically targeted responsibilities directed at ensuring that there is adequate provision of suitable accommodation for Gypsies and Travellers in each locality. In the planning arena it will fulfil a function analogous to that of the House Builders Federation in relation to land allocations for housing. The Commission will, in addition to vetting Development Plans, have other important and associated functions, including:

- The power to issue formal statements as to what constitutes adequate provision for the purposes of clause 1 of the Bill;
- The duty to oversee and collate bi-annual counts of Gypsy caravans;
- The power to issue general and specific guidance concerning the adequacy of local authority accommodation programmes.

Before briefly describing the purpose of the Bill's various clauses, it is appropriate to list certain key principles that have underscored the approach to the drafting of the Bill:

¹⁹ See e.g. *West Glamorgan County Council v Rafferty* [1987] 1 All ER 1015.

- 1) A key aim of the process was to produce a set of proposals which were politically ‘practical, affordable and realisable’. The exercise was not to create a utopian agenda, but one which could actually make progress in Parliament and make a difference by improving the lives of Gypsies and Travellers.
- 2) Because of the variety of opinions amongst those who contributed proposals for the Bill and observations upon its various drafts it is possible to state that very few of its provisions meet with unanimous support. Indeed this is hardly surprising bearing in mind the great respect for ‘differentness’ that underlies the approach of the contributors. Accordingly only those proposals for which a substantial consensus of agreement existed, have been included. Many provisions have not therefore been included, albeit that the predominant reason for their omission is not substantial opposition to them in principle, but the view that they required further consideration; that it would be premature to distil them into a legislative proposal at this stage. A list of such omitted material is contained at page 18 below.
- 3) The Bill does not, of course, incorporate material which would be better contained in subordinate legislation / guidance. Into this category fall many of the essential changes required to planning control (including the General Development Order), Traveller-focussed Health Improvement Programmes under the Health Act 1999, as well as to local authority policies concerning unauthorised encampments. The need for these changes has already been highlighted in *Gaining Ground*.
- 4) Whilst it is to be hoped that the Government will feel able to support the passage of this Bill in its entirety, its compartmentalised drafting (into separate ‘Parts’) has been designed to enable a piecemeal implementation if needs be. Thus, by way of example, the measures in clauses 14-15 (which extend the Housing Corporation’s funding remit to include caravan site construction) could easily be incorporated into a general Housing Bill; or the necessary amendments to the criminal trespass provisions (in clause 13) could be incorporated into a general Criminal Justice Bill.

Overview of the Bill

Clauses 1-2 *The Gypsy and Traveller Accommodation Commission*

The Gypsy and Traveller Accommodation Commission (GTAC) will be a non-political body charged with ensuring that there is adequate (and suitable) accommodation for Gypsies and Travellers in England and Wales. In the planning arena it will act like the House Builders Federation in ensuring that Development plans incorporate adequate policies and land for site construction. The Commission will assume responsibility for ensuring that bi-annual counts of Gypsies are accurate and that each authority complies with its duty to prepare detailed ‘accommodation programmes’ (clause 5). The Commission has the power to issue guidance (clause 7) and a failure by an authority to comply with this guidance will be a material consideration for courts and planning inspectors when determining any planning appeal or any other enforcement proceedings (clause 6).

The composition of the authority is detailed in Schedule 1 to the Bill: at least half of its members must be Gypsies and Travellers.

Clauses 3-4 *Duty to facilitate site provision*

These clauses recast the previous obligation to provide sites by enabling local authorities to discharge this duty by adopting other measures which ‘facilitate’ this goal. ‘Facilitating’ could include tolerating (or ‘re-securing’) traditional stopping places, obtaining grants for self-build sites, ensuring sufficient planning applications are approved, as well as supporting the construction by Housing Associations of sites (with the benefit of Housing Corporation financial support if needs be) under clause 15.

Local authorities are provided with powers to seek the co-operation of adjoining authorities in promoting sufficient sites (which include temporary stopping places). A failure by an authority to co-operate in such a programme would be a material consideration for any court or planning inspector when determining any planning application or enforcement application connected with that authority (clause 6(1)(d)). The use of this provision could help negate the so-called ‘honey pot’ effect; namely that an enlightened authority that provides sites experiences a disproportionate responsibility, because its humane action encourages Travellers to move into its area away from less tolerant authorities.

Local authorities powers in relation to site construction are widened to enable safe play spaces to be created, and any other facilities which promote safe and healthy environmental conditions on sites.

Clauses 5-6 *Accommodation Programmes*

Local authorities are required to prepare Gypsy and Traveller Accommodation Programmes which spell out precisely how they are going to comply with their

‘site facilitation’ duty (under clause 3). This provision is modelled on the Housing (Traveller Accommodation) Act 1998 in the Republic of Ireland although the present Bill creates a less elaborate scheme. The programmes must incorporate all the available information, not only about the accommodation needs of Gypsies and Travellers, but also issues such as management policies and practice for existing sites. The preparation of such plans will be subject to specific guidance by the Secretary of State and the Gypsy and Traveller Accommodation Commission, which will include procedures for consultation with local Gypsies and Travellers (clause 2(1)(b)(i)) and (it is anticipated) the requirements of ‘Best Value’.

The adequacy of a local authority's accommodation programme will be (amongst other factors) a material consideration when a court or planning inspector is making a decision in proceedings concerning that authority which relate to Gypsies and Travellers.

Clause 7 *Guidance issued by the GTAC or Secretary of State*

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

Clause 8 *The right to live a nomadic way of life*

This clause establishes the right of Gypsies and Travellers to pursue a nomadic habit of life, by asserting the responsibilities that come with this right. These responsibilities are most clearly articulated in Article 8(2) of the European Convention on Human Rights, the wording of which is adopted by this clause.

Clause 9 *Non-discrimination*

This clause amends the Race Relations Act 1976 to make explicit that the Act protects, in addition to Romany Gypsies, traditional Gypsies and Travellers of Irish, Scottish and Welsh descent.

Clauses 10-12 *Education provisions*

The proposed amendments to the School Standards and Framework Act 1998 will require local education authorities to prepare effective strategic programmes (as part of their educational development plans) which will ensure that the educational needs of Gypsies and Travellers (of whatever age and including vocational training) are satisfied. In order to support such authorities in this endeavour the Bill amends the grant support provisions of the 1996 Act to ensure:

- 1) continuity of funding (for 5 year periods); and

- 2) that Gypsies and Travellers are able to receive funding from the ethnic minorities grant, notwithstanding that some Traveller groups might not otherwise be deemed to constitute an 'ethnic minority'.

Clause 13 ***Criminal trespass provisions***

The Bill amends s61 Criminal Justice and Public Order Act 1994 by restoring the 'purposive' approach of the Public Order Act 1986. However the 1986 wording is strengthened by emphasising that the powers can only be used in cases of mass trespass (12 or more persons and 12 or more vehicles) and subject to stringent obligations on the police both as to the service of notices, the recording of reasons for the use of the powers and by clarifying the statutory defences for failing to comply with such an order.

Clauses 14-15 ***Public funding for site construction***

Clauses 14 and 15 remove the present anomaly whereby public funds are available to subsidise the construction of housing accommodation but not for caravan site accommodation. This amendment is achieved by widening the potential powers of housing associations (now known as registered social landlords) and then amending the powers of the Housing Corporation to use its resources to fund the construction or maintenance of caravan sites.

Clauses 16-17 ***Security of tenure provisions***

At present Gypsies and Travellers residing on local authority Gypsy caravan sites have appreciably less security of tenure than residents on other caravan sites which are protected by the Mobile Homes Act 1983. These provisions remove this anomaly and increase protection from eviction for such residents.

Clause 18 ***The Court's discretion in relation to public land***

This clause ensures that courts have the power, in appropriate cases, to refuse relief to a local authority that has failed to comply with its obligations under Part II of the Act (to facilitate the provision of accommodation for Travellers).

Clause 19 ***Repeals***

This section repeals:

- 1) the power of the police to seize and impound caravans which are the living accommodation of Gypsies and Travellers; and
- 2) the enhanced powers of eviction available to local authorities which apply to encampments on highways and land of uncertain ownership. The current legislation enables eviction to occur even where the encampment is causing neither nuisance, annoyance nor indeed any

interference with the rights of the land owner. It is legislation which clearly offends the European Convention on Human Rights²⁰.

Clause 20 ***Wales***

This provision extends the powers under the Bill to Wales.

Clause 21 ***Financial provision***

Since the Bill may result in an increase in the expenditure of local authorities this ‘money clause’ enables Parliament to pay funds to cover any such additional expenses they may incur. Provision is already made for the costs attributable to the Gypsy and Traveller Accommodation Commission expenses in clause 1(2).

Clause 22 ***Commencement provisions***

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

²⁰ See Luke Clements and Philip Elkin (2001) *Human Rights Act – Gypsies and Other Travellers*, (forthcoming), p.2.

Annex 1: The situation of Roma and Sinti in the OSCE Area

An extract from a Report by the High Commissioner on National Minorities of the Organisation on Security and Co-operation on Europe (OSCE), The Hague, 10 March 2000, pp. 112-117.

• Gypsies and Travellers in the United Kingdom

The lack of adequate halting sites is a relatively recent problem in the United Kingdom. In the words of Mr. Justice (now Lord Justice) Sedley:

For centuries the commons of England provided lawful stopping places for people whose way of life was or had become nomadic. Enough common land had survived the centuries of enclosure to make this way of life sustainable, but by section 23 of the Caravan Sites and Control of Development Act 1960 local authorities were given power to close the commons to travellers. This they proceeded to do with great energy, but made no use of the concomitant powers given to them by section 24 of the same Act to open caravan sites to compensate for the closure of the commons²¹.

Responding to the resulting scarcity of caravan sites, Parliament passed the Caravan Sites Act 1968 with the principal aim of transforming into a duty the discretionary power of local authorities to create such sites. Section 6(1) required local authorities “to exercise their powers ... so far as may be necessary to provide adequate accommodation for gypsies residing in or resorting to their area”, and the Secretary of State could direct local authorities to provide caravan sites where it appeared to him necessary²². Parliament’s aim in enacting this law was, in the words of a British judge, “that there should be sufficient sites to accommodate the whole of the gypsy community within the law ...”²³.

²¹ R v Lincolnshire CC ex parte Atkinson (September 1995, transcript at Annex 1), quoted in Memorial of the Applicant, Buckley v. United Kingdom, App. No. 20348/92, European Court of Human Rights, p. 8.

In comments to the OSCE High Commissioner on National Minorities, the British Government provided a somewhat different interpretation of past law, as follows:

Before the advent of town and country planning, commons were only ‘lawful’ stopping places in the sense that camping on them was not a criminal offence. It was, and is, a trespass, and the landowner is entitled to apply to the Court for an order for the removal of trespassers, including camping Roma. It is, however, a feature of common land that the landowner may not be known, or may not have sufficient interest to commence Court proceedings to remove trespassers. This can lead to difficulties with enforcement under town and country planning legislation. Powers of control by order were accordingly given to the local authorities by the Caravan Sites and Control of Development Act 1960. The extent to which those powers were used is likely to indicate the extent of the nuisance caused by unauthorised camping on commons.

(Foreign and Commonwealth Office of The Government of The United Kingdom, Comments Prepared by the UK Government, 27 October 1999, p. 1 (on file with the Office of the OSCE High Commissioner on National Minorities) [hereafter, Comments Prepared by the UK Government].

²² Caravan Sites Act 1968, section 9.

²³ R v Hereford and Worcester CC ex parte Smith (1988), transcript, pp. 24-25, quoted in *id.*

In exchange for ensuring that all Gypsies could find lawful caravan sites, the law made it a crime for Gypsies - but no one else - to station caravans in unauthorized areas pursuant to a system of “designation”²⁴. The distinction between Gypsies and others has since been eliminated from U.K. law. At the time, if the Secretary of State was satisfied under the 1968 law that a local authority had made adequate provision for the accommodation of Gypsies - or that it was not necessary or expedient to do so - he could “designate” the relevant district or county²⁵. Some achieved this status without providing any caravan sites; most did so despite their failure to provide sufficient sites. Upon designation it became a criminal offence for a Gypsy to station a caravan within the designated area with the intention of living in it for any period of time, on the highway, on any other unoccupied land or on any occupied land without the consent of the occupier²⁶.

Local authorities proved highly reluctant to establish caravan sites, and the Secretary of State rarely used his authority to direct them to do so²⁷. A study undertaken by Sir John Cripps at the Government’s behest, completed in July 1976, found that

provision exists for only one-quarter of the estimated total number of gypsy families with no sites of their own. Three-quarters of them are still without the possibility of finding a legal abode ... Only when they are travelling on the road can they remain within the law: when they stop for the night they have no alternative but to break the law²⁸.

Nevertheless, the 1968 Act achieved substantial – if still inadequate – results. Perhaps spurred by legal actions seeking to compel action under the 1968 law, local

²⁴ Section 10(1) made it an offense “for any person being a gipsy to station a caravan for the purpose of residing for any period” on specified categories of land in “designated” areas. The British Government acknowledged that “the powers that flow from designation” under this act “are severely discriminatory against one group of people,” but concluded that “their use is justifiable” on the basis – and only on the basis – “that the duty of the responsible local authority with regard to that group has been fully implemented”. Circular No. 57/78: *Accommodation for Gypsies: Report by Sir John Cripps*, section 5.10(a), 15 August 1978.

²⁵ Caravan Sites Act 1968, section 12.

²⁶ *Id.*, section 10. For purposes of the law, “gipsies” were defined as “persons of nomadic habit of life, whatever their race or origin, but [the term] does not include members of an organised group of travelling showmen, or of persons engaged in travelling circuses, travelling together as such” (section 16). In *R v South Hams District Council ex parte Gibb (and others)*, [1994] 3 WLR 1151 (CA), the Court of Appeal, confronted with the question whether a New Traveller was entitled to claim a right to a site under the 1968 Act, held that the term “Gypsy” should be narrowly construed. See Luke Clements and Philip Elkin, *Human Rights Act – Gypsies and Other Travellers*, (forthcoming), p. 2.

²⁷ Lord Avebury, Foreword, in Rachel Morris & Luke Clements (eds.) (1999) *Gaining Ground: Law Reform for Gypsies and Travellers*, Traveller Law Research Unit, Cardiff Law School, University of Hertfordshire Press, Hatfield, pp. xiii-xix, at p. xiv.

²⁸ Sir John Cripps (1997) *Accommodation for Gypsies: A Report on the Working of the Caravan Sites Act 1968*, HMSO, London, p. 9 [hereafter, Cripps Report]. Sir John Cripps noted that a key reason why it was taking longer than expected to achieve the aims of the 1968 law was the determined opposition locally to every proposal to establish a caravan site. “It is not possible,” he wrote, “to overstate the intensity of feeling, bordering on the phrenetic, aroused by a proposal to establish a site for gypsies in almost any reasonable location.” *Id.* at p. 12. (It should be noted that, according to British attorneys who have represented numerous Gypsies in cases involving rights under the 1968 law, once sites were actually established the pattern has been for local opposition to abate).

authorities established more than 300 new caravan sites over the 24-year period when the Caravan Sites Act 1968 was in effect²⁹.

In 1994 the British Government nonetheless successfully pressed for repeal of the Caravan Sites Act 1968, explaining:

That system has been in operation for 24 years, and the fact is that levels of unauthorised camping - in terms of numbers of gypsy caravans on unauthorised sites - have hardly changed since then ... The Government had to decide to do something ... The conclusion we reached ... was that local authority site provision was not likely ever to meet that apparently growing demand for sites ... [I]t is the Government's view that public provision has now reached a satisfactory level and that further provision should be made by the gypsies themselves through the planning system³⁰.

The provisions of the Caravan Sites Act 1968 summarized above were repealed by Section 80(1) of the Criminal Justice and Public Order Act 1994 ("CJPOA"). Local authorities are no longer statutorily required to provide adequate sites for Gypsies, although councils still have statutory power to establish caravan sites³¹.

While eliminating local authorities' duty to provide adequate caravan sites, the CJPOA 1994 enlarged the circumstances in which unauthorized parking may be determined illegal. Section 77(1) of the CJPOA 1994 gives local authorities the power to direct unauthorized campers to move³²; for these purposes, unauthorized campers are persons who appear to be "for the time being residing in a vehicle or vehicles" on any land forming part of the highway, any other unoccupied land, or any occupied

²⁹ The simultaneous growth in demand for sites meant that a number of Gypsies – by a 1994 Government estimate, 4,000 caravans – continued to halt on unauthorized sites, but this should not obscure the more positive accomplishments of the law. In the assessment of Lord Avebury, one of the original sponsors of the Caravan Sites Act 1968, "[t]he number of mobile homes on unauthorised sites began to decline, in spite of a rapid increase in the size of the traveller population ...". In his view, if the law and the system it established had continued in effect, "unauthorised encampments would have virtually disappeared within [another] ten years". Lord Avebury, *supra* (footnote 27), at p. xv. Indeed, the British Government takes the view that "[h]aving regard to the number of families originally considered to need accommodation ... the 1968 Act was very successful, and achieved far more in the way of site provision than it set out to achieve". Comments Prepared by the UK Government, *supra* (footnote 21) at p. 1.

³⁰ Official Report, House of Lords, 11 July 1994, col. 1, 541-2, quoted in Lord Avebury, *supra* (footnote 27).

³¹ Caravan Sites and Control of Development Act 1960, section 24. Exercise of this power was, however, rendered even less likely than before by the repeal, pursuant to Section 80(5) of the CJPOA 1994, of a law authorizing the national government to pay 100 percent grants to local authorities in respect of capital expenditures relating to the provision of Gypsy caravan sites. Local Government, Planning and Land Act 1980, section 70.

³² The United Kingdom Government notes that DoE Circular 18/94, *Gypsy Sites Policy and Unauthorised Camping* and the DETR/Home Office *Managing Unauthorised Camping: A Good Practice Guide* both advise local authorities to make "necessary health and other checks" before giving unauthorized campers a direction to leave. Comments Prepared by the UK Government, *supra* (footnote 21), at p. 2.

land without the consent of the occupier. Failure to comply with such a direction as soon as practicable or re-entry upon the land within three months is an offence³³.

Under current law, Gypsies have three options for lawful³⁴ camping: parking on public caravan sites – which the Government acknowledges to be insufficient; parking on occupied land with the consent of the occupier; and parking on property owned by the campers themselves. The British Government has issued guidance to local authorities aimed at encouraging the last approach³⁵. In practice, however, and notwithstanding official recognition of their special situation and needs, many Gypsies have encountered formidable obstacles to obtaining the requisite permission to park their caravans on their own property.

Under United Kingdom law, one is not entitled to park a caravan on property merely by virtue of owning it; planning permission is required for carrying out any development of land³⁶. For these purposes, a change in land use for the stationing of caravans can constitute a development³⁷. An application for planning permission must be made to the local planning authority, which is required to make its determination in accordance with the local development plan unless material considerations indicate otherwise³⁸. If a development is carried out without the required planning permission, the local authority can issue an “enforcement notice” if it considers it expedient to do so having regard to the provisions of the development plan and to any other material considerations³⁹.

This scheme allows wide play for the exercise of discretion – and that discretion has repeatedly been exercised to the detriment of Gypsies. A 1986 report published by the Department of the Environment described the prospects of applying for planning permission for a Gypsy site as “a daunting one laced with many opportunities for failure”⁴⁰. In 1991, the last year in which the success of application rates was

³³ CJPOA 1994, section 77(3). Local authorities can apply to a magistrates’ court for an order authorizing them to remove caravans parked in contravention of such a direction. CJPOA 1994, section 78.

³⁴ Of course, Gypsies may also choose to camp on unauthorized sites. However, it is then up to the discretion of the local authorities to ‘tolerate’ the camping or not. As noted above, under CJPOA 1994, if local authorities direct the unauthorized camper to leave, he/she commits a criminal offence by failing to comply.

³⁵ In light of the 1994 legislation, the Government issued Circular 1/94 (5 January 1994), which advised councils (at p. 5, paragraph 20):

In order to encourage private site provision, local planning authorities should offer advice and practical help with planning procedures to gypsies who wish to acquire their own land for development ... The aim should be as far as possible to help gypsies to help themselves, to allow them to secure the kind of sites they need, and thus help avoid breaches of planning control.

³⁶ Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991 (“the 1990 Act”), section 57.

³⁷ Restormel Borough Council v. Secretary of State for the Environment and Rabey [1982] Journal of Planning law, p. 785; John Davies v. Secretary of State for the Environment and South Hertfordshire District Council [1989] Journal of Planning Law, p. 601.

³⁸ 1990 Act, section 54A.

³⁹ *Id.*, section 172(1).

⁴⁰ Quoted in Memorial of the Applicant, Buckley v. United Kingdom, *supra* (footnote 21), at p. 14. Ten years earlier, Sir John Cripps summarized the plight of Gypsies who had applied for planning

evaluated, it was ascertained that 90 percent of applications by Gypsies for planning permission were denied. In contrast, 80 percent of all planning applications were granted during the same period⁴¹. It is to be noted that, as a category, Gypsy planning applications are relatively unique insofar as they typically request permission to park caravans in areas or sites which are subject to restriction by local planning authorities. As such, virtually all Gypsy planning applications are highly contentious⁴². Nonetheless, the fact remains that there is inadequate provision or availability of authorized halting sites (private or public), which the high rate of denial of planning permission only exacerbates. Moreover, there are indications that the situation has deteriorated since 1994. One recent study of Gypsies and the planning system concludes:

... since 1994 the pace of authorised (public and private) provision has decreased to approximately 250 caravans per year from 320. The current rate of yearly increase in authorised provision accounts only for the reduction of the same number of caravans on unauthorised sites. Evidently, since Circular 1/94 has been introduced, the pace of private site provision has not increased sufficiently to counterbalance decreases in public site provision ...⁴³.

In the face of these difficulties, the itinerant life style which has typified the Gypsies is under threat. As Justice Henry observed when he cited the need for the policy embodied in Britain's Caravan Sites Act 1968 (now abandoned) of making adequate provision for caravan sites: "If there are not sufficient sites where gypsies may lawfully stop, then they will be without the law whenever and wherever they stop. This will result either in them being harried from place to place, or in them being allowed to remain where they should not lawfully be"⁴⁴.

permission to park caravans on their own property: "The fact is that a gypsy wishing to provide for the needs of himself and members of his family finds it almost impossible to obtain planning permission, as a long list of refusals testifies. Meanwhile the remorseless and often fast-moving tide of urban development has overtaken many traditional stopping places close to industrial areas". Cripps Report, *supra* (footnote 28), at p. 5.

⁴¹ House of Lords Hansard, 7 June 1994, cols. 1198 and 1132.

⁴² The experience of Gypsies seeking planning permission (and being denied) is typified in two cases which have been considered by the organs of the European Convention on Human Rights: Buckley v. United Kingdom, No. 23/1995/529/615; and Chapman v. United Kingdom, App. No. 27238/95.

⁴³ Toby Williams, (1999) *Private Gypsy Site Provision*, Advisory Council for the Education of Romany and other Travellers (ACERT), Harlow, Essex, p. vii.

⁴⁴ R. v. Hereford and Worcester CC ex parte Smith (1988) transcript, pp. 24-25.

Annex 2: Reform material requiring further analysis

As noted above (at page 8) the Traveller Law Reform Bill does not address all the legal provisions that have been identified as being unreasonably discriminatory in their practical impact, and in need of reform. This omission stems from the nature of these provisions and the time constraints of the research. In effect, it has not proved possible in the time available, to both (a) formulate reform proposals that addressed the injustice and (b) consult with Gypsies and Travellers on that formulation.

The main proposals that fall into this category are as follows:

Education

Section 444(6) Education Act 1996, which protects parents from prosecution if they can establish that they are engaged in a trade or business of such a nature as requires them to travel from place to place, requires Traveller children to attend a minimum of 200 school sessions (half days) over a one year period. OFSTED, in its report *The Education of Travelling Children*⁴⁵ expressed concern that this provision discriminates against Travelling Children by relieving authorities of the duty to ensure that such children are receiving equally effective education to that of non-Travelling children.

Accommodation

Caravan site rules

The arbitrary and often harsh site rules applied on public authority Gypsy caravan sites (i.e. those governed by Part I Caravan Sites Act 1968) discriminate against residents *vis-à-vis* the tenure rights enjoyed on private sites. The problem in relation to reform proposals however is that simple amendment (i.e. to provide the protection afforded by the Mobile Homes Act 1983) is only a partial solution. The 1983 Act has been the subject of substantial criticism⁴⁶ as have the application of static caravan site standards to Gypsy and Traveller accommodation, not least the requirement that all caravans comply with recent Model British Standards (BS 3632) specifications. Most consultees considered that reform of this law in this field would require major overhaul and provide rights on 'permanent' sites to be analogous those to Council tenants, and to include, where appropriate, the right to buy.

Housing Revenue Account expenditure

Whilst the Bill seeks to reform the powers of the Housing Corporation to enable it to support the development of site accommodation for Gypsies and Travellers, there is additionally a need for the reform of the uses to which the Housing Revenue Account can be applied. Public housing finance derives primarily from individual council's rent receipts and government grants (effectively government permission to borrow money). These monies make up the council's Housing Revenue Account, which can only be spent on legitimate Housing expenditure approved by the government. To obtain approval, housing authorities submit annual Housing Investment Programme bids, detailing their area's housing needs and proposals for expenditure (i.e. repairs, regeneration of existing properties and support for new social housing programmes).

⁴⁵ March 1996, para. 43.

⁴⁶ See Ron Stainer (1997) 'The Site Licence Issue', referred to in *Traveller Law Reform* (1997), at p. 21 footnote 80.

The reform required is for expenditure on Gypsy and Traveller sites to be deemed a legitimate part of dealing with 'housing' need. The crucial importance of reform of this complex area is highlighted by the analysis at page 21 below of the lack of public finance for the Hackney site, despite political and practical agreement being reached for its development.

Grant support for transit sites

The amendments made by the Bill to the Housing Corporation's grant making powers will not resolve the problem concerning the lack of central government support for the development of a regional network of transit sites. A strong case was made for the Gypsy and Traveller Accommodation Commission to be given grant making powers (and the necessary Exchequer funds) to facilitate this objective. Such a change in the status of the Commission would require substantial further consultation but would appear to have broad support. During the consultation process for the Bill, many local authority officers indicated that the lack of external grant support was one of the major political constraints to the development of (what they considered to be much needed) temporary halting sites.

Planning

Stop notices

Substantial support existed for the proposal to repeal the relevant provisions in sections 183-185 Town And Country Planning Act 1990 which (via amendment in 1991) had enabled stop notices to be used to stop the residential use of caravans (but not houses) in certain situations. The discrimination is obvious and requires attention, but simple amendment is not a realistic proposal, in that it is arguable that a planning system may appropriately deal differently with mobile and static structures.

First Schedule to Caravan Sites & Control of Development Act 1960

In the 1997 Conference Report and in *Gaining Ground* (para 5.12) attention had been drawn to the need for amendment to (or the exercise of Ministerial powers in relation to) the First Schedule of the Caravan Sites and Control of Development Act 1960. Under paragraph 12 of the Schedule the Minister is empowered to grant a certificate of exemption⁴⁷ to any organisation as to which he or she is satisfied that its objects include the encouragement or promotion of recreational activities. Amendment or the exercise of Ministerial powers in relation to this provision could enable approved housing associations to benefit in much the same way that the Caravan Club and the Boy Scouts already do. The Schedule provides for temporary and seasonal exemptions to the need for planning permission to station caravans.

Many consultees drew attention to the possibility of collaborative local authority / landowner schemes being developed to enable redundant or 'set aside' land to be used for this purpose. It has also been argued that the 28 day and seasonal exemptions which apply to farmers could also be significantly relaxed, permitting them to grant 'short term licences' to a limited number of Gypsies and Travellers⁴⁸.

⁴⁷ From the need for a site licence and in consequence, planning permission.

⁴⁸ See for instance Sid Rawle (1992) *Short Term Licensing* (unpublished).

Annex 3: Rendlesham Road temporary official site, Hackney, London

A report by the London Gypsy and Traveller Unit (LGTU)

Background

In 1996 Hackney Council moved fifteen Traveller families onto a site on Rendlesham Road. The families had been living on tolerated sites in another part of the Borough in an area due for regeneration, and had mounted a very effective lobbying campaign to ensure that the Council provided them with a place to go to.

The new site was overcrowded, and had very poor facilities – one standpipe tap, shared portaloos, loose hardcore instead of concrete, and no electricity. They pay £80 a week per family for this.

The Council at the time had a stated commitment to build two official sites to accommodate these families, and set up various searches for another piece of land. Four years – and many Council reports and Traveller deputations later – this commitment still has not been fulfilled, and the families continue to live in very unsatisfactory conditions. Only eight families now remain on the site.

Present situation

1. Political will

Previously the inaction could be attributed to a hung Council. Now, however, there is explicit political support from the Labour and Liberal groups and both participate in an officer/ member working party which has senior officers charged with progressing the provision of a permanent site. They are currently working in consultation with London Gypsy and Traveller Unit and the families on site.

2. Land

The land where the temporary site now is, comes under the local estates development management and is Hackney owned. Development of a permanent site does not conflict with the development plans and would be seen as a vast improvement on the current temporary one. There are no Borough policies against building a site here.

3. Site conditions

These are totally unacceptable: flooding and standing water on the site are a source of constant infection for the children; the chemical toilets are smelly and unsuitable for long term use, particularly for children, and are rented at very high cost; the rudimentary hard-standing is subsiding, making the flooding worse; and the standpipe tap is inadequate and inappropriate as the only water supply for eight families.

4. Location

The site is near a full range of services including schools, nurseries, doctors, shops, a park, and a very supportive Roman Catholic church. All of the children on site attend the local school and nursery, and the families are registered with local GPs. Some are registered to vote. The local church has been very proactive in establishing good community relations to the extent of mounting petitions in support of the Travellers and joining them in deputations to the Council.

5. The Traveller families

The families on this site have spent five years lobbying to get an official site and decent living conditions. Their Ombudsman complaint was upheld but with little material result. They rightly feel discriminated against for having to live in such poor conditions for so long.

6. Planning

In conjunction with LGTU, the Travellers have been working with Planning Aid to draw up planning proposals for a future official site. This can now feed into the officer/member working party and the planning process. Officers do not envisage major problems with planning permission.

7. Site management

Three Housing Associations have expressed active interest in managing a permanent official Traveller site in Hackney. If Housing Corporation money had been available they would have been keen to build it.

Finance

Hackney Council have had to make £26 million of cuts to their budget in the last eighteen months. They are handing over their housing stock to housing associations and private management, lock stock and barrel, because they do not have the resources to maintain and improve their Council housing. The officer/member working party overseeing the proposal to build this official site identify lack of finance as the only, but possibly fatal, stumbling block to its completion.

Conclusion

This is a very concrete example of how the accommodation needs of Traveller families in Hackney are being treated very differently from those of other residents, purely because of lack of access to Housing Corporation money. The majority of new and refurbished social housing in Hackney is funded by Housing Corporation money via Housing Associations. The discrimination involved in this unequal access to public resources is stark and self-evident, and is encapsulated in the Housing Association Act 1998.

Frieda Schicker, LGTU, March 2000

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