



Amendment to the Temporary Stop Notice Regulations

Consultation



Amendment to the Temporary Stop Notice Regulations

Consultation

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government (DCLG)

Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

© *Crown Copyright, 2007*

Copyright in the typographical arrangement rests with the Crown.

This publication, excluding logos, may be reproduced free of charge in any format or medium for research, private study or for internal circulation within an organisation. This is subject to it being reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

Any other use of the contents of this publication would require a copyright licence. Please apply for a Click-Use Licence for core material at www.opsi.gov.uk/click-use/system/online/pLogin.asp, or by writing to the Office of Public Sector Information, Information Policy Team, St Clements House, 2-16 Colegate, Norwich, NR3 1BQ.
Fax: 01603 723000 or email: HMSOlicensing@cabinet-office.x.gsi.gov.uk

If you require this publication in an alternative format please email alternativeformats@communities.gsi.gov.uk

Communities and Local Government Publications
PO Box 236
Wetherby
West Yorkshire
LS23 7NB
Tel: 08701 226 236
Fax: 08701 226 237
Textphone: 08701 207 405
Email: communities@twoten.com
or online via the Communities and Local Government website: www.communities.gov.uk

Printed in the UK on material containing no less than 75% post-consumer waste.

March 2007

Product Code: 06 HC 04352

Contents

| | |
|--|----|
| Introduction | 7 |
| Background | 8 |
| The current position | 9 |
| New proposals | 10 |
| Aim of Consultation | 13 |
| Consultation Questions | 13 |
| Impact on Ethnic Groups | 13 |
| How to respond | 14 |
| The Consultation Criteria | 15 |
| Annex A: Draft Circular | 16 |
| Annex B: Model Temporary Stop Notice | 27 |
| Annex C: Draft Regulations | 29 |
| Annex D: Regulatory Impact Assessment | 32 |
| Annex E: Race Equality Impact Assessment | 43 |

Introduction

1. This consultation document seeks views on proposed changes to the temporary stop notice regulations which would affect the way that they can be used against unauthorised developments occupied by people who use caravans as their main residence. The changes to the regulations outlined in the Circular (page 18) would allow local planning authorities to use temporary stop notices to prevent the occupation of caravans as main dwelling houses on unauthorised developments as long as an alternative authorised site was available on which the caravans could be stationed.
2. To allow this to happen, the Government proposes that where local planning authorities have suitable pitches available, they should be able to require the removal of all caravans from unauthorised developments. This consultation exercise seeks views on amending the regulations governing the use of temporary stop notices to give effect to this proposal.

Background

3. Temporary stop notices were developed in the light of responses to ODPM's consultation *Review of the Planning Enforcement System in England* 2002 which highlighted the need, in some circumstances, for local planning authorities to act more swiftly in response to unauthorised development.
4. Temporary stop notices provide a means for Local Planning Authorities to halt development immediately for 28 days while an alleged breach of planning control is investigated and further enforcement action is considered, without the need for the local planning authority to issue an associated enforcement notice. The terms of temporary stop notices were originally consulted upon between November 2004 and January 2005 and, following consultation, were introduced by regulation on 7 March 2005.
5. Surveys of local authorities by Communities and Local Government (formerly ODPM) since the introduction of temporary stop notices have found that they have been used successfully across the country to stop a range of development including tree felling, quarrying, building work and the further development of unauthorised caravan sites. Planning enforcement officers now routinely use temporary stop notices and the majority of those who have used them regard them as an effective enforcement tool.

The current position

6. At present, temporary stop notices cannot prohibit the stationing of a caravan where it is stationed on the land immediately before the issue of the temporary stop notice and the caravan is at that time occupied by a person as their main residence. The only exception to these circumstances (ie situation where the local planning authority can use temporary stop notices to require caravans used as a main residence to leave) is where the local planning authority considers that the harm to amenity caused by the stationing of the caravan is so serious as to outweigh any benefit to the occupier of the caravan of staying there.
7. The current temporary stop notice regulations limit a local planning authority's ability to use temporary stop notices to require caravans being used as main residences to leave land because in many cases there would be no alternative authorised site to which the caravan(s) could move and those occupying the caravans would effectively be made homeless by such a move.
8. However, in recent years, the number of caravans on unauthorised developments has steadily increased. As at July 2006, 2234 caravans were reported by local planning authorities to be located on unauthorised developments. The presence of caravans on unauthorised developments can be the source of significant community tension particularly where caravans remain on land for long periods of time without the necessary planning permission. Those in the settled community perceive it to be unfair that those occupying caravans appear to be able to flout planning legislation with impunity. Those on unauthorised developments cite acute shortage of available land and a very poor success rate in planning applications (it is estimated that around 90 per cent of first time planning applications for Gypsy and Traveller sites are refused) as justification for their actions.
9. The Government's new policy framework aims to alleviate this situation by requiring local authorities to assess the need for Gypsy and Traveller accommodation in their areas and develop strategies for addressing that need. Circular ODPMS1/2006 requires local planning authorities to identify land suitable for development as Gypsy and Traveller sites within their local plans. This should, over time, improve access to land for both public and private sites and reduce the incidence of unauthorised developments.
10. The proposals for extended powers, which follow, anticipate that process in that they will only be available to local authorities who are able to provide alternative pitches for caravans directed to move off unauthorised developments. The government expects that such authorities will be acting within the context of having made generally adequate and appropriate provision for Gypsies and Travellers residing in their areas. At this stage these powers will be available in practice to relatively few authorities, but the Government wishes to encourage local authorities to recognise that the key to effective enforcement lies in site provision.

New Proposals

11. The aim of these proposals is to find a way for local planning authorities to avoid tension developing between Gypsies and Travellers on unauthorised developments and the settled community by requiring the removal of all caravans (including those being used as a main residence), from unauthorised developments where an alternative authorised site is available. This proposed extension of temporary stop notice provisions should mean that those local planning authorities that have made appropriate provision in their areas, and have suitable pitches available, will be able to deal with this type of unauthorised development more effectively.
12. A temporary stop notice currently remains in force for 28 days. This provides a period during which the local planning authority should urgently consider what follow up action is needed. Instances of unauthorised development of caravan sites may be resolved through compromise before the development and the occupation of the land becomes entrenched, and without the need for costly and lengthy enforcement action. This course may include an agreement to remain on the alternative authorised site while a planning application is considered. If the unauthorised campers fail to move from the site once the temporary stop notice has been served, they will be in breach of its terms and can be prosecuted for non compliance. If the site of the unauthorised development is reoccupied at the end of the 28 day period, the local planning authority may use an enforcement notice and a stop notice to halt further development and require occupation of the land to cease. A stop notice can be used to stop further occupation of the land. If the authority concludes that more drastic action is necessary, it can apply for a court injunction to prevent reoccupation of the site. It may strengthen the authority's position if it can show that suitable alternative accommodation has been offered.
13. As described in the attached guidelines, in order to take advantage of the extended provisions, a local planning authority should be confident that alternative accommodation can be offered for the duration of any planning enforcement or appeal process, although it is not necessary for that accommodation to be on the same site throughout that period.
14. Figure 1 sets out enforcement options currently available to deal with unauthorised development of caravan sites alongside options that could be delivered by the new proposals.

| Figure 1: Current Position | |
|---|--|
| Action | Effect |
| Temporary stop notice issued. | Stops any further caravan from joining site, but any in first incursion used as main residence remain. Expires after 28 days. |
| Follow up with Enforcement Notice and Stop Notice. The Stop Notice may be served at the same time or after the Enforcement Notice. | Requires occupiers to stop any further development and restore site to original condition. The Stop Notice prohibits the use of land as a site for a caravan. There is no right of appeal. |
| Failure to comply with Enforcement Notice (if not appealed). | Council can prosecute. |
| Occupiers may appeal Enforcement Notice and, on payment of fee, appeal can include deemed planning application. | Occupiers remain on site pending outcome of appeal. |
| Appeal Determined. Enforcement appeal allowed → Enforcement appeal dismissed → | Occupiers effectively have planning permission. Occupiers required to leave or can be evicted after specified compliance period. Occupiers may also be prosecuted for failure to comply with the enforcement notice. |

* An injunction can be sought by the local planning authority at any stage during enforcement proceedings to restrain any actual or anticipated breach of planning control.

| Figure 1: Effects of New Proposals | |
|---|---|
| Action | Effect |
| Temporary stop notice issued – alternative pitches available. | All caravans required to leave site, even if used as main residence. |
| Council discusses with occupiers and proceeds with determination of planning application. | Occupiers remain on alternative site, while planning application determined. |
| Enforcement Notice and Stop Notice issued if Travellers return to site. | If Travellers return to the site and appeal the Enforcement Notice, the compliance period for failed appeals may be shortened if an alternative site is available. |
| | If a Stop Notice is served caravans must leave the site. There is no right of appeal. A local planning authority can prosecute for failure to comply with a Stop Notice. |
| Injunction obtained to prevent occupants returning to development site, for duration of the planning process. | Travellers may remain on alternative site for duration of planning process. |

15. The Government believes that the proposal provides an appropriate balance between respecting the rights of those occupying the caravans by allowing them to remain in their home, albeit on a different site, whilst also maintaining confidence in the planning system by enforcing effectively against breaches of planning control.

Aim of consultation

16. This consultation seeks views on the principle of extending the temporary stop notice provisions in this way, and on the terms of the accompanying guidance, as set out below.
17. Following the consultation exercise, if the Government chooses to take forward the proposals, the relevant secondary legislation will be amended and revised guidance on the use of temporary stop notices will be issued in the form of a Government Circular.
18. Draft Regulations and guidance are attached and we would welcome consultees' views on the questions set out below, and any other points on which they wish to comment. Changes and additions to the text contained in the existing temporary stop notice guidance and regulations are highlighted in grey throughout the document.

Consultation questions

1. In what circumstances would an additional power to use temporary stop notices to require the removal of all caravans from a site, where a suitable alternative is available, be useful in helping to reduce the problems associated with unauthorised developments?
2. Paragraphs 21-23 – Do you think that the Government's view on the requirements for an alternative site are reasonable? What practical issues would these present for local planning authorities?
3. Do you think that an alternative site should be available for the duration of any planning action, or just in the shorter term?

Impact on Ethnic Groups

19. The purpose of a Race Equality Impact Assessment is to work out how a policy or legislative proposal will affect people from different racial groups, in order to enable us to avoid any negative impacts which we cannot justify on non-racial grounds.
20. Since the proposals being consulted upon here will impact on, among others, Gypsies and Irish Travellers who are recognised as ethnic groups under Race Relations legislation, Communities and Local Government will use responses to the consultation exercise to inform the completion of a final Race Equality Impact Assessment on the proposed extension. An initial Race Equality Impact Assessment is attached as an annex to the Regulatory Impact Assessment. If you have any views on the assessment and the proposed monitoring arrangements, then please include them in your response.

How to respond

Please send your response, no later than **31st May 2007** to:

Katie Jones
Department for Communities and Local Government
1/E8 Eland House
Bressenden Place
London
SW1E 5DU

Or by email to Katie.Jones@communities.gsi.gov.uk

If you have any queries regarding the consultation please email the above address or contact Katie Jones on 0207 944 3565.

Representative groups are asked to include a summary of the people and organisations they represent in their reply.

A summary of responses to this consultation will be published on the Communities and Local Government website: www.communities.gov.uk

Paper copies will be available on request.

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 Information Regulations 2004).

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 the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

The 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 (eg 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 a Regulatory Impact Assessment if appropriate.**

The full consultation code may be viewed at 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, Bressenden Place, London, SW1E 5DU; or by e-mail to: albert.joyce@communities.gsi.gov.uk

Please note that **responses to the consultation itself** should be sent to the contact shown within the main body of the consultation.

Annex A

Department for Communities and Local Government

Circular XXXX

***Department for Communities and Local Government
Eland House, Bressenden Place, London SW1E 5DU***

Temporary Stop Notice

1. This Circular gives guidance on the temporary stop notice provisions in Part 4 of the Planning and Compulsory Purchase Act 2004 which inserted sections 171E to 171H to the Town and Country Planning Act 1990. It should be kept in mind that though the guidance reflects the Department's current considered views, interpretation of the law is ultimately for the Courts.

Subordinate legislation

2. The Town and Country Planning (Temporary Stop Notice) (England) Regulations specify activity not prohibited by a temporary stop notice.

The power to serve a Temporary Stop Notice

3. Where the local planning authority consider that there has been a breach of planning control and it is necessary in order to safeguard the amenity of the area that the activity that amounts to the breach should stop immediately, section 171E enables the local planning authority to issue a temporary stop notice. This differs from the normal stop notice powers because the temporary stop notice does not have to wait for an enforcement notice to be issued. In addition the effect of a temporary stop notice will be immediate, it will not be necessary to wait three days before the temporary stop notice takes effect or give reasons why the temporary stop notice will take effect immediately.
4. The temporary stop notice must be in writing and must set out the activity that the local planning authority thinks is a breach of planning control. It must prohibit the carrying on of the activity and set out the local planning authority's reasons for issuing the temporary stop notice.
5. The temporary stop notice may be served upon any person who appears to be carrying out the activity prohibited by the temporary stop notice, anyone who seems to be an occupier of the land to which the notice relates, or anybody who appears to have an interest in the land. It is for the local planning authority to decide which is the appropriate person or persons. In cases where such persons cannot immediately be located, or refuse service of the temporary stop notice, a copy of the notice on the site will suffice.

Public notification of service of a Temporary Stop Notice

6. The local planning authority must also display a copy of the temporary stop notice on the site with a statement that the temporary stop notice has been served and failure to comply with the temporary stop notice is an offence. The site notice extends the effect of the temporary stop notice to any person contravening it.
7. The site notice publicising the temporary stop notice must state the date that the temporary stop notice has been served, the activity that has to cease and that any person contravening the temporary stop notice may be prosecuted for an offence under section 171G. The temporary stop notice takes effect on the day that the site notice is displayed.

Cessation of the effect of a Temporary Stop Notice

8. The temporary stop notice expires 28 days after the display of the notice on the site, or any shorter period set out in the temporary stop notice, or if it is withdrawn by the local planning authority. The maximum length of time that the temporary stop notice will have effect is for a period of 28 days. During this period the local planning authority must decide whether it is appropriate to take enforcement action. At the end of the 28 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served.

Scope of the prohibition in a Temporary Stop Notice

9. The activities that a temporary stop notice may prohibit include: a use of the land which is ancillary, or incidental to the unauthorised main use of the land; or a particular activity taking place only on part of the land; or an activity which takes place on the land intermittently or seasonally.
10. Therefore the activity need not be taking place on the entire site. It might be confined to a specific area of the site, eg a particular building from which noise, fumes and dust are being emitted; or a part of the site where open storage of scrap materials is unacceptable because of the height at which the scrap is piled. In deciding whether to limit the temporary stop notice to only part of the site, the local planning authority will need to consider whether the activity to be prohibited is capable of readily being moved around to any other part of the site, eg open storage of pallets. If so, it will usually be prudent to make the temporary stop notice apply to the entire site to prevent the prohibited activity from being carried out on another part of the site.
11. An “activity” which the temporary stop notice may prohibit is defined in section 171E(1) of the 1990 Act as “the activity (or any part of the activity) which amounts to the breach.” Because a temporary stop notice is prohibitory, it is not appropriate for use in any circumstances which require some positive action to be taken in response to it. A temporary stop notice can only require an activity to cease, or reduce or minimise the level of an activity. The “immediate” cessation of activities should allow for the shutting down or making safe any activity. Where building operations are stopped allowance should be made for any work necessary to make the site safe. A temporary stop notice may prohibit an unauthorised activity which is ancillary or incidental to the change of use of land.

12. A temporary stop notice may be served in cases where planning permission has been granted subject to conditions which if not complied with can result in serious harm and those conditions have not been complied with. Examples of these types of conditions include: archaeological surveys required before works commence on the site; tree protection required before works commence on the site; tree surveys indicating trees to be retained before works commence on the site; and wheel washing equipment for vehicles on the site.

Temporary Stop Notice restrictions

13. The primary legislation makes clear that a temporary stop notice may not prohibit the use of a building as a dwelling house.
14. The Town and Country Planning (Temporary Stop Notice) Regulations 2006 further make clear that a temporary stop notice may not prohibit the continued stationing of a caravan on land where the caravan is the main place of residence of the occupier of the caravan, subject to the qualifications referred to below.
15. The Town and Country (General Permitted Development) Order 1995 in part 5, Class A of Schedule 2 links a permitted development right to land use for a caravan to the situations, set out in Schedule 1 to the Caravan Sites and Control of Development Act 1960, where there is no need to obtain a caravan site licence. Therefore this permitted development right covers the following:
 - a) use of land by a person travelling with a caravan for one or two nights, subject to an annual limit of 28 days of such use on that land or adjoining land;
 - b) use of up to three caravans for up to 28 days a year on holdings of not less than 5 acres;
 - c) use of any land for up to five touring caravans at once by members of the Caravan Club, the Camping and Caravanning Club and other recognised recreational organisations, provided the site has an exemption certificate from Defra;
 - d) stationing a caravan on agricultural land to accommodate a person or persons employed in farming operations 'during a particular season';
 - e) use of land as a caravan site for the accommodation of workers employed in carrying out building or engineering operations; and
 - f) use of land as a caravan site by a travelling showman who is a member of an organisation of travelling showmen which holds a certificate and who is travelling for the purpose of his business.

These permitted development rights apply whether or not land has been sub-divided, though the right under (b) above would not apply to plots of less than 5 acres.

16. There are no permitted development rights specifically for Gypsies and Travellers although some of the rights listed above might be relevant in the case of Gypsies and Travellers.

Exceptions to the Temporary Stop Notice Restrictions

17. Temporary stop notices may be used in cases where permitted development rights do not apply and where the local planning authority considers that the risk of harm to a compelling public interest arising from the stationing of the caravan is so serious as to outweigh any benefit, to the occupier of the caravan, in the stationing of the caravan for the period for which the temporary stop notice has effect.
18. Some examples of locations where the unauthorised stationing of a caravan would normally be unacceptable are:
- Sites of Special Scientific Interest (SSSI) where an encampment endangers a sensitive environment or wildlife;
 - Grounds of ancient monuments or listed buildings, battlefields or sites of potential archaeological interest;
 - A site where pollution from vehicles, or dumping, or from poor sanitation could damage ground water or water courses;
 - A derelict area with toxic waste or other serious ground pollution;
 - The verge of a busy road where fast traffic is a danger to unauthorised campers;
 - Where the site is exposed to unacceptable levels of air pollution;
 - Where there is an immediate negative impact on the health of the occupiers of the caravans.
19. A temporary stop notice may be used to prohibit the stationing of any additional caravans on land, on which a caravan is already stationed. A single temporary stop notice may apply to the whole of the site (planning unit) in circumstances where a field is subdivided into plots, irrespective of the fact that the field may not be in single ownership. The temporary stop notice may also be used to stop other development associated with using the site for further caravans and any further work developing the site. Local planning authorities should ensure at least minimum standards of health, hygiene and public health are maintained before taking action and, for existing caravans, should allow basic temporary facilities including some form of temporary foul waste disposal which prevents nuisance or risk to anyone's health.

20. A temporary stop notice may also be used to require the removal of a caravan(s) used as main residences in cases where permitted development rights do not apply and where there is an available pitch(es) on a suitable alternative caravan site on which the caravans can be stationed.
21. An alternative site should have the necessary planning permission for that purpose and be available to a local authority, registered social landlord or other person or body with which the relevant local planning authority has an agreement to access the site. Where a temporary stop notice is used to require the removal of caravans from a site in this way, local planning authorities should inform those living on the unauthorised site of the location of the alternative site and how to go about accessing it. The temporary stop notice should be accompanied by a covering letter or information sheet containing details of the alternative authorised site and should include contact information for the relevant person at the local planning authority, with whom the occupiers of the caravans can discuss this issue.
22. An alternative site should have basic hygiene facilities to allow for standards of health, hygiene and public health deemed reasonable. The Government considers that an alternative site should allow the occupiers of the caravans continuing access to education, healthcare, employment and other relevant services. Where a temporary stop notice is issued in respect of an unauthorised site occupied by travelling showpeople, the alternative site should be capable of accommodating both residential caravans and any fairground vehicles and equipment that are located on the unauthorised site from which the showpeople cannot be separated.
23. Consideration should be given to alternative authorised sites that allow those living on the unauthorised site to remain together. If this is not possible, then efforts should be made to ensure that any dependent members of the same family are not unreasonably separated from necessary support. For example, every effort should be made to keep together parents and dependent children, or adults supporting elderly or infirm relatives.
24. Efforts should also be made to ensure that any alternative site is available, as a minimum for the period of the temporary stop notice, and ideally for the duration of the planning process. However, it may be acceptable to move families between suitable alternative authorised sites within reason during that period, and in compliance with the local authority's other welfare duties towards the family.
25. A temporary stop notice may not prohibit the carrying out of any activity which has been carried out (whether continuously or not) for a period of more than four years ending with the day on which a copy of the notice is first displayed. (For this purpose, no account is to be taken of any period during which the activity was authorised by planning permission.)
26. A temporary stop notice may be used to prohibit "operational development" – activity consisting of, or incidental to building, engineering, mining or other operations, or the deposit of refuse or waste materials, or the change of use to operational development.

27. The local planning authority may not issue a further temporary stop notice upon the expiry of a temporary stop notice. The local planning authority will only be able to issue a temporary stop notice for the same activity if it has taken some form of enforcement action (which could include obtaining an injunction under section 187B) against the activity set out in the original temporary stop notice. So, for example, where a temporary stop notice is issued stopping a specified activity and an enforcement notice is issued and this is complied with but some time later the same activity commences again, the local planning authority would be able to issue a further temporary stop notice against the same activity.

Penalties for contravention of a Temporary Stop Notice

28. Section 171G provides that, when a person contravenes a temporary stop notice after a site notice has been displayed or the temporary stop notice has been served on them, they shall be guilty of an offence. The offence may be charged by reference to any day or longer period of time and a person may be convicted of a second, or subsequent offence by reference to any period of time following the preceding conviction for such an offence. A person guilty of this offence is liable, on summary conviction, to a fine not exceeding £20,000; and, on conviction on indictment, to an unlimited fine. In determining the amount of any fine to be imposed, the Court is to have regard to any financial benefit which has accrued, or appears likely to accrue, in consequence of the offence.
29. It is a defence for any person prosecuted for an offence under section 171G to prove that the temporary stop notice was not served on them and that they did not know, and could not reasonably have been expected to know, of its existence.

Challenging the prohibition in a Temporary Stop Notice

30. Any person affected by a temporary stop notice will be able to make representations to the local planning authority. The local planning authority should include the name, address and telephone number of their nominated officer in the temporary stop notice. There is no right of appeal to the Secretary of State against the prohibition in a temporary stop notice. The validity of a temporary stop notice, and the propriety of the local planning authority's decision to issue a temporary stop notice, may be challenged by judicial review. To do so the person affected by a temporary stop notice will need to seek leave from the court.
30. The temporary stop notice continues to apply (for a maximum of 28 days) even when a person served with a temporary stop notice has challenged it under section 171G(5) or by way of judicial review.
31. If the developer has not already got planning permission, he still has the right to make an application for a lawful development certificate, or for planning permission. Only if a lawful development certificate is granted will there be any right to compensation for any financial loss the recipient may have incurred as a consequence of the temporary stop notice. The temporary stop notice will have a similar effect to an interim injunction. An enforcement notice can be issued before the temporary stop notice expires, with the onus on the developer to prove that the development is not in breach of planning control. Alternatively a planning application can be submitted although this will not affect the temporary stop notice which will continue to take

effect. The existing powers to serve a stop notice under section 183 may have to be used following the issue of an enforcement notice in order to prevent any further works or use taking place unless and until planning permission is granted either by the local planning authority or by the Secretary of State on appeal. If the application is refused, or any resulting appeal is also unsuccessful, enforcement action can be taken to remove any unauthorised works. This approach will apply only to work in progress; if the development is complete then an enforcement notice should be issued in the usual way.

Compensation

32. A person who at the time the temporary stop notice is served has an interest in the land to which the temporary stop notice relates may be entitled to be compensated by the local planning authority for any loss or damage directly attributable to the prohibition effected by the temporary stop notice. Compensation is only payable if:
- a) the activity specified in the temporary stop notice was the subject of an existing planning permission and any conditions attached to that planning permission have been complied with;
 - b) permitted development under the Town and Country Planning (General Permitted Development) Order 1995 or permitted under a local development order (a new provision introduced by the Planning and Compulsory Purchase Act 2004);
 - c) the local planning authority later issue a lawful development certificate confirming that the development was lawful;
 - d) the local planning authority withdraws the temporary stop notice for some reason other than because it has granted planning permission for the activity specified in the temporary stop notice after the issue of the temporary stop notice.
33. Even if the local planning authority incurs a liability to pay compensation for one of these four reasons, that liability may be reduced or eliminated in any case where the claimant was required, by a planning contravention notice or other formal requisition for information, to provide information to the local planning authority and did not provide it or otherwise co-operate with the local planning authority when responding to the notice. This is the same as the compensation provisions for the stop notice under section 186 of the 1990 Act. The purpose of these provisions is to ensure that someone who fails to provide the local planning authority with required information, or pursues a course of non-co-operation with the local planning authority, should not be able to obtain any compensation for loss or damage which could have been avoided if he or she had provided the required information or co-operated with the local planning authority.
34. Compensation is not payable where the local planning authority grant retrospective planning permission for the activity specified in the temporary stop notice (paragraph 28(c) above).

35. There is a 12 month time limit running from the date the temporary stop notice ceased to have effect, or the date it was withdrawn, for claiming compensation for loss or damage due to a temporary stop notice. The usual approach, if liability is admitted, is for the local planning authority and the claimant to agree on the amount of any compensation which may be payable. If agreement on the amount payable cannot be reached, the dispute is normally referred to the Lands Tribunal for decision.

Administrative procedures for dealing with Temporary Stop Notices

36. It is essential for local planning authorities to act quickly to spot the breach of planning control and decide that a temporary stop notice is required. Many breaches of planning control occur outside normal working hours and at weekends. Therefore it would be appropriate for planning enforcement to have the same emergency cover as other environmental and public health protection services.
37. It is important to draft the terms of the temporary stop notice with clarity and precision. There is no opportunity for any drafting deficiency to be corrected after it has been issued. The temporary stop notice should prohibit all the activities comprised in the alleged breach of control, or certain of the specified activities at which the local planning authority has decided to direct the notice. In the event of a subsequent contravention of a temporary stop notice, the local planning authority may need to initiate proceedings under section 171G of the 1990 Act, which would require the local planning authority to prove “beyond reasonable doubt” (the criminal standard of proof) that the prohibition had been contravened by the defendant. The terms of the notice must provide the basis for any such prosecution. It is because it is an offence that drafting must be clear and there must be a clear case that there is an offence before a conviction.
38. Once the local planning authority has decided to issue a temporary stop notice, it is essential to implement the decision speedily and effectively. There should always be a clear understanding (preferably stated in administrative instructions) about the respective responsibilities of the local authority’s Planning Department and Legal Department for the necessary preparatory work, the formulation of the terms of the temporary stop notice, the arrangements for issuing and/or serving it and how its practical effect will be assessed (including the need to bring a prosecution quickly if the notice is contravened). Since issuing a temporary stop notice is likely to be relatively infrequent for many local planning authorities, it will usually be best to maintain the essential knowledge and experience of temporary stop notice procedures in the small group of planning and legal officers that are already familiar with stop notice procedures.
39. It is important to obtain proper authorisation for issuing a temporary stop notice, from the Council’s officer to whom authority to issue temporary stop notices has been delegated. Although there is no right of appeal to the Secretary of State against a temporary stop notice, it can be defended on the grounds in section 171G(5) of the 1990 Act; that it was not properly authorised, or that the decision to issue it was unreasonable. A challenge may be brought by seeking leave, in the High Court, to bring judicial review proceedings.

Use of powers to issue a Temporary Stop Notice

40. The effect of issuing a temporary stop notice will be to halt the breach of control or the specified activity immediately. This can have immediate serious consequences on a business. Local planning authorities should therefore ensure that a quick but adequate assessment of the likely consequences of issuing a temporary stop notice is available to the officer who will authorise issue of the notice. It should not be necessary to carry out a detailed cost/benefit assessment but the assessment should examine the foreseeable costs to the company, operator or landowner against whose activities the stop notice is directed, and the benefit to amenity in the vicinity of the site which is likely to result from a temporary stop notice.

Cost/benefit assessment for Temporary Stop Notices

41. The costs arising from issuing a temporary stop notice will usually be confined to the firm, operator or landowner who is thereby prevented from carrying on the activity prohibited by the notice. There may occasionally be some costs to the local economy. The costs to a firm may vary from having to modify a production process, at little or no additional cost (at one extreme), to the complete cessation of a business (at the other), with consequent loss of jobs, failure to complete contracts, or bankruptcy. Since a temporary stop notice can be directed at any activity, or any part of an activity, or any associated activity, the local planning authority should ensure that a temporary stop notice's requirements prohibit only what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.
42. Before deciding to issue a temporary stop notice, the local planning authority's representative may choose to discuss, whenever practicable, with the person carrying on the activity whether there is any alternative means of production or operation which would overcome the objections to it in an environmentally and legally acceptable way. If an acceptable alternative means of production or operation would require the grant of planning permission, in order to carry it on lawfully, the local planning authority should take the initiative in inviting a planning application. However, since the purpose of a temporary stop notice is to compel the activities specified in it to cease immediately, any delay should be minimised.
43. The benefits of issuing a temporary stop notice will usually be readily apparent as an improvement in amenity in the neighbourhood. The local planning authority should consider how many people are likely to benefit, and how adversely their amenities will be affected if a temporary stop notice is not issued (on the assumption that an enforcement notice will be issued and eventually take effect on expiry of the compliance period specified in it).

Environmental impact assessment

44. Planning authorities will wish to consider using temporary stop notices where the breach of planning control relates to failure to comply with environmental impact assessment requirements, particularly where continuing with the breach could lead to adverse environmental effects.

Human rights

45. The temporary stop notice provision may not lawfully be used in a way that contravenes Article 1 of the First Protocol and Article 14 of the European Convention on Human Rights. The temporary stop notice powers are subject to section 3 of the Human Rights Act 1998, and are compatible with the Convention rights. Before issuing a temporary stop notice, the local planning authority must be satisfied that there has been a breach of planning control and that “it is expedient that the activity which amounts to the breach is stopped immediately”, see section 171E(1)(b). Section 171E(3) requires the local planning authority to give reasons for issuing the temporary stop notice on the face of the notice. The local planning authority must therefore be satisfied that immediate cessation of the activity is expedient in the circumstances and must set out its reasons for this decision on the face of the notice.

Effective service of a Temporary Stop Notice

46. The validity of a temporary stop notice cannot be challenged on the ground that it has not been served on someone who ought to be served with it. Section 171E(4) enables the local planning authority to serve a temporary stop notice on any person who appears to them to have an interest in the land, or to be engaged in any activity prohibited by the notice. Thus, for example, when a temporary stop notice is directed at a breach of planning control involving operations to rebuild a derelict rural dwelling house, and the owner of the land cannot be contacted, the local planning authority may serve the temporary stop notice on anyone who is actually engaged in carrying out the building works prohibited by the notice. Normal administrative practice should be to trace any owner or occupier of the land and arrange for the temporary stop notice to be served on them also. But in cases where such persons cannot immediately be located a copy of the notice on the site will be sufficient.

Prosecution for an offence

47. When a site notice has been displayed for a temporary stop notice, it is an immediate offence for anyone to contravene, or to cause or permit the contravention of, the prohibition in a temporary stop notice. When the temporary stop notice has been served on a person, it is an offence for that person to contravene, or to cause or permit the contravention of, the prohibition in the temporary stop notice immediately after the temporary stop notice has been served on them. It is also an offence to contravene a temporary stop notice if it has been placed on the site in accordance with section 171E(5) of the 1990 Act.
48. To emphasise the seriousness of contravening a temporary stop notice, the local planning authority should always consider a possible prosecution as soon as they have evidence of an offence. Prosecution for an offence under section 171G is usually in the Magistrates’ Court, but may take place in the Crown Court if the Magistrates decline jurisdiction because of the seriousness of the offence, or the defendant elects for jury trial. If there is likely to be a delay in hearing the case in the Magistrates’ Court or Crown Court, the local planning authority should emphasise the seriousness and urgency of the case to the Court’s administrators and ask for an “expedited” hearing.

49. Prosecuting authorities should always be ready to give details, if obtainable, about the proceeds resulting from the offence, so that the Court can take account of them in determining the amount of the fine.

Cautioning alleged offenders

50. When investigating the facts, prior to initiating any proceedings, local planning authorities should have regard to the provisions of sections 66 and 67(9) of the Police and Criminal Evidence Act 1984 in relation to cautioning alleged offenders.

Model Stop Notice

51. A model temporary stop notice is in the Annex.

Department for Communities and Local Government

The Chief Executives of:

County Councils in England

District Councils in England

Unitary Authorities in England

London Borough Councils

Greater London Authority

Regional Planning Bodies

Regional Development Agencies

Council of the Isles of Scilly

The Town Clerk, City of London

The National Park Officer, National Park Authorities in England

The Chief Planning Officer, The Broads Authority

Annex B

Model Temporary Stop Notice

Important – this communication affects your property

Town and Country Planning Act 1990

(As amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004)

Temporary Stop Notice

SERVED BY: [name of Council] herein after referred to as “the Council”.

To: [name of intended recipient of the notice]

1. On *[date]*, the Council has issued this temporary stop notice alleging that there has been a breach of planning control on the land described in paragraph 4 below.
2. This temporary stop notice is issued by the Council, in exercise of their power in section 171E of the 1990 Act, because they think that it is expedient that the activity specified in this notice should cease on the land described in paragraph 4 below. The Council now prohibits the carrying out of the activity specified in this notice. Important additional information is given in the Annex to this notice.
3. **THE REASONS FOR ISSUING THIS NOTICE**
[Briefly specify the reasons why the temporary stop notice has been issued. There is no requirement to outline specific policies from the Local Plan.]
4. **THE LAND TO WHICH THIS NOTICE RELATES**
Land at *[address of land, or description of relevant part of the land to which the temporary stop notice relates]*, shown edged red on the attached plan.
5. **THE ACTIVITY TO WHICH THIS NOTICE RELATES**
[Specify the activity required by the temporary stop notice to cease, and any activity carried out as part of that activity, or associated with it.]
6. **WHAT YOU ARE REQUIRED TO DO**
Cease all the activity specified in this notice.

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on *[date]* when all the activity specified in this notice shall cease. This notice will cease to have effect on *[date 28 days after it takes effect]*.

Dated: *[date of notice]*

Signed: *[Council's authorised officer]*

On behalf of *[Council's name and address]*

Nominated Officer *[Name of contact officer]*

Telephone Number *[of Nominated Officer]*

ANNEX

WARNING

THIS NOTICE TAKES EFFECT ON THE DATE SPECIFIED IN PARAGRAPH 7.

THERE IS NO RIGHT OF APPEAL TO THE SECRETARY OF STATE

AGAINST THIS NOTICE.

It is an offence to contravene a temporary stop notice after a site notice has been displayed or the temporary stop notice has been served on you. (Section 171G of the 1990 Act). If you then fail to comply with the temporary stop notice you will be at risk of **immediate prosecution** in the Magistrates' Court, for which the maximum penalty is £20,000 on summary conviction for a first offence and for any subsequent offence. The fine on conviction on indictment is unlimited. If you are in any doubt about what this notice requires you to do, you should get in touch **immediately** with *[Council's nominated officer to deal with enquiries, address and telephone number]*. If you need independent advice about this notice, you are advised to contact urgently a lawyer, planning consultant or other professional adviser specialising in planning matters. If you wish to contest the validity of the notice, you may only do so by an application to the High Court for judicial review.

Annex C

The text below shows how the regulations would look once the amendment has been made to the current secondary legislation which sets out the scope of the powers to issue a temporary stop notice. Subject to consultation, if the text below was taken forward, the exceptions relating to the prohibition of the stationing of a caravan would read (amendment underlined):

Circumstances in which temporary stop notice does not prohibit stationing of caravan

2. - (1) The stationing of a caravan on any land in the circumstances specified in paragraph (2) is prescribed for the purposes of section 171F(1)(b) of the Town and Country Planning Act 1990.

(2) The circumstances are that -

(a) the caravan is stationed on the land immediately before the issue of the temporary stop notice; and

(b) the caravan is at that time occupied by a person as his main residence;

unless the local planning authority consider that the risk of harm to a compelling public interest arising from the stationing of the caravan is so serious so as to outweigh any benefit, to the occupier of the caravan, in the stationing of the caravan for the period for which the temporary stop notice has effect **or an alternative site is available.**

STATUTORY INSTRUMENTS

2007 No.

TOWN AND COUNTRY PLANNING, ENGLAND

**The Town and Country Planning (Temporary Stop Notice)
(England) (Amendment) Regulations 2007**

Made - - - - - *xx 2007*
Laid before Parliament *xx 2007*
Coming into force - - - *xx 2007*

The Secretary of State, in exercise of the powers conferred by section 171F of the Town and Country Planning Act 1990(1), makes the following Regulations:

Citation, commencement and application

1. These Regulations may be cited as the Town and Country Planning (Temporary Stop Notice) (England) (Amendment) Regulations 2007 and shall come into force on **XX** 2007.
2. These Regulations apply in relation to England only.

Amendment of Regulations

3. The Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005(2) are amended by the insertion, at the end of paragraph (2) of regulation 2, of the words “or an alternative site is available”.

Date **XX** 2007 Minister of State
Department for Communities and Local Government

(1) 1990 c.8. Sections 171A to 171D were inserted by sections 1 and 4 of the Planning and Compensation Act 1991 (c.34). Section 171F of the Town and Country Planning Act 1990 was inserted, with section 171E and other sections not relevant to these Regulations, by section 52 of the Planning and Compulsory Purchase Act 2004 (c.5). See section 336 of the Town and Country Planning Act 1990 for the definition of “prescribed”.
(2) SI 2005/206.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 171E of the Town and Country Planning Act 1990 enables a local planning authority to issue a Temporary Stop Notice if they think that there has been a breach of planning control and that it is expedient that the activity, or any part of it, which amounts to the breach, is stopped immediately.

Section 171F(1)(b) enables the Secretary of State to prescribe descriptions of activities which are not prohibited by a Temporary Stop Notice, and circumstances in which the carrying out of an activity is not prohibited by a Temporary Stop Notice. The Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 provide that a Temporary Stop Notice does not prohibit the stationing of a caravan that is a main residence unless the local planning authority consider that the risk of harm to a compelling public interest arising from the stationing of the caravan is so serious as to outweigh any benefit to the occupier of the caravan for the period for which the temporary stop notice has effect.

Those Regulations are now amended to provide an additional exception, namely, where the local planning authority considers that an alternative site is available.

A regulatory impact assessment has been prepared in relation to the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 and is available on the internet at www.odpm.gov.uk. Copies can also be obtained by post from the Department for Communities and Local Government, Zone 1/F8, Eland House, Bressenden Place, London SW1E 5DU or by phoning 0207 944 3565.

Annex D

PARTIAL REGULATORY IMPACT ASSESSMENT (RIA)

Title of Proposal

1. Amendment to the Temporary Stop Notice Regulations.

Purpose and Intended Effect of Measure

2. The objective of this proposal is to reduce the numbers of caravans on unauthorised developments while a planning application is determined. This will contribute to the Government's overall policy aim to reduce the numbers of caravans on unauthorised sites.

Background

3. The Planning and Compulsory Purchase Act 2004 gave local planning authorities a new discretionary enforcement power to be able to issue a temporary stop notice to immediately halt unauthorised development, for a period of 28 days. A temporary stop notice does not have to be served with an associated enforcement notice and does not require as much preparation as an enforcement notice does, and can therefore be prepared in a very short space of time thus speeding up the process of enforcement by ensuring that unauthorised development is stopped sooner, rather than a few days after work has started on the development. During the period in which the temporary stop notice is in force, a local planning authority can investigate the alleged breach of planning control further to ascertain more details of the alleged breach, allowing the local planning authority to prepare an enforcement notice and stop notice for issue before or at the end of the 28 day period, if necessary.
4. This power was commenced by way of regulations which came into force on 7 March 2005. Since their introduction, temporary stop notices have been used by a number of local planning authorities in a range of circumstances to successfully prevent further development of land. However, at present temporary stop notices cannot be used to require caravans to leave a site where the caravan is the main residence of someone, unless the harm to a compelling public interest outweighs the benefit to the occupier of the caravan in staying. For example this might apply if the caravan was stationed on contaminated land or a site of special scientific interest.
5. Due to this public interest balancing test that local planning authorities are required to undertake, it is usually the case that local planning authorities do not use temporary stop notices to require caravans which are occupied as main residence from leaving land. At present, caravans often remain on unauthorised developments for significant periods until an enforcement appeal has concluded or a planning application has been determined. The presence of caravans on unauthorised developments (particularly if in large numbers) can be a significant source of community tension.

Rationale for government intervention

6. At present many, although not all, of the caravans on unauthorised developments are occupied by Gypsies and Travellers, often due to a lack of alternative land or sites. The proposed extension is therefore likely to have a significant impact on these communities and this is discussed further below.
7. Local planning authorities conduct a bi-annual caravan count on behalf of Communities and Local Government (CLG) which records the number of Gypsy and Traveller caravans on authorised and unauthorised sites. Whilst the number of caravans on unauthorised encampments (where Gypsies and Travellers camp on land that they do not own) has dropped in recent years, the numbers of Gypsy and Traveller caravans on unauthorised developments (where land is owned by Gypsies and Travellers and developed without planning permission) has risen eg in July 1996 the number of caravans on unauthorised developments was 855 (9.37 per cent of the total number of caravans counted) compared to July 2006 when the number of caravans on unauthorised developments was 2234 (13.7 per cent of the total number of caravans counted).
8. This increase is likely to continue unless action is taken on two fronts – increased provision of authorised sites in conjunction with more effective enforcement against unauthorised development. The Government has introduced a new policy framework which should result in local authorities allocating land in their local plans which is suitable for development as Gypsy and Traveller sites. As local authorities make such provision, the need to buy land and develop it without planning permission should be removed. Therefore if land continues to be bought and developed without planning permission, the Government believes that local planning authorities should be able to use stronger powers to require the removal of caravans from land, where a suitable alternative authorised site is available.

Consultation

Within government

9. This proposal has been consulted upon within Communities and Local Government and with those Government Departments that have a policy interest in the proposal. In addition, the original temporary stop notice proposals were consulted upon with colleagues across Whitehall. This paper has also been discussed by the Government's Task Group on enforcement and site provision.

Public consultation

10. The current temporary stop notice Regulations and guidance were consulted on between November 2004 and January 2005. As a result of consultation responses, the circumstances in which a temporary stop notice could be used were clarified and expanded upon in guidance which was published in the form of a Government circular (ODPM Circular 02/05) and accompanied the relevant regulations.
11. A consultation paper seeking views on the proposed extension to the temporary stop notice is attached.

Options

12. As stated above, the policy aim of Government is to reduce the number of caravans on unauthorised sites while planning applications for those sites are considered. When formulating the options to achieve this aim, an underlying principle was that those caravans on any unauthorised site must have somewhere else to go in the interim. This principle is in line with the Government's policy that local planning authorities must make appropriate provision of caravan sites for Gypsies and Travellers. In considering options to achieve our aim, the only feasible one identified was to amend the temporary stop notice regulations to allow temporary stop notices to require the removal of caravans where alternative sites are available. This option is explored further below.

Option 1 – Do Nothing

13. Gypsies and Travellers living on unauthorised developments are subject to the same planning laws as everyone else. Due to the nature of the planning system, planning appeals and enforcement appeals can take a long time to determine and Gypsies and Travellers can remain on unauthorised developments for long periods of time. The presence of Gypsies and Travellers on unauthorised developments can be a source of significant community tension. This situation is likely to continue unless some mechanism is introduced which can require the caravans to move quickly to an appropriate alternative site. However, doing nothing would still allow local planning authorities to use the existing range of enforcement powers against unauthorised sites.

Option 2 – Introduce new provision into Temporary Stop Notices Regulations

14. The introduction of a new provision into the temporary stop notice regulations will allow Local Planning Authorities to use temporary stop notices to require caravans which are main residences to move from an unauthorised development if a suitable alternative pitch is available. Enforcement action is discretionary for local planning authorities and therefore the proposed extension is an optional power that the local planning authority can use if an alternative site is available. The aim of the proposed extension is to prevent people living on unauthorised caravan sites for long periods of time and from expanding and developing sites without planning permission. Not all Local Planning Authorities will be able to access the power since they will not have access to an alternative authorised site on which the caravans can be stationed. The use of the proposed power will be confined to those authorities that have access to an alternative suitable pitch/es on which the caravans can be stationed, in support of the Government's belief that those councils that have made appropriate provision should be able to deal with unauthorised development more swiftly. Question 1 of the consultation paper is seeking views on the circumstances in which the proposed power would be useful.

Options which were also considered and rejected

Option 3 – Removal of retrospective planning permission

15. Removing the right to apply for retrospective planning permission was examined as part of the Enforcement Review undertaken in 2002. The majority of the respondents to the consultation did not support this approach and the Review recommended that no change was made to the principle of retrospective planning permission. Ministers have endorsed the recommendations. This issue was revisited more recently and again it was concluded that this course of action should not be followed. It would be impossible to distinguish between those who had made a genuine mistake and those who had knowingly developed without permission so there is a risk of a disproportionate interference with the property rights of a developer. It would also be impossible to remove retrospective planning permission for just one section of the community as this is quite clearly incompatible with the Human Rights Act.

Costs and Benefits

Sectors and groups affected

16. If Option 2, an extension to the temporary stop notice provisions, was taken forward, it would impact on:
- those people living on unauthorised sites, in areas where alternative site provision had been made. In such circumstances, Local Planning Authorities would be able to access the new power and issue a temporary stop notices which would require caravans to leave the site. (In many cases those living on unauthorised sites will be Gypsies and Travellers)
 - Local Planning Authorities that have access to spare pitches, in that they will have access to an additional enforcement power which can require caravans to leave a site.
 - If the power was used, the local community would be affected since they would not need experience the problems which can sometimes be associated with unauthorised developments, since those occupying the site would have been required to move to an authorised site. (As the temporary stop notice power does not allow direct action to remove people from the unauthorised site, there is a possibility that they will either remain on the site or leave the site but not go to the alternative.)
17. At present, there are around 2200 Gypsy and Traveller caravans on unauthorised developments (where land is owned by a person and developed without planning permission) of which around 980 are tolerated (where local planning authorities have chosen not to take enforcement action against the sites) meaning that about 1220 are not tolerated (where local planning authorities are taking enforcement action or have an intention to do so). We do not know how many caravans are on unauthorised developments which aren't owned by Gypsies and Travellers since this is not counted

18. The 2200 caravans are stationed on around 540 separately located sites and there is therefore an average of 4 caravans per unauthorised site. If the proposed power is introduced, Local Planning Authorities will be able to use any available pitches on authorised sites which they have access to, to require the removal of caravans from unauthorised developments. Even where sites have spare capacity, ie they could accommodate more caravans, a Local Planning Authority would need access to an authorised pitch, since different families cannot be expected to share pitches, and sites should not become overcrowded as a result of the proposed power.

Race Equality Impact Assessment

19. A final Race Equality Impact Assessment will be completed as part of the consultation, and published on the Communities and Local Government website. An initial race equality impact assessment is attached and the views of consultees regarding the impact of the proposals on race equality are being sought.
20. In summary, if taken forward this proposal is likely to have the greatest impact on those who use caravans as their main residence living on unauthorised developments. This group would include the recognised ethnic groups of Romany Gypsies and Irish Travellers that have a cultural tradition of caravan dwelling. Therefore it is likely that this proposal disproportionately affects Gypsies and Travellers as a result of their particular lifestyle.
21. However, the proposed extension is only open to those local planning authorities that have made suitable alternative provision. Use of the extended power would require caravans to leave sites but would not deprive Gypsies and Irish Travellers of their caravan thus ensuring that Gypsies and Irish Travellers can continue to pursue their traditional way of life but on an authorised site rather than an unauthorised site. The Government therefore believes that the proposed policy provides an appropriate balance between the rights of the individual to stay in their home and pursue their preferred way of life whilst also providing local planning authorities with a power to effectively uphold the planning system and maintain confidence in its operation. The Government therefore believes the impact on Romany Gypsies and Irish Travellers is justifiable.

Rural Impact Assessment

22. If option 2 is pursued, the proposed extension should have a positive impact on rural areas. The new temporary stop notice provision will require the removal of caravans from unauthorised developments, which often occur in inappropriate locations such as Green Belt. The removal of such caravans should have a positive impact on the amenity of the environment. The alternative caravans will have been offered an alternative authorised site which will have appropriate planning permission and will therefore have gone through the consultation process giving local people an opportunity to express their views on the location of the site as well as having undergone a sustainability appraisal.

Health Impact Assessment

23. The temporary stop notice power is most likely to be useful at the beginning of the development of an unauthorised site. In these circumstances, the hygiene and living facilities are likely to be very basic on the unauthorised site, since full development of the site will not yet have taken place. The alternative authorised site to which unauthorised campers will be directed will have developed hygiene and living facilities allowing those that will relocate to the site better access to these facilities. The draft guidance that is being consulted on gives advice that an alternative authorised site must have hygiene facilities and also advises that any alternative sites should still allow those occupying the site to access to health facilities. However, we are seeking views on the suggested standards of the alternative authorised site. Local planning authorities may also have a duty of care towards those who would be affected by a move and should therefore carry out welfare enquiries which should inform the decision making process prior to using this power. We therefore conclude that the proposal should not have a negative impact on health.

Breakdown of costs and benefits

Option 1 – Do nothing

Economic

24. As outlined above, at present temporary stop notices cannot be used to require caravans to move from unauthorised developments in most circumstances. This means that local planning authorities generally have to use other enforcement powers such as enforcement notices and stop notices against the site, which may take more officer time to prepare and follow up, than issuing a temporary stop notice immediately which requires the removal of caravans. Doing nothing would not impose any burden on a local planning authority since the powers available to Local Planning Authorities to deal with unauthorised development would not change. However, doing nothing would not achieve our policy aim of removing caravans from unauthorised developments while planning applications are considered.

Environmental

25. Unauthorised development by Gypsies and Travellers can take place in inappropriate places such as Green Belt or on other land not suitable for residential use. The development may not be in keeping with the local scenery and damaging to the amenity of the natural environment. As outlined above, unauthorised development may be present for a considerable amount of time until a decision on a planning or enforcement appeal is made.

Social

26. The presence of caravans on unauthorised developments can be a source of significant local tension between occupiers of the site and members of the settled community, particularly where the caravans remain for long periods of time. At present Local Planning Authorities have powers to enforce against breaches of

planning control and can issue stop notices with associated enforcement notices which could require land to stop being used as residential caravan sites. [However, where an appeal against an enforcement notice has been submitted or a planning application submitted local planning authorities are often reluctant to use stop notices, for fear of compensation claims from those occupying the unauthorised site]

Option 2

27. Amend the temporary stop notice regulations to allow local planning authorities to require caravans to move from an unauthorised development where an alternative authorised site is available.

Economic

28. A local planning authority will have to dedicate some officer time to the preparation of a temporary stop notice although they would have had to do this anyway if using other enforcement powers. However, where a temporary stop notice requires caravans to leave a site and it is complied with, ie the caravans relocate to the proposed alternative site, then an authority may not have to dedicate staff time to additional follow up enforcement action, until the outcome of any planning application was known. Despite the officer time that will be needed to implement the proposed power, the Local Government Association's recent Task Group inquiry into Gypsy and Traveller issues recommended that Government should consider stronger powers of enforcement against unauthorised development. The introduction of this power will achieve this aim. As pointed out previously, the proposed power is discretionary and Local Planning Authorities do not have to use it in cases of unauthorised development.
29. If temporary stop notices are used at the start of development then they can minimise the amount of work undertaken on the site. Following the refusal of planning permission, and any subsequent appeals, local planning authorities may have to take direct action to restore the land to its former condition. If minimal work has been undertaken then it will cost the Local Planning Authorities less to restore the land to its previous condition, than if more extensive works had taken place and a temporary stop notice hadn't been issued. The costs of clearing unauthorised developments can be tens of thousands.
30. We believe that the proposed power allows us to achieve our policy objective and that the costs associated with it are proportionate to the benefit gained.

Environmental

31. As long as the requirement to leave a site is complied with, there should be a beneficial effect on the environment, as the development works on the site would not be expanded and the caravans would leave the site, restoring some of the former appearance of the site.

Social

32. As stated earlier, the presence of those living on unauthorised developments often gives rise to tensions with the local community and can be very damaging to community relations. The relocation of those living on an unauthorised development to an authorised site may defuse this situation and allow the consideration of the planning application/appeal not to be marred by tensions, incidents and local campaigns which may seek to prejudice the outcome of planning applications.

Small Firms' Impact Test (SFIT)

33. This proposal provides local planning authorities with an additional discretionary enforcement power to require the removal of residential caravans from an unauthorised site as long as an alternative authorised site is available on which the caravans can be stationed. This proposal may impact directly on those small businesses which are operated from their place of residence, where the residence is the unauthorised site. The proposal may also have an indirect effect on those small businesses which are located near unauthorised sites.

Businesses on unauthorised sites

34. When temporary stop notices were originally consulted upon some travelling showpeople responded and argued that the issuing of temporary stop notices could adversely affect their small businesses, since it could require the storage of equipment to cease. In order to mitigate the impact on travelling showpeople, the guidance in the circular stated that the impact on business operation is a matter which local planning authorities should consider when deciding whether or not to issue a temporary stop notice. The guidance advises local authorities that temporary stop notices can be directed at part of an activity and that the requirements of a temporary stop notice should prohibit only what is essential to safeguard the amenity and public safety of the neighbourhood or to prevent serious or irreversible harm to the environment in the surrounding area.
35. The majority of the business undertaken by travelling showpeople takes place at sites for which they have permission to undertake business activities, eg fairs. However due to a lack of authorised sites, some travelling showpeople occupy unauthorised sites during the winter where their equipment is stored and maintained. Under the new provision proposed, those living on the unauthorised site (whether they are travelling showpeople or others) will have been offered an alternative authorised site on which to station their caravan and dependent on the nature of their business they could continue to operate the business from the alternative site, eg where the business is a van.
36. The guidance does advise local planning authorities to undertake a quick assessment of the financial impact on a business before requiring its activities to cease. In addition, local planning authorities have discretion to vary what is prohibited by the temporary stop notice, and it may be that development associated with the stationing of caravans is required to stop, but that equipment may be allowed to remain on the unauthorised site.

37. However, because of the concerns of travelling showpeople expressed in response to the original consultation exercise, the Department has sought initial views from the Showmen's Guild regarding the impact of the new proposal on the business activities of travelling showpeople. The Showmen's Guild has commented that the nature of showpeople's business is such that 'site splitting', where residential caravans and equipment are located on separate sites is unacceptable. This is because of the inability to get insurance cover for the equipment and the danger of it being tampered with when not in sight and sound of residential caravans, bearing in mind the strict Health and Safety regulations under which showpeople operate.
38. The Government considers this a legitimate concern and is currently consulting on new planning guidance in relation to caravan sites for showpeople which highlights the importance of mixed use sites and the unacceptability of site splitting. In response to the concerns of the Showmen's Guild, the Government has amended guidance to state that where temporary stop notices are used against unauthorised sites occupied by travelling showpeople, the alternative authorised sites should be able to accommodate both equipment and residential caravans.

Businesses located near to unauthorised sites

39. The presence of unauthorised sites may have a negative impact on small businesses located in the vicinity. Noisy caravan sites without planning permission might disturb farming activities, eg animals grazing and it is likely that small businesses located near to unauthorised sites would welcome the relocation of residential caravan sites. However, we would welcome the views of small firms on the proposals contained in the consultation paper.
40. The Small Business Service has been consulted and is content with this assessment.

Competition Assessment

41. The proposal set out in option 2 provides local planning authorities with a discretionary enforcement power. The competition filter has been applied to these proposals and has been found to have no impact on competition within the UK.

Legal Aid Impact Test

42. There is no right of appeal against a temporary stop notice, therefore we think that the majority of temporary stop notices that are issued will not give rise to legal action. The only course of action open to those wishing to dispute the way in which a temporary stop notice has been issued is through seeking a judicial review of the decision to issue a temporary stop notice. At present, Gypsies and Travellers are able to apply for legal aid (under the exceptional funding scheme), in order to be legally represented at appeals against the refusal of permanent planning permission, providing they qualify financially, and pass quite strict criteria for funding.
43. In the financial year 05/06 temporary stop notices were used 291 times (as evidenced by returns from local planning authorities) of which some will have been used against Gypsy and Traveller sites, although Local Planning Authorities are not required to report the types of development which they are used against. Approximately 6

months after the introduction of temporary stop notices, a survey was carried out of 14 authorities which between them had issued 41 notices, and five notices had been issued against Gypsy and Traveller sites. We are not aware of any notices that have been challenged via judicial review either when used against Gypsy and Traveller sites or against other forms of unlawful development.

44. The extension of the temporary stop notice provision could possibly result in Gypsies and Travellers seeking legal aid to dispute such notices. However, the introduction of the extended temporary stop notice power will not cause more unauthorised development, so it may be that where temporary stop notices were used anyway to stop other aspects of the development, local authorities will take advantage of the wider power and stop the residential aspect of the site, where they have the alternative site available. The use of a temporary stop notice to which there is no right of appeal, should remove the breach of planning control, as the occupiers of the site will move to an alternative authorised site while any planning application is being considered. The use of temporary stop notices may therefore reduce the likelihood of alternative enforcement tools being used, eg enforcement notices, which do have a right of appeal. We therefore think that the use of temporary stop notices may result in a few cases where legal aid for judicial review is sought, but there may be a reduction in the number of Gypsies and Travellers seeking legal aid for enforcement appeals. We do not think that the proposed extension of the temporary stop notice power will have a significant impact on the legal aid budget.
45. Failure to move from an unauthorised site when an alternative site has been offered will be in breach of the temporary stop notice and a local planning authority could prosecute those on the unauthorised site for non-compliance. It is possible that those living on the site might seek legal aid to represent themselves in court. However, we do not expect the amended temporary stop notice power to result in many more additional notices being issued, they just may alter the scope of what is required to stop by a temporary stop notice.
46. This new proposal must also be viewed in the context of the wider policy framework which is to promote more site provision and allocation of land which is suitable for development as Gypsy and Traveller sites. The increase in the identification of land in plans which is suitable for Gypsy and Traveller sites should mean that less unauthorised development takes place in the first place so the overall number of challenges to enforcement powers and refusals of planning applications should reduce, therefore resulting in a net reduction in the burden of cases on behalf of Gypsies and Travellers on the legal aid budget.

Enforcement, Sanctions and Monitoring

47. The proposed extension provides a permissive power which local planning authorities may use at their discretion, where they have suitable alternative sites available and where it is expedient to enforce.
48. Local Planning Authorities are not obliged to use the power and the Government will not use sanctions against those that don't, in keeping with the principle that enforcement action is discretionary on the part of the local planning authority.

49. Once a temporary stop notice has been issued, it has immediate effect. In terms of enforcing the temporary stop notice itself, it will be the planning enforcement officers of the local planning authority which will monitor compliance with the notice. For example, where a temporary stop notice requires caravans to leave and the occupiers of the caravans do not comply with the terms of the temporary stop notice, the local planning authority can prosecute those in breach of the notice for non-compliance. However, the local planning authority cannot take direct action to remove the caravans from the land.

Monitoring and review

50. At present, local planning authorities must provide quarterly returns to central Government which shows the number and type of enforcement action taken. This return shows the number of temporary stop notices issued, but does not provide details of the types of development which they are used against.
51. However, if the new temporary stop notice power was introduced the Government would be able to monitor whether the total number of instances of use of a temporary stop notice increased. The returns from local planning authorities would also provide a basis for the Gypsy and Traveller Unit to carry out a survey of local planning authorities, to monitor the use and effectiveness of the new provision and the impact on different ethnic groups, eg one year after introduction.

Annex E: Race Equality Impact Assessment

1. POLICY DESCRIPTION

1.1 Title of policy to be Assessed:

Extension to the temporary stop notice provisions to change the way in which notices can be issued against caravans which are used as a main residence.

1.2 Brief description of policy to be Assessed:

The Government sets national planning policy in the form of guidance and sets the enforcement powers available to an authority through primary legislation, which can sometimes be amended by secondary legislation.

There is a general enforcement power available to local planning authorities called a temporary stop notice which was introduced in the Planning and Compulsory Purchase Act 2004 and brought into effect through secondary legislation and an accompanying circular which came into force on 7 March 2005. The power can be used by local planning authorities to immediately require breaches of planning control to cease, for a period of 28 days, while the need for further enforcement action is considered. At present, on sites without the relevant planning permission where caravans are occupied as main residences, temporary stop notices can only be used to require the use of the land as a caravan site to cease in very limited circumstances, that is, where ‘ the risk of harm to a compelling public interest outweighs the benefit to the occupier of the caravan’.

The proposal being consulted on, would allow local planning authorities to use temporary stop notices to require the occupation of sites to stop as long as there was an alternative site on which the caravans could be stationed.

1.3 Aims of policy to be Assessed:

- The presence of unauthorised sites, where caravan sites are developed without the necessary planning permission and remain for long periods of time while planning applications and any subsequent planning or enforcement appeals are considered, can give rise to community tension within an area. The presence of unauthorised sites can also give rise to the perception that the planning system treats different groups of people differently and that it is ‘one law for one group of people and one law for others’. Although this is not true and the planning system is the same for everyone, this perception often fuels community tension.
- The proposal being consulted on will allow temporary stop notices (a planning enforcement power) to require the occupation of land with residential caravans to cease, where there is an alternative authorised site on which to station the caravans.
- The requirement for caravans to leave a site will allow the occupiers of the caravan to continue to pursue their caravan dwelling lifestyle on an alternative authorised site, whilst removing a breach of planning control while a planning application for the necessary planning permission is considered.

- The proposal is intended to maintain integrity in the planning system, whilst respecting the rights of individuals to pursue a caravan dwelling lifestyle. The removal of unauthorised caravan sites, whilst planning applications/appeals are being considered may remove the community tension that can be associated with the presence of unauthorised sites and actually assist in community cohesion.
- The extended power will only be available to those local authorities that have access to an available pitch on an alternative authorised site, in recognition of the fact that land is often developed without planning permission because of the lack of alternative authorised sites, or suitable land.

1.4 Who will be affected by this policy?

Sectors and Groups Affected

- Romany Gypsies and Irish Travellers
- Other groups with a nomadic way of life including travelling showpeople
- Other caravan dwellers
- Local Authorities
- Registered Social Landlords

2. ASSESSMENT ANALYSIS

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

As Gypsies and Irish Travellers are likely to form a large part of those that are on unauthorised caravan sites, then this policy is likely to have a disproportionate effect on these two groups.

2.2 Detailed Policy Considerations

Living in a caravan is part of the culture of Gypsies and Irish Travellers and each year local authorities carry out a count of all Gypsy and Traveller caravans (including new traveller) on both authorised and unauthorised sites. Given the caravan dwelling lifestyle of Gypsies and Travellers, then this proposal is most likely to impact on these ethnic groups. The lack of authorised Gypsy and Traveller sites and the difficulty that Gypsies and Travellers experience in getting in planning permission contributes to the number of Gypsies and Travellers living on caravan sites without planning permission.

The Government's wider policy framework should ensure that local planning authorities conduct assessments of the accommodation needs of Gypsies and Travellers either residing or resorting to their area, and allocate land in local plans, in line with need. The land allocated would then be made available for Gypsies and Travellers to buy and apply for planning permission to develop privately or may be developed as socially rented sites by local authorities or registered social landlords (RSLs). As more land is allocated in local

plans, we would expect to see the incidence of unauthorised development fall as Gypsies and Travellers are more likely to buy land on which they know there is more certainty of gaining planning permission. The increased provision of socially rented Gypsy and Traveller sites would also contribute to the aim of reducing the level of unauthorised sites.

The use of temporary stop notices is monitored through quarterly returns submitted to the Department by Local Planning Authorities, although the type of development they are used against is not monitored. However, this regime allows the Government to monitor the number of temporary stop notices issued. The returns from local planning authorities will provide a basis for the Gypsy and Traveller Unit to undertake a survey of local planning authorities to monitor the use and effectiveness of the power and the impact on different ethnic groups.

The temporary stop notice proposal is one aspect of planning policy which will impact on Gypsies and Travellers and should be viewed in the context of the wider policy framework which is intended to provide more authorised sites and land on which Gypsies and Travellers can have more certainty of gaining planning permission for private sites.

The identification of suitable land for sites will be monitored through the Government Offices' monitoring of Development Plan Documents produced by local planning authorities. The delivery of local authority and RSL sites will be monitored through the take up and spend of Gypsy and Traveller Sites Grant and through the monitoring of applications, those intended to occupy the site, ie Romany Gypsies, Irish Travellers or other types of traveller can be ascertained.

The Government believes that the proposed power provides an appropriate balance between the rights of the individual to pursue a caravan dwelling lifestyle and the rights of the local planning authority to enforce against breaches of planning control and uphold the planning system. The proposed power would allow individuals to continue living in their caravans with access to appropriate services, but would offer them an authorised site on which to station their caravans, thus removing the breach of planning control.

However, the Government is seeking views on the impact on different ethnic groups as part of the consultation exercise.

2.3 Give brief details of the evidence available/used. (If you have no data to support your assessment you can get views from diversity groups through a consultation).

At present around 25 per cent of Gypsy and Traveller caravans are on unauthorised sites, though this is split between 11 per cent which are on land they do not own (unauthorised encampment) and the remainder on land which is owned and developed without planning permission (unauthorised development). The caravan count not only includes Romany Gypsy and Irish Traveller caravans but also includes other types of travellers such as new travellers.

There are no records of the numbers of unauthorised caravan sites by people not considered to be Gypsies or Travellers since this information is not collected.

Planning powers are likely to be used against unauthorised developments – currently around 2234 caravans. Of those 2234 caravans, 981 are tolerated (this is where local planning authorities have made a decision not to take enforcement action, and informed government of this through the bi-annual caravan count), therefore planning enforcement powers are most likely to be used against the remaining 1253 caravans.

Local authorities are asked to record the ethnicity of those living on the various types of sites where known, but this information is patchy. We therefore don't have reliable estimates of the numbers of caravans owned by Romany Gypsies and Irish Travellers living on unauthorised caravan sites which aren't tolerated.

Given that the proposal will impact on Gypsies and Travellers who have suffered from a lack of suitable land on which to develop, the Government has deliberately tied the use of the extended power to the provision of sites and the availability of alternative authorised pitches, to ensure that the use of the power is confined to those local planning authorities that have made suitable provision of sites. This will ensure that those living on unauthorised sites are not made homeless by the use of the power.

2.4 Consultation Methods.

A consultation paper detailing the proposals will be sent to all local planning and housing authorities, a range of bodies representing Gypsy and Traveller communities and travelling showpeople, the CRE and other organisations for comment. The document will be made available on the website of the Communities and Local Government and alternative forms of the document such as audio are available on request.

The proposals contained in the document have been considered and discussed by the Government's Task Group on enforcement and site provision and their comments have informed the drafting of the paper.

Through the consultation exercise, views are being sought on a number of aspects of the proposals, including this assessment of the impact on different ethnic groups.