



Office of the
Deputy Prime Minister

Creating sustainable communities

*Definition of the term 'gypsies
and travellers' for the purposes
of the Housing Act 2004*

Consultation

February 2006



Office of the
Deputy Prime Minister

Creating sustainable communities

Definition of the term 'gypsies and travellers' for the purposes of the Housing Act 2004

Consultation

Office of the Deputy Prime Minister
Eland House
Bressenden Place
London SW1E 5DU
Telephone 020 7944 4400
Web site www.odpm.gov.uk

© *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.

For any other use of this material, please write to HMSO Licensing, St Clements House, 2-16 Colegate, Norwich NR3 1BQ. Fax: 01603 723000 or e-mail: licensing@bmsso.gov.uk

Further copies of this consultation are available from:

ODPM Publications
PO Box 236
Wetherby
West Yorkshire
LS23 7NB
Tel: 0870 1226 236
Fax: 0870 1226 237
Textphone: 0870 1207 405
E-mail: odpm@twoten.press.net

Printed in Great Britain on material containing 75% post-consumer waste and 25% ECF pulp.
February 2006
Product code: 05HC03603

CONTENTS

	Page
The Consultation Criteria	4
Executive Summary	5
Consultation Questions	6
Responses	7
Introduction	8
Previous definitions	8
The planning definition	9
Why have different definitions?	9
Proposed housing definition	10
Accommodation Assessments	11
Accommodation Strategies	12
Ethnicity of gypsies and travellers	12
Race Impact Assessment	12
Annex A	
Sections 225-226 of the Housing Act 2004	13
Annex B	
Partial Regulatory Impact Assessment (RIA)	15
GLOSSARY	
CJPOA Criminal Justice and Public Order Act 1994	
CSCDA Caravan Sites and Control of Development Act 1960	

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 (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

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

Adam Bond, ODPM Consultation Co-ordinator
Room 2.19, 26 Whitehall
London, SW1A 2WH;
or by e-mail to:
adam.bond@odpm.gsi.gov.uk

Executive Summary

This consultation paper invites views on a proposed definition of 'gypsies and travellers' to apply in the context of regulations issued by ODPM under sections 225 and 226 of the Housing Act 2004.

The proposed definition builds on the 'planning definition' as set out in the Planning Circular 'Planning for Gypsy and Traveller Caravan Sites' (ODPM 01/2006) and extends this to capture a wider group whose accommodation needs have often been overlooked.

The key features of the two definitions are summarised below.

The planning definition:

- Has been confirmed through consultation.
- Has been broadened to include gypsies and travellers that have ceased travelling for health, educational or caring responsibilities.
- Is not based on ethnicity.
- Will be used to determine gypsy and traveller status for planning applications.

The proposed housing definition:

- Would be used to assess the level and nature of accommodation need in an area.
- Would cover all gypsies and travellers whether travelling or settled.
- Would cover ethnic gypsies and travellers.
- Would apply to gypsies and travellers generally, rather than individuals.

This consultation paper is being published on the ODPM website and sent to local housing authorities and related groups and organisations, and bodies representing gypsy and traveller communities for comment.

Consultation Questions

The proposed definition of 'gypsies and travellers' for the purposes of sections 225 and 226 of the Housing Act 2004 purposes is:

Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism and/or caravan dwelling.

- Does the proposed definition capture the right groups of people?
- Are there any unjustifiable disproportionate impacts on any ethnic minorities?

Responses

Please send your response, no later than 28 April 2006 to:

Katie Jones
Office of the Deputy Prime Minister
1/E8 Eland House
Bressenden Place
London
SW1E 5DU

Email to: katie.jones@odpm.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 ODPM website:

www.odpm.gov.uk/housing/consult

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 ODPM.

The ODPM 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.

Introduction

1. Section 225 of the Housing Act 2004 contains provisions designed to address the accommodation needs of 'gypsies and travellers' alongside those of the rest of the community, and to ensure that local authorities take a strategic approach to assessing and meeting the accommodation needs of 'gypsies and travellers'.
2. Specifically, the Housing Act 2004 requires local authorities to undertake regular assessments of the needs of 'gypsies and travellers' either living in, or resorting to, their area, under the Local Housing Needs Assessment process as set out in section 8 of the Housing Act 1985. The Act also requires local authorities to include the needs of 'gypsies and travellers' in any housing strategy they produce in line with section 87 of the Local Government Act 2003, and to take any such strategy into account when they are exercising their other functions, such as planning, education and social care. Sections 225 and 226 are set out in Annex A.
3. Sub-section (5)(a) of section 225 provides that the term 'gypsies and travellers' has the meaning given by regulations made by the appropriate national authority. The Government is therefore consulting on a new definition of 'gypsies and travellers' which will apply when local authorities are carrying out accommodation assessments and preparing accommodation strategies in respect of this group.
4. Legislation requires the use of lower case (gypsies and travellers): for consistency and to avoid any presupposition as to the ethnicity of those who may be covered by the definition, that formulation is used throughout this document. It is recognised that the formulation Gypsies and Travellers is usually used, including in Government documents, which recognises the ethnic status of many members of this group.
5. **The purpose of this document is therefore to seek views on the definition of the term 'gypsies and travellers' for the purposes of sections 225 and 226 of the Housing Act 2004.**

Previous definitions

6. 'Gypsies' were first defined in legislation in Part II of the 1968 Caravan Sites Act. After the repeal of Part II of the 1968 Act by the Criminal Justice and Public Order Act (CJPOA) in 1994, the definition of 'gypsies' and the power for local authorities to provide facilities for them was inserted into the Caravan Sites and Control of Development Act (CSCDA) 1960. Under the CSCDA as amended by the CJPOA, local authorities have the power to provide caravan sites for anyone, but can provide additional working space and facilities for those people that fall under the definition of 'gipsy'.
7. This definition specifies that 'gypsies' are persons of nomadic habit of life, whatever their race or origin, although not including travelling showmen or circus people. This definition was further modified by case law (*R v South Hams District Council, ex p. Gibb* [1994] 4AER 1012) to specify that nomadism must be for the purposes of work. This definition has traditionally been referred to as the 'planning definition' to reflect its common use in planning cases to determine whether an individual can claim 'gipsy' status and have this status taken into account as a material consideration in the case.

The planning definition

8. The CSCDA definition has now effectively been superseded for planning purposes by a new definition set out in the Planning Circular 'Planning for Gypsy and Traveller Caravan Sites', ODPM 01/2006. The definition was amended following consultation in December 2004, and in recognition of the fact that many gypsies and travellers stop travelling permanently or temporarily because of health reasons or caring responsibilities, but still want to maintain their traditional caravan dwelling lifestyle.
9. The planning definition now covers:

Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.

10. The planning definition seeks to capture those with specific land use requirements arising from their current or past nomadic way of life. It is not based on ethnicity or cultural tradition, as many ethnic gypsies and travellers will not have an individual history of nomadism, and hence will have no associated land use requirements for a site. On the other hand, groups such as 'new travellers' who have a nomadic way of life may have such a requirement. To fall within the planning definition a person must either have or at some time have had a nomadic habit of life. Organised groups of travelling show people, or circus people, travelling together as such, fall under a separate Planning Circular (22/91 Travelling Showpeople) and as such are specifically excluded from this definition.

Why have different definitions?

11. Careful consideration has been given to whether it is possible to create a single definition. However, the function of the planning definition is very different from the function of the housing definition which is proposed here, and it is not possible to align the two completely.
12. The purpose of the planning system is to regulate the use and development of land in the public interest. It is, therefore, appropriate that the planning definition should be limited to those who can demonstrate that they have specific land use requirements arising from their nomadic way of life. The planning definition is relevant to the application of planning policies and the determination of applications for planning permission. In this context, having 'gypsy status', where it has implications for land use, can be a material consideration in the determination of planning applications.
13. The proposed housing definition is for a very different purpose. It is intended to be a pragmatic and much wider definition which will enable local authorities to understand the possible future accommodation needs of this group and plan strategically to meet those needs. It recognises that there will be movement between sites and bricks and mortar housing, and that an understanding of the full gypsy and traveller community, not just those who are currently travelling, is necessary in order for local authorities to meet their responsibilities and put proper strategic plans in place.

14. Falling within the housing definition does not confer a direct advantage on any individual. It does not in itself imply that that person 'should' live on a site, or has 'gypsy status' for planning purposes. It means that the individual belongs to a group whose accommodation needs must be assessed by the local authority. Once a need has been identified the local authority will then develop a strategy to meet it. However, there are a variety of ways in which gypsy and traveller accommodation needs may be met and the definition does not tie the local authority to specific solutions.
15. Although two separate definitions are necessary, there is a considerable amount of overlap in the groups that they need to capture, and the two definitions can be harmonised to a considerable extent. The proposed housing definition therefore builds on and extends the planning definition.

Proposed housing definition

16. The proposed housing definition is:

Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism and/or caravan dwelling.
17. The intention of this definition is to cover all those whose distinctive ethnicity, cultural background and/or lifestyle may give rise to specific accommodation needs, now or in the future, that need to be assessed and planned for.
18. A broad definition is necessary to achieve a full understanding of the accommodation needs of this community, and to put appropriate strategies in place to meet it. For example, gypsies and travellers in bricks and mortar housing may form part of the source of future site need and it will be essential to understand this. Assessing the needs of housed gypsies and travellers will also help in understanding any particular issues faced by this group. The process will help to identify how any problems can be overcome and the ways in which housing may be made to work better for them. This could reduce the numbers wishing to leave housing for sites, and encourage some of those currently on unauthorised sites to move into housing where that is a suitable option for them.
19. In some parts of the country 'new age travellers' form a substantial minority of the travelling population. Although these people have adopted a nomadic lifestyle relatively recently their needs should be assessed alongside those of the more traditional gypsy and traveller groups. To do otherwise would be to neglect the needs of part of the community, leading to practical problems and potential legal challenge. It should be noted that travelling showmen and circus people travelling together as such are not excluded from this definition and where there is a need for winter quarters for this group, it may make sense for local authorities to assess this need as part of the gypsy and traveller assessment process, as many of the issues will be similar.

20. It may not always be clear-cut whether a particular group falls within this definition. However, local authorities are reminded that the accommodation or housing needs of the whole community must be assessed under section 8 of the Housing Act 1985. Therefore, if the local authority decides that the accommodation needs of a particular group should not be assessed under section 225, they are nonetheless under a duty to assess those needs as part of the wider section 8 requirement. *The Housing Market Assessments – Draft guidance* on carrying out wider HMA's is available on the ODPM website: www.odpm.gov.uk/planning under 'Consultation Papers'.
21. The existence and scope of the housing definition do not imply any changes to the planning definition.

Accommodation Assessments

22. The proposed definition sets out whose accommodation needs should be assessed under section 225. Comprehensive guidance on carrying out gypsy and traveller accommodation assessments is available from ODPM. This guidance sets out:
 - Why the assessment needs to be done.
 - What it should produce.
 - Whom it covers.
 - How it will differ from assessment for the settled community.
23. It also provides advice on carrying out the assessment, covering:
 - Partnership working.
 - Deciding who should carry out the assessment.
 - The use of existing data sources.
 - The use of specialist surveys.
 - How to identify and access the 'gypsy and traveller' community.
 - What use should be made of the data once gathered.
24. This guidance forms a supplement to, and should be read in conjunction with, guidance on Housing Market Assessments, also available from ODPM.
25. Until regulations are in place setting out the definition of the term 'gypsies and travellers' for section 225 purposes, local authorities should follow the definition set out in this consultation paper and the guidance on 'gypsy and traveller' accommodation assessments. Both the guidance and the regulations will be finalised following this consultation.

Accommodation Strategies

26. Section 225 of the Housing Act 2004 also deals with the requirement on local authorities to include the accommodation needs of 'gypsies and travellers' in any housing strategies they produce in line with section 87 of the Local Government Act 2003. Guidance on producing these strategies will be issued for consultation in due course. Strategies will be based on dealing with the needs identified through accommodation assessments therefore, the same definition will be appropriate for both purposes.

Ethnicity of gypsies and travellers

27. Gypsies and Irish Travellers are recognised ethnic groups for the purposes of the Race Relations Act 1976. The proposed definition in this document has no effect on the ethnic status of Gypsies and Irish Travellers and they remain protected under Race Relations legislation. It also has no implications for the ethnicity of groups not currently covered by Race Relations legislation.

Race Impact Assessment

28. As part of this consultation, ODPM is gathering evidence to inform the completion of a Race Impact Assessment on the proposed definition. A final Race Impact Assessment will be published alongside the summary of responses to this consultation.

Annex A: Sections 225-226 of the Housing Act 2004

225 Duties of local housing authorities: accommodation needs of gypsies and travellers

(1) Every local housing authority must, when undertaking a review of housing needs in their district under section 8 of the Housing Act 1985 (c. 68), carry out an assessment of the accommodation needs of gypsies and travellers residing in or resorting to their district.

(2) Subsection (3) applies where a local housing authority are required under section 87 of the Local Government Act 2003 (c. 26) to prepare a strategy in respect of the meeting of such accommodation needs.

(3) The local authority who are that local housing authority must take the strategy into account in exercising their functions.

“Functions” includes functions exercisable otherwise than as a local housing authority.

(4) A local housing authority must have regard to any guidance issued under section 226 in -

(a) carrying out such an assessment as mentioned in subsection (1), and

(b) preparing any strategy that they are required to prepare as mentioned in subsection (2).

(5) In this section -

(a) “gypsies and travellers” has the meaning given by regulations made by the appropriate national authority;

(b) “accommodation needs” includes needs with respect to the provision of sites on which caravans can be stationed; and

(c) “caravan” has the same meaning as in Part 1 of the Caravan Sites and Control of Development Act 1960.

226 Guidance in relation to section 225

(1) The appropriate national authority may issue guidance to local housing authorities regarding-

(a) the carrying out of assessments under section 225(1), and

(b) the preparation of any strategies that local housing authorities are required to prepare as mentioned in section 225(2).

(2) Before giving guidance under this section, or revising guidance already given, the Secretary of State must lay a draft of the proposed guidance or alterations before each House of Parliament.

(3) The Secretary of State must not give or revise the guidance before the end of the period of 40 days beginning with the day on which the draft is laid before each House of Parliament (or, if copies are laid before each House of Parliament on different days, the later of those days).

(4) The Secretary of State must not proceed with the proposed guidance or alterations if, within the period of 40 days mentioned in subsection (3), either House resolves that the guidance or alterations be withdrawn.

(5) Subsection (4) is without prejudice to the possibility of laying a further draft of the guidance or alterations before each House of Parliament.

(6) In calculating the period of 40 days mentioned in subsection (3), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

Annex B: Partial Regulatory Impact Assessment (RIA)

Title of Proposal

1. The definition of 'gypsies and travellers' for the purposes of the Housing Act 2004.

Purpose and Intended Effect of Measure

Objective

2. To define the scope of 'gypsies and travellers' so that local authorities understand their responsibilities under sections 225 and 226 of Housing Act 2004 in relation to the completion of accommodation needs assessments and preparing strategies to meet that need.
3. Once the definition of 'gypsies and travellers' has been prescribed in regulations, the relevant sections of the Housing Act can be commenced which will require local authorities to complete accommodation needs assessments for 'gypsies and travellers'. They also apply to the production of strategies showing how that need will be addressed.
4. There is no specific timescale attached to the completion of an accommodation assessment or a strategy. The accommodation assessment process forms part of the evidence base to inform authorities' Local Development Frameworks, and the timescales for completion of the documents which form this framework vary depending on where authorities are in the cycle. However, we would encourage local authorities to complete accommodation assessments at the earliest opportunity since the needs of gypsies and travellers have so long been overlooked and the high levels of unauthorised camping and development in some areas are unsustainable. In some areas accommodation assessments are already underway.

Background

5. At present, in England, around 25% of caravans are on unauthorised sites.
6. Local authorities have an existing duty under section 8 of the Housing Act 1985 to assess the housing need of all of the population. This assessment of need then informs the local housing strategy, which each local authority completes and which includes priorities for the area and an action plan to address those priorities. Should they fail to do this, the Secretary of State has a power under section 87 of the Local Government Act 2003 to require them to do so.
7. Whilst it has been good practice to include gypsies and travellers in housing needs assessments and housing strategies, in reality this has happened in very few places. The consequences of this have been widely varying levels of understanding and very different approaches to gypsy and traveller accommodation in different areas.

8. The proposed definition of 'gypsies and travellers' which is being consulted upon in the associated document will only apply to English housing authorities. Secondary legislation applying to Wales is the responsibility of the National Assembly for Wales. The proposals should have additional impacts on the wider 'settled' community and businesses, since the wider policy framework, of which this definition is an essential part, should reduce the levels of unauthorised camping and development. The impacts of the proposals on the wider community and small businesses are discussed in this document.
9. Legislation requires the use of lower case (gypsies and travellers): for consistency and to avoid any presupposition as to the ethnicity of those who may be covered by the definition, that formulation is used throughout this document. It is recognised that the formulation Gypsies and Travellers is usually used, including in Government documents, which recognises the ethnic status of many members of this group.

Rationale for government intervention

10. There are over 15,000 gypsy and traveller caravans in England. Around three quarters of these caravans are on authorised sites, many of which are well-managed and are an accepted part of the local community. However, under-provision of authorised sites has resulted in gypsies and travellers camping on unauthorised land or developing their own land without planning permission. The number of caravans on unauthorised encampments and developments increased from 3,782 in July 1994 to 4,067 in July 2005.
11. Further family growth is likely to lead to an increased number of gypsies and travellers on unauthorised sites, although in recent years, the level of increase has been mitigated by funding from central government to refurbish and make full use of existing sites.
12. The continuing increase in unauthorised sites is likely to contribute to increasing community tensions between gypsies and travellers and the settled community. The social exclusion that is experienced by gypsies and travellers is one of the drivers for poor educational¹ outcomes in comparison with the wider settled community and BME groups and poor health outcomes² in comparison with the wider settled community. Those that are living in unauthorised encampments are particularly at risk given the difficulty they often experience in accessing services due to patterns of frequent moving. The Social Exclusion Unit based within ODPM is shortly expected to report on a project regarding service provision for frequent movers which will have relevance to gypsies and travellers.
13. Many authorities have not made adequate site provision for gypsies and travellers and some local authorities have pursued an enforcement only approach. Local authorities can spend a considerable amount on enforcement activity on evicting gypsies and travellers. In contrast, gypsy and traveller sites can be cost neutral i.e. they are financed through rental income.

1 For further information on the educational attainment of gypsies and travellers see, Ethnicity and Education: The Evidence on Minority Ethnic Pupils. DfES January 2005.

2 For further information on health issues relating to gypsies and travellers see Parry, G. Van Cleemput, P. Peters, J. Moore, J. Walters, S. Thomas, K. Cooper, C. (2004) The Health Status of Gypsies and Travellers in England. Sheffield: University of Sheffield School of Health and Related Research.

Consultation

Within government

14. Consultation has taken place across Government on the proposed definition and draft consultation paper.

Public consultation

15. A draft planning circular entitled 'Planning for Gypsy and Traveller Sites' was consulted upon between December 2004 and March 2005. The draft circular contained a new planning definition³ intended to replace the one contained in the Caravan Sites and Control of Development Act 1960 s. 24(8) and modified by case law.
16. The consultation exercise elicited a wide range of responses. Some respondents to the consultation thought that the proposed definition for planning purposes was too wide while others thought it should cover the full range of people who classify themselves as gypsies or travellers. The formulation which is being consulted upon in this document has been drawn up taking account of the range of views expressed in response to the planning circular consultation.
17. The planning circular definition covers those who have a specific land use requirement arising from their nomadic way of life, and thus uses nomadism as a basis for the definition. It was recognised that this group should be an integral part of the 'housing definition' and the proposed formulation therefore builds on the 'planning definition'.

Options

Option 1 – Do nothing

18. If the Government chooses to 'do nothing' then sections 225 and 226 of the Housing Act 2004 cannot be commenced, since their commencement relies on prescribing a definition of 'gypsies and travellers' in regulations. This will mean that local authorities will be under no specific duty to assess the accommodation needs of 'gypsies and travellers' and may not strategically plan to meet that need.
19. The accommodation needs assessment is part of a wider policy framework that will ultimately result in additional authorised provision for gypsies and travellers thus reducing the need for unauthorised sites. One of the outputs of the local and regional accommodation assessment process will be the level of additional pitches that need to be provided within the area. This number will go forward to the Regional Planning Body who will take a strategic overview of numbers and consult on revisions to the Regional Spatial Strategy allocating pitch numbers for each authority to deliver on through the identification of appropriate land.

³ See paragraphs 8-10 of the associated consultation paper for an explanation of the new planning definition.

20. The Government identified the need for a specific duty to assess the accommodation needs of gypsies and travellers because they have been overlooked in the past in many areas. Without this duty it is likely that the distinctive accommodation needs of gypsies and travellers will continue to be overlooked and appropriate provision won't be made.

Option 2 – Use proposed definition

21. As set out above, the formulation which is being consulted upon has been informed by earlier consultation on a proposed 'planning definition'. The proposed housing definition is as follows:

Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism and/or caravan dwelling.

22. The proposed definition is deliberately broad to ensure that local authorities understand the wide range of need that exists amongst the gypsy and traveller community and not just those that have specific land use requirements arising from those needs. Understanding the wide range of need that may exist will help inform the wider policies and responsibilities of local authorities towards the group identified, whilst at the same time ensuring that the authority can strategically plan for current and future needs. For example, the accommodation needs assessment may help local authorities to understand better any particular issues faced by this group. The process will help to identify how any problems can be overcome and the ways in which housing may be made to work better for them. This could reduce the numbers wishing to leave housing for sites, and encourage some of those currently on unauthorised sites to move into housing where that is a suitable option for them.
23. Assessing the needs of a wider group does not imply that a particular course of action should be followed to meet that need. Local authorities must prioritise and balance the needs of 'gypsies and travellers' with those of the wider population, although in many areas addressing the backlog of need may be a priority. It should also be noted that, as for other groups, the accommodation assessment process focuses on need rather than preference or aspiration.

Option 3 – Using the planning definition for the accommodation assessment

24. As set out above, a definition of gypsies and travellers for planning purposes was consulted upon in December 2004. The definition contained in the revised planning circular is as follows:

Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.

25. The definition will be relevant when people apply for planning permission in those areas of land which have been designated for use by gypsies and travellers.
26. If the planning definition were to be mirrored in housing legislation, local authorities would only be under a duty to assess the accommodation needs of those people who were judged to fall within the above definition. By implication, such assessments would not capture the wider range of need that may exist e.g. amongst ethnic gypsies and travellers who may live in housing, but whose cultural traditions may give rise to forms of need other than land use requirements.
27. The housing definition needs to be a pragmatic strategic one which enables local authorities to fully understand the accommodation needs of a group of people whose needs have frequently been overlooked in the past. The Government believes that taking a narrower view, as would be the case if the planning definition was used, would not give local authorities a full picture of the accommodation needs of the whole gypsy and traveller community. This would mean that those that have a need for sites but that don't fall within the above definition would not have their needs assessed nor planned for, which could result in continued levels of unauthorised camping and development.

Costs and Benefits

28. The proposal which is being consulted upon here impacts on gypsies and travellers themselves, local authorities and in some cases may be relevant for travelling show people, who may have similar accommodation requirements, particularly in Winter.

Race Equality Impact Assessment

29. A Race Equality Impact Assessment will be completed as part of the consultation process and published on the ODPM website and will be informed by a specific consultation question.

Rural Impact Assessment

30. It could be argued that the scope of the definition will have an impact on rural areas. The accommodation assessment process is part of a wider policy framework which will result in additional provision of sites in appropriate locations.
31. If a narrower definition of 'gypsies and travellers' is used, less need for pitches might be identified resulting in less land being allocated in local plans (some of which might be in rural areas). However, if the definition is too narrow it might not identify those people with genuine requirements for caravan pitches. If enough authorised land is not identified and there continues to be high levels of unauthorised camping there is likely to be a negative impact on the countryside. For example, gypsies and travellers may continue to camp on or develop Green Belt land without planning permission. Where gypsies and travellers are camping unlawfully they are much less likely to receive local authority services such as waste collection. This can result in fly-tipping making the environment unattractive and damaging wildlife.
32. It is therefore important that the wider policy framework results in the delivery of adequate areas of land to provide for those people with a need for authorised land on which to station their caravan.

Breakdown of costs and benefits

Option 1 – Do nothing

33. As stated earlier, the outputs from local and regional accommodation assessments feed into the wider planning framework and inform the amount of land which needs to be designated for gypsy and traveller sites. By doing nothing, the section of the Housing Act which makes the accommodation assessment compulsory will not be enacted and therefore local authorities may choose not to conduct assessments. Therefore doing nothing impacts on the ability of the wider planning system to deliver appropriate levels of land. The impacts under each of the headings below are therefore based on the lack of the wider system to deliver appropriate land.

Economic

34. If alternative, appropriate land is not available for those gypsies and travellers who have no authorised place to live, then unauthorised camping and development is likely to continue resulting in local authorities having to incur ongoing costs in support of enforcement activity. Private landowners may also have to use their own money to remove gypsies and travellers from their land.
35. Enforcement does not solve the causes of unauthorised camping, and in many cases merely moves the problem elsewhere. The costs of enforcement are therefore repeat ongoing costs.
36. If the relevant sections of the Housing Act 2004 are not enacted, local authorities will not be specifically required to conduct accommodation assessments of 'gypsies and travellers' or include 'gypsies and travellers' in their housing strategies. This will save some money in terms of staff time working on both the accommodation assessment and housing strategy, although this saving is likely to be far outweighed by the amount of staff time spent on enforcement against unauthorised sites.

Environmental

37. If relevant sections of the Housing Act are not commenced then the ability of the planning system to deliver appropriate land will be compromised and unauthorised camping will continue. Unauthorised camping is sometimes in highly inappropriate locations such as Sites of Special Scientific Interest or Green Belt land. Where this is the case, gypsies and travellers are usually moved on quickly but sometimes individual sites are damaged or spoilt by rubbish. There are often complaints of fly-tipping and rubbish left around unauthorised encampments. In some cases the rubbish may be left by the gypsies and travellers and in others unauthorised encampments tend to attract fly-tipping from the wider community.

Social

38. Unauthorised encampments and developments are often the source of significant community tension between gypsies and travellers and the settled community. Local people can believe that it is one rule for gypsies and travellers and another for the wider community. Continued unauthorised camping is therefore likely to fuel this community

tension. Gypsies and travellers are one of the most socially excluded groups with poor life outcomes in relation to the wider population. Although approaches between local authorities vary, those who camp at the side of the road often have particularly poor access to education and health services.

Option 2 – Using a broad definition

39. The proposed definition is intended to be a pragmatic strategic one that enables local authorities to understand the current and possible future accommodation needs of the group and plan strategically to meet that need.

Economic

40. Using a broad definition of ‘gypsies and travellers’ to carry out an accommodation assessment and produce a strategy may cost an authority slightly more money than if a narrower definition was used, since the authority might have to use a variety of means to reach those ‘gypsies and travellers’ that are not immediately identifiable (e.g. those in housing). However, if the council is fully informed about the needs of ‘gypsies and travellers’ in the area and can plan strategically to meet that need, particularly through the identification of appropriate land for them to live on, then the amount of unauthorised camping and development is likely to decrease. This means that the costs of producing accommodation assessments and strategies are likely to be offset and exceeded by the savings generated through no longer needing to take enforcement action against unauthorised sites.

Environmental

41. The identification of a wide range of need within an area will inform the number of additional pitches that may be required to accommodate gypsies and travellers. It is in the interests of the authority to allocate an appropriate amount of land based on need, to ensure that gypsy and traveller sites are provided in sustainable and appropriate locations. The consequence of ‘under provision’ (which may occur if a narrower definition is used) is that gypsies and travellers may continue to camp in inappropriate locations e.g. school playing fields, Green Belt land, because there are not enough authorised places to live. When an authority is producing Development Plan Documents (DPDs) it will be required to consult on the locations of any sites, thus ensuring that the environmental and sustainability impact of a site being developed is considered.

Social

42. The presence of gypsies and travellers is most likely to be a source of tension within an area, where gypsies and travellers are on unauthorised sites. The use of a broad definition should result in the provision of enough land to accommodate the wide range of need within an area and is likely to remove the need to camp on unauthorised land – in turn this should improve community relations in an area. Whilst the creation of permanent sites is often contentious and results in strong local opposition, one study⁴

⁴ Neighbours’ Views of Official sites for Travelling People. Planning Exchange 1996.

suggested that the fears of people were not realised when a permanent site was established. People's fears were usually based on their experience of unauthorised encampments, not official sites. Those living on well established and managed sites often have good relations with the local community and take part in wider community schemes e.g. neighbourhood watch. The provision of accommodation on a stable long term basis also means that gypsies and travellers living on sites are much more likely to have better access to schools, healthcare and other services.

Option 3 – Using a narrower planning definition for the accommodation assessment

Economic

43. If the planning definition of gypsies and travellers was used then local authorities would be required to assess a narrower range of need than under option 2. Local authorities may make some cost savings in comparison to option 2 since they would be required to reach a smaller target audience when assessing need and producing strategies to meet that need – although it may be difficult and time-consuming to distinguish between those gypsies and travellers who should have their needs assessed and those who shouldn't. However, using a narrow definition may fail to capture some need – for example gypsies and travellers who are currently travelling and have a provable need for pitches on appropriate land but don't fall within the planning definition. As the pitch numbers identified by the accommodation assessment feed into the wider planning process this could result in under provision of appropriate land, and in turn mean that unauthorised camping and development continues. Enforcing against this camping costs money and is a repeat cost which is likely to exceed any saving made by having a narrower definition.

Environmental

44. Although using a planning definition will result in additional sites being provided in appropriate locations, it is not likely to be enough to cater for the range of need for sites that may exist – for example among gypsies and travellers who are currently travelling but do not fall under the planning definition. Under provision could result in continued levels of unauthorised camping and development, which often occurs in inappropriate locations, and therefore has a negative impact on the environment.

Social

45. As highlighted above, additional provision of authorised sites should reduce the levels of unauthorised camping and thus contribute towards better community relations. Although again, using a narrower definition to identify need for sites may result in under provision for the reasons stated above. The continued presence of unauthorised sites is likely to give rise to community tensions. Again as highlighted earlier, those gypsies and travellers that have no authorised place to live are likely to have poorer access to services than those living on authorised sites.

Small Firms' Impact Test (SFIT)

46. At present, unauthorised camping by gypsies and travellers sometimes occurs on business premises e.g. farm land, car parks etc. This can negatively impact on businesses since unauthorised camping may affect the operation of a business and the owners of premises may have to pay legal costs to remove gypsies and travellers from the site and may also have to pay eviction costs, should bailiffs be required. Therefore the greater the reduction in unauthorised camping, the more likely the positive impact on small businesses. The Government believes that the use of the broader definition for the purposes of the Housing Act 2004 is most likely to result in the greatest reduction in unauthorised camping and therefore have the greatest benefit for small firms.
47. Some gypsies and travellers themselves may run small businesses from their place of residence. Therefore in terms of the wider policy framework, a broad definition of 'gypsies and travellers' should result in an appropriate level of new sites being delivered, some of which may have adjoining business premises. The provision of new sites should therefore have a positive impact on the small businesses run by gypsies and travellers in that there will be a continuity of premises.
48. The Small Business Service has been consulted and is content with the above assessment of impact.

Competition assessment

49. This proposal mainly affects public services and therefore has no impact on competition.

Enforcement, sanctions and monitoring

50. The purpose of the new mechanisms that have been put in place is to mainstream the needs of gypsies and travellers into the same systems that are used for the rest of the population.
51. Pitch numbers identified from local accommodation assessments will go forward to the Regional Planning Body for consideration. The Regional Planning Body will then provide a strategic overview of need in the region and the Regional Spatial Strategy will set out pitch numbers for each local authority to deliver. Even if councils fail to complete accommodation assessments and produce pitch numbers, they will still be expected to allocate land within their areas for gypsy and traveller sites, subject to the level of need in the region. It is therefore in the interests of local authorities to accurately identify the level of need within their own area to inform revisions to the Regional Spatial Strategy.
52. Local housing strategies must include information on special needs groups, including, where appropriate, gypsies and travellers. Section 87 of the Local Government Act 2003 provides the Secretary of State not only with the power to compel a local housing authority to produce a housing strategy, but also to impose requirements on the content of that strategy where he sees fit to do so.

53. In the context of the wider policy framework, if local authorities fail to address gypsy and traveller site provision, the Secretary of State has powers under the Planning and Compulsory Purchase Act 2004 to direct councils to address this issue in their Development Plan Documents (DPD). In order to identify an appropriate amount of land that needs to be allocated, the local authority will have to have an understanding of the level of need in the area and therefore would have to carry out an accommodation assessment to inform the production of a DPD.

Monitoring and Review

54. The Gypsy and Traveller Unit has a dedicated resource based in the Government Offices of each of the three regions where there are significant levels of unauthorised camping and development. Members of the Regional Implementation team will be working with local authorities and planning and housing colleagues within the Government Offices to monitor progress on accommodation assessments, strategy preparation and addressing site provision more generally.
55. The Government has produced guidance to assist local authorities when carrying out accommodation assessments and guidance on preparing strategies will be issued in due course.
56. The success of the wider policy framework, of which accommodation assessment is an essential part, will be monitored through a number of means. ODPM will be monitoring the take up and spend of Gypsy and Traveller Sites Grant, which will result in additional socially rented provision. As local authorities begin to allocate appropriate land in their Development Plan Documents and provide new authorised sites we would expect to see the levels of unauthorised camping and development decrease. This will be monitored through the Gypsy and Traveller Caravan Count, conducted by local authorities on behalf of ODPM.