



Law Society
of Scotland

Consultation Response

Local development plan evidence report - defining
Gypsies and Travellers: consultation

15 February 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Equalities Law sub-committee welcomes the opportunity to consider and respond to the Scottish Government's consultation: Local development plan evidence report - defining Gypsies and Travellers. The sub-committee has the following comments to put forward for consideration.

General Comments

There appears to be reasonable grounds for introducing this definition as a piece of positive action to remedy the ongoing disadvantage faced by the Scottish Gypsy and Traveller communities in relation to planning. Adoption of a specific definition for the purposes of planning is to be welcomed to ensure that the needs of the gypsy and traveller communities are recognised in the planning process. It has long been recognised that these communities have not been well served in the planning process and steps have been required to remedy this. For example, in 2013/14 the Scottish Government equalities unit established a specific programme looking at the issues surrounding Scottish Gypsies and Travellers. This arose from a belief that that, whilst progress had been arguably made in relation to other equalities groups, abuse of gypsies and travellers was the last 'acceptable racism' in UK.

At that time, Scottish local authorities did not appear to routinely review the needs of Scottish Gypsies and Travellers in planning processes or, if they did, they did not identify action to resolve the issues. Where accommodation / sites were made available (and many local authorities had none) these were often in very poor condition. In many cases local authorities seemed reluctant to address the needs of Scottish Gypsies and Travellers. This was, in part, due to pressure against local elected officials from residents fearing the effect of Scottish Gypsies and Travellers being accommodated near them.

It is noted that the Scottish Government has continued to take action on this issue, introducing guidance on 'minimum sites standards and site tenants' core rights and responsibilities' in 2015, announcing a '10-point action plan' to involve Gypsies and Travellers in planning in 2019 and introducing a 'Gypsy/Traveller Accommodation Fund' in 2021, amongst other actions.

Consultation Questions

Question 1) The Scottish Government (Planning, Architecture and Regeneration Division) is considering the following statement to define the Gypsy and Traveller community for planning purposes:

"For the purposes of section 16B(14) of the Town and Country Planning (Scotland) Act 1997 (evidence report for preparation of local development plan), "Gypsies and Travellers" means-

a) persons of or from a nomadic cultural tradition whatever their race or origin, including-

(i) persons who have ceased to travel temporarily or permanently as a result of their own or their family's (including dependants) educational needs, health needs, or old age,

(ii) members of an organised group of travelling show people or circus people (whether or not travelling together as such),

(iii) persons who require the provision of land for temporary or permanent living (including the use of caravans as defined in section 16 of the Caravan Sites Act 1968),

b) persons with a cultural tradition of nomadism."

a) Do you agree with this statement?

Yes

Comment: The definition proposed is consistent with a definition being used over the last 10 years by the Scottish Government in its discussions with partners regarding the Scottish Gypsy and Traveller community. As this is a definition that has been in use for a decade, it is one that should be recognised and understood by statutory bodies.

b) If no, what changes would you seek?

N/A

Question 2) What do you think councils should do to better involve the Gypsy and Traveller communities in planning consultations and processes?

There is no equivalent definition of Gypsies and Travellers in the Equality Act 2010. Though Scottish travellers, Roma and Irish travellers have all been held to satisfy the test set out by the House of Lords in *Mandla v Dowell-Lee*¹ to be considered a group defined by reference to ethnic origin (and protected, therefore, by the race provisions of the Equality Act), other traveller groups claiming protection under the

¹ [Mandla \(Sewa Singh\) v Dowell Lee \[1982\] UKHL 7 \(24 March 1982\) \(bailii.org\)](#)

Equality Act would likely have to first persuade the tribunals/courts that they too satisfy the elements of the test set out in *Mandla v Dowell-Lee* test to access Equality Act protections.

On the one hand, having a definition (of appropriate scope) in the 2019 Act may be helpful to planning authorities insofar as it alerts them to the nature of the groups whose interests they need to take into consideration. However, planning authorities will have very similar duties to take the needs of Gypsies and Travellers into account under their Public Sector Equality Duty (“PSED”) to have due regard to the need to advance equality of opportunity and eliminate discrimination. The Gypsies and Travellers relevant for the PSED duty, however, will not necessarily map directly on to the those which satisfy the definition in the 2019 Act since the relevant test for the Equality Act is that set out in *Mandla v Dowell-Lee*. There is perhaps a risk, therefore, that planning authorities will look to the 2019 Act definition of Gypsies and Travellers when deciding whose needs require to be considered – and omit to consider whether others might be relevantly protected under the PSED and the ethnic origin provisions in the Equality Act.

Question 3)

a) Do you believe that this (or any) definition will have an impact on businesses?

b) If so, do you consider this to be positive or negative and why?

We have no comment to make in response to these questions.

4) a) Do you believe that this (or any) definition will have an impact on certain groups of protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex/gender, sexual orientation)?

Yes

b) If so, do you consider this to be positive or negative and why?

Negative (potential)

Comment: There is the potential for negative impacts if the risk identified in our answer to question 2 of local authorities omitting to consider whether others might be relevantly protected under the PSED and the ethnic origin provisions in the Equality Act materialises.



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