

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	Changes to Schedule 1 to the Mobile Homes Act 1983, introduced by the Mobile Homes Act 1983 (Amendment of Schedule 1) (Scotland) Order 2013
Summary of aims and desired outcomes of Policy	The aim of the legislative change is to improve statutory protections for residents who choose to live permanently in mobile homes, the outcome of which will be to improve quality of life, to free those residents from harassment, and to improve the clarity of the responsibilities of both the residents and the site owners.
Directorate: Division: team	Directorate for Housing, Regeneration and Welfare; Housing Services and Regeneration Division; Housing Options and Services Unit.

Executive summary

1. The aim of the legislative change is to improve statutory protections for residents who choose this form of living, the outcome of which will be to improve quality of life, to free those residents from harassment, and to improve the clarity of the responsibilities of both the residents and the site owners.

2. The analysis of the evidence gathered to inform the policy change has highlighted that in relation to residential mobile home living the two key (overlapping) groups with protected characteristics that will be impacted on are the elderly, and ill or disabled, who have chosen this form of lifestyle.

3. The Scottish Government has given due regard to section 149(1) of the Equality Act 2010 in the development of this legislative change. The positive impact on introduction of the Order will be to improve the life of all residents living permanently on residential mobile homes sites, many of whom are elderly and as such may be considered to be vulnerable.

4. The Scottish Government has ensured that the protections provided by this Order will (as far as they are relevant) apply to Gypsies/Travellers. Members of those communities will, in the main, be in the same legal position as those living on permanent mobile or park home sites.

Background

5. The implied terms, set out in Part 1 of Schedule 1 to the Mobile Homes Act 1983, are contractual terms implied by that Act into the pitch agreement between a resident of a mobile home and the owner of the site where the home is stationed, which permits the resident to station his or her mobile home on the site and occupy it as a residence. Part 2 of Schedule 1 has a list of matters concerning which additional terms can be implied by the courts. Changes to Part 2 remove particular matters from the list of those the court can imply terms about, as the Order will mean those matters will now be covered in the implied terms in Part 1. The aim of the legislative change is to improve statutory protections for residents who choose this form of living, the outcome of which will be to improve quality of life, to free those residents from harassment, and to improve the clarity of the responsibilities of both the residents and the site owners.

6. The implied terms were developed to protect residents living in permanent residential mobile homes, renting the pitch on a licensed site from a private site owner. However the sector has developed significantly with the emergence of luxury park home retirement style villages. This niche section of the housing sector now accommodates approximately 5,400 residents in Scotland, many of whom can be considered vulnerable due to their age or ill health.

7. Since the Local Government etc (Scotland) Act 1994 local authority sites providing accommodation for Gypsies / Travellers have fallen within the definition of protected site, and as such the implied terms have applied in relation to agreements for pitches on those sites.

The Scope of the EQIA

8. This EQIA is focussed on the changes introduced by the Order, which will improve statutory protections for residents who choose this form of living.

9. We ran two consultation exercises, the first one on our proposals in general from January to March 2011. A total of 67 consultation responses

were received, and no equalities issues were raised through this consultation process. We then held a public consultation from August to September 2011 specifically on our proposals as they would apply to Gypsies/Travellers. We received 42 responses, and again no specific equalities issues were raised. A consultation workshop was also held with a range of local authorities and local authority Gypsy/Traveller Site Managers. In addition to this we engaged a representative of the Gypsy/Traveller community who undertook direct communication with members of the Gypsy/Traveller communities. This involved workshop discussion and support to complete response forms.

10. The outcome and messages received through this consultation have been published on the Scottish Government website, and are reflected in the terms of the Order as it applies to the Gypsy/Traveller Community.

11. The Scottish Government has previously undertaken a twice yearly count of Gypsies/Travellers. However the latest data relates to 2009 as the Gypsy/Traveller count is currently under review. The 2009 count found that;

- There were 31 Council/Registered Social Landlord (RSL) sites across Scotland. 28 of these operated all year round and 3 were only open in the summer.

- These sites provide a total of 478 pitches (of which 345 (72%) were currently tenanted, 61(13%) were available for let but untenanted and 72 (15%) were unavailable for letting. There were 294 (43%) households living on Council/RSL sites, 161 (24%) on private sites and 229 (33%) on unauthorised encampments.

- Of the 31 Council/RSL sites, 8 were operating at full capacity. All 3 seasonal sites were in use at the time of the Count while the site in Glasgow remained unused.

- Around 225 (64%) of households based on Council/RSL sites had been tenants for over a year. 31% of all households had held their tenancies for 5 years or more.

- There were 22 private sites at the time of the Count, 17 of which operated all year round and 5 of which were only open in the summer. 161 households were living on private sites, with the great majority 148 (92%) having been there for 4 weeks or longer.

Key Findings

12. The analysis of the evidence gathered to inform the policy change has highlighted that in relation to residential mobile home living the two key (overlapping) groups with protected characteristics that will be impacted on are the elderly, and ill or disabled, who have chosen this form of lifestyle.

13. The Scottish Government does not consider that there is any provision within the Order which will have a negative impact on any of the protected characteristics. By the very nature of the introduction of the Order, to improve protections for all residents, the revised legislation will have positive implications for all those living in residential mobile homes irrespective of their personal characteristics.

14. It could be argued that removing the site owner's ability to approve the sale of a property and assignation of agreement interferes with their right to say who has a right to stay on their land. However, after giving full consideration to European Convention on Human rights, specifically Article 1 Protocol 1 which relates to protection of property, it was concluded that interference can be justified in the public interest and can be shown to be proportionate and justified.

15. In the interests of equality and in giving full consideration to the rights of Gypsies/Travellers as a particular ethnic group, it is right that the Scottish Government legislates appropriately to meet the requirements of this way of life, while ensuring that Gypsies/Travellers who choose to live more permanently on local authority, Registered Social Landlord or private sites are afforded almost all the same statutory rights and legal protections as the residents of permanent mobile or park home sites.

16. In giving consideration to the outcome of the consultation and in support of existing contractual relationships, the Scottish Government is ensuring that the new implied terms will apply to Gypsies/Travellers, so that they will have the same statutory protections as the residents of permanent mobile homes, with only two exceptions. These exceptions are to the provisions in the Order relating to the sale and assignation of the agreement, and gifting of a mobile home and assignation of the agreement to a family member. These will not apply to the Gypsy/Traveller community, to reflect what happens in practice. Due to the lifestyle and

mobile nature of a Gypsy/Traveller owned caravan, these provisions are not relevant to that community.

17. However, on local authority sites in particular where the site occupancy agreements are based on the Scottish Secure Tenancy, Gypsies/Travellers already have the benefit of improved protections and as such the introduction of this Order will have neither a positive or negative impact, but will ensure that the terms implied into Gypsy/Traveller agreements are relevant in relation to the mobile nature of their privately owned homes or their rented accommodation agreements.

Recommendations and Conclusion

18. The evidence has highlighted the importance of giving full consideration to the protected characteristics of age and illness/disability in development of the policy, and the needs of the Gypsy/Traveller community.

19. Care has been taken not to impact on the contractual arrangements already established on local authority Gypsy/Traveller sites, in relation to the mobile nature of home owning Gypsies/Travellers, or the tenancy agreements of those renting properties from local authorities. However the overarching principle of ensuring that Gypsies/Travellers are afforded the same statutory conditions and legal protections as those living in permanent mobile home sites has been maintained.

20. Provisions in the Order relating to the sale and assignation of the agreement, and gifting of a mobile home and assignation of the agreement to a family member, will not apply to the Gypsy/Traveller community. This reflects what happens in practice. Due to the lifestyle and mobile nature of a Gypsy/Traveller owned caravan the terms are not relevant to that community. The Scottish Government has ensured that the protections provided by this Order will insofar as they are relevant apply to Gypsies/Travellers. Members of those communities will, with the two exceptions mentioned, be in the same legal position as those living on permanent mobile or park home sites.

21. Other changes made to the policy to ensure equalities issues are addressed include removing the site owner's right to approve the sale of a property and assignation of agreement. This will remove the main opportunity an unscrupulous site has to bully, harass and victimise a resident. The Scottish Government has also enhanced the security of

tenure protection of residents where there may be occasions that they are unable to live in their home as their only or main residence, and introduced provision which means that the site owner must recognise a qualifying resident's association.

22. The Scottish Government has given due regard to section 149(1) of the Equality Act 2010 in the development of this legislative change. The positive impact on introduction of the Order will be to improve the life of all residents living permanently on residential mobile homes sites, many of whom are elderly and as such may be considered to be vulnerable.

23. The effect of the policy will be monitored by on-going engagement with the Residential Mobile Homes Stakeholder Group, including residents, industry and local authorities. The volume of related Ministerial and direct correspondence will also be monitored.

Scottish Government
8 May 2013