

**EXPLANATORY MEMORANDUM TO THE  
TOWN AND COUNTRY PLANNING (TEMPORARY STOP  
NOTICE)(ENGLAND) REGULATIONS 2005**

**2005 No.206**

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1. These regulations restrict the use of temporary stop notices (TSNs) in certain circumstances against caravans occupied as a main residence.

**3. Matters of special interest to the Joint Committee on Statutory Instruments/Select Committee on Statutory Instruments**

3.1. None.

**4. Legislative Background**

4.1. These regulations are being made to ensure the effective and appropriate use of TSNs, a new planning enforcement provision introduced by section 52 of the Planning and Compulsory Purchase Act 2004 (the Act). The coming into force of these regulations will coincide with the commencement of section 52 of the Act.

4.2. Section 52 was debated twice in the House of Lords during the passage of the Act. Hansard references are as follows

- House of Lords, Lord Rooker – 16 March Columns 210-212
- House of Lords, Lord Rooker – 25 March Columns 926-928

4.3. The Joint Committee on Human Rights also reported on this section of the Bill in its Eighth Report of 2003/04, to which there was a response from Lord Rooker in the Tenth Report, and a further response from the JCHR in the same report.

**5. Extent**

5.1. This instrument applies to England only.

**6. European Convention on Human Rights**

6.1. This instrument is subject to negative procedure and does not amend primary legislation. Therefore no statement as to compatibility has been made.

## 7. Policy background

- 7.1. The Planning and Compulsory Purchase Act 2004 gives planning authorities a new general discretionary power to be able to issue a TSN at the start of unauthorised development, before an enforcement notice is served, thus speeding up the process of enforcement.
- 7.2. During Autumn 2002, ODPM carried out a review of the planning enforcement regime (review of the Planning Enforcement System in England). Most consultees were satisfied that the system of planning enforcement was basically sound although there were some ways in which it could be improved. A perceived difficulty is that planning authorities do not have any powers that operate immediately to suspend an activity that is in breach of planning control.
- 7.3. The new TSN provisions permit planning authorities to require the immediate cessation of a breach of planning control for a limited period of 28 days. During this period, the planning authority would assess the circumstances and consider whether enforcement action would be appropriate.
- 7.4. TSNs apply to persons in breach of planning control but does not prohibit the use of any buildings as a dwellinghouse. However a caravan is not a building and therefore in respect of caravans, TSNs could be applied to persons residing in caravans on land without planning permission, in breach of planning control.
- 7.5. The government made a commitment not to commence the TSN provisions until regulations had come into effect to give persons living in caravans similar protection to those who live in houses. Ministers have since decided that there may be circumstances in which TSNs should be applied without restriction.
- 7.6. A consultation paper which set out these proposals in detail was issued on 29 November, with a closing date for comments by 26 January. 90 responses were received in response to this consultation.
- 7.7. The comments received fell into 6 main categories
  - that TSNs would be ineffective in dealing with flagrant breaches of planning control and the planning enforcement system is too slow
  - that the caveat included in the draft regulations

“unless the local planning authority considered that the harm to amenity caused by the stationing of caravans is so serious.....”

was vague and did not provide sufficient certainty. This wording has now been changed and examples of the breaches of control that may fall within the new caveat will be set out in the accompanying Circular
  - that there should be a defined limit on the number of caravans permitted on a site. We do not believe that there should be an arbitrary maximum. Local planning authorities, having regard to local circumstances will be able to judge whether the harm to a compelling public interest outweighs the benefit of permitting the caravan/s to remain.
  - that the restrictions of the use of TSNs should be relaxed.
  - that TSNs should not be introduced as there is a lack of alternative sites for Gypsies and Travellers.

- Other comments relate to the primary powers suggesting that the 28 day period be increased, and that the circumstances in which compensation is payable should be further limited.
- 7.8. The regulations restrict the use of TSNs against caravans. They cannot be used against caravans already on a site when a TSN is issued if the caravan is a main residence (except in the circumstances set out below). The TSN can prevent further caravans coming onto a site or further development being undertaken on the site. This restriction on the use of TSNs protects those living in caravans as a main dwelling.
- 7.9. Since the primary provisions were introduced, Ministers have considered further the most appropriate and proportionate approach on the degree to which the TSN regime should give protection to those stationing caravans on land. Having reviewed the matter carefully, including the circumstances in which the unauthorised development of caravan sites occur and the damage they can cause, Ministers have concluded that in cases of very serious harm, TSNs should be capable of being used in respect of caravans to require their removal from a site. Ministers consider that the forms of immediate harm which may be caused by the sudden stationing of caravans on land in breach of planning control may be so severe that a complete exemption from the TSN regime would not be justified. Therefore, in exceptional circumstances where 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, for the period the TSN has effect, TSNs can be used to require that the breach stop immediately.
- 7.10. The regulations make clear that a TSN 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. However, TSNs may be used in cases where 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 TSN has effect. These circumstances would need to be very serious and might include circumstances where the only access was on a hairpin bend creating serious traffic safety concerns, or where the site was a protected habitat.
- 7.11. It is the view of the Secretary of State that the regulations are compatible with Convention rights, and in particular with both Articles 8 and 14 of the European Convention on Human Rights. There are objective reasons which justify the different approaches to buildings used as dwellinghouses and caravans used as a residence. The difference between the approaches to buildings and caravans used as a main residence arises from the different nature of the development in each case and from the different effects on the environment.
- 7.12. The distinction is made between buildings and caravans, in part, because of the nature of development. The immediate detrimental effect of moving residential caravans onto land will almost always be significantly greater than an existing building, being used for residential purposes.

- 7.13. There may be impacts from the occupation of a building used as a residence, but these are very unlikely to be as severe as the continuing harm which will be caused by a residential caravan site.
- 7.14. There are many examples of unauthorised development in the form of stationing of caravans by Gypsies and Travellers (including on land they own). Most are refused planning permission and only around 25% are successful on appeal.
- 7.15. The problem of unauthorised development by Gypsies and Travellers in breach of planning control has been the subject of widespread media attention.
- 7.16. The change is both politically and legally important. It provides a new power to local planning authorities and supports the government's aim of treating Gypsies and Travellers in a fair and responsible way while recognising the rights of others and the importance of ensuring that the planning system is not brought into disrepute, and that the system has the means by which to deal with unlawful development.

## **8. Impact:**

- 8.1. A Draft Regulatory Impact Assessment was prepared and published as part of the public consultation undertaken. The assumptions made in the Regulatory Impact Assessment are unchanged following receipt of consultation responses. The Regulatory Impact Assessment is attached.

## **9. Contact**

Alison Bowerbank at the Office of the Deputy Prime Minister Tel: 0207 944 3966 or e mail [Alison.bowerbank@odpm.gsi.gov.uk](mailto:Alison.bowerbank@odpm.gsi.gov.uk) can answer any queries regarding the instrument.

# **Final Regulatory Impact Assessment**

## **Temporary Stop Notice - Regulations**

### **Purpose and intended effect of measure**

1. The Planning and Compulsory Purchase Act 2004 gives local planning authorities (LPAs) a new discretionary enforcement power to be able to issue a temporary stop notice (TSN) at the start of unauthorised development, before an enforcement notice is served, thus speeding up the process of enforcement.
2. It was agreed that before commencement of these provisions, regulations would be introduced to restrict the use of TSNs in certain circumstances. The aim is to ensure that the TSN may not in ordinary circumstances prohibit the continued stationing of a caravan on land where the caravan is the main place of residence of the occupier of the caravan. However a TSN may be used to prohibit the stationing of any additional caravans on land, on which there is already stationed a caravan. The TSN may also be used to stop other development associated with using the site for further caravans and any further work developing the site.
3. TSNs may be used against the continued stationing of a caravan on a site in exceptional circumstances where the risk of harm to the local amenity is considered so serious as to outweigh the benefit to the occupier of the caravan.

### **Background**

4. Part VII of the Town and Country Planning Act 1990 (TCPA) confers powers upon local planning authorities to take enforcement action in respect of breaches of planning control.
5. A stop notice can only operate in tandem with an enforcement notice. Where an enforcement notice is served to remedy a breach of planning control, the LPA may also require the breach to cease immediately and may serve a stop notice.
6. In essence the stop notice prohibits the activity set out in the enforcement notice until the enforcement notice has been complied with. This means that where an appeal is made against the enforcement notice (EN) the EN is suspended until the outcome of the appeal, but the stop notice will continue to operate. A stop notice cannot prohibit the use of a building as a dwellinghouse (section 183(4)).
7. The stop notice may be served after the EN is served but it must take effect before the EN takes effect. The stop notice itself must set out the date on which it takes effect which must not be earlier than three days after the notice is served. The stop notice continues to operate until the withdrawal of the EN, the EN is quashed or the EN is complied with.
8. During Autumn 2002, ODPM carried out a review of the enforcement regime. (Review of the Planning Enforcement System in England). Most consultees were satisfied that the system of planning enforcement was basically sound although there were some ways in which it could be improved. The time enforcement can take from the issue of an EN by the LPA to the resolution of any appeal that is lodged needed to be improved.
9. A perceived difficulty is that LPAs do not have any powers that operate immediately to suspend an activity that is a breach of planning control. With all enforcement actions there is a delay before they take effect. There are 28 days to comply with ENs, and three days before a stop notice takes effect. Even with an injunction, in most cases, notice of application for the injunction must be given.

10. The new TSN provisions permit LPAs to require the immediate cessation of a breach of planning control for a limited period of 28 days. During this period, the LPA would be able to assess the circumstances and consider whether enforcement action would be appropriate.
11. The TSN provision applies to persons in breach of planning control but does not prohibit the use of any buildings as a dwellinghouse or the carrying out of an activity of a description or in circumstances prescribed in regulations (section 171F(1)(b)). However, a caravan is not a building and therefore, in respect of caravans, and in the absence of any applicable regulations, TSNs could be applied to persons residing in caravans on land without planning permission.
12. The Government made a clear commitment not to commence the TSN provisions until regulations come into effect to give persons living in caravans (Gypsies and Travellers) similar protection as those who live in dwelling houses.
13. Nonetheless, on reflection, the Government has decided that there remain some situations in which the differences between caravans and buildings are such that some limited availability of TSNs is appropriate in the case of caravans. There are objective reasons, which justify the different approaches to buildings used as dwellinghouses and caravans used as a residence. The distinction between the approaches to buildings used as dwellinghouses and caravans used as a main residence arises from the different nature of the development in each case and from the different effects on the environment.
14. The detriment caused by caravans moving onto land is more immediate than an existing building already situated on land. With buildings, there is an opportunity for LPAs to take enforcement action at the stage when the building is built, prior to it being occupied as a residence, whereas, with caravans, this initial opportunity for enforcement will not be available. Where a building has been erected over time without enforcement action being taken, the occupier may have a legitimate expectation that he will be able to make use of it.

## **Risk Assessment**

15. The proper balance of seeking to control unauthorised development while at the same time recognising the need for Gypsies and Travellers to find a legal place to stay would be undermined if these regulations were not made, and the powers commenced without conditions.

## **Options**

### *Option 1*

16. Do nothing. Do not commence the powers in the Act. This is considered as a baseline option.

### *Option 2 - preferred option*

17. Allow LPAs to use the TSN provisions subject to conditions set out in regulations. The regulations are provided in response to concerns that the provisions, if used without conditions, could have a disproportionate impact on people who live in caravans as their main residence.
18. We also considered commencing the TSN provisions without additional regulations, however this was not considered a feasible option as it would be contrary to the Government's commitment to Parliament.

## **Benefits**

### *Economic*

#### *Options 1 and 2*

19. We have not identified any economic benefits associated with either option, except that LPAs would not have to retrain their staff to deal with the new provisions if they were not commenced. We did however invite consultees to consider any additional benefits that have not been identified.

### *Environmental*

#### *Option 2*

20. The regulations allow LPAs to use the TSN powers to prevent further development where a caravan site has been established, and to prevent intensification of the use of the site. The benefits of option 2 will be the protection of environmentally sensitive or valuable land, reduction in noise pollution, or a reduction in any other cost of development which the planning system aims to minimise.

#### *Option 1*

21. There would be no environmental benefits if the powers were not commenced.

### *Social*

22. There is scope for TSNs to reduce the social problems caused by caravan sites developing in an uncontrolled fashion.
23. There would be no social benefits if the provisions were not commenced.

## **Costs**

### ***Economic***

24. TSNs do not increase the costs of applying for planning permission.
25. Compensation is payable if the activity which is specified in the notice is authorised by planning permission granted before the notice was issued; or a development order or local development order; or if a certificate in respect of the activity is issued under section 191 or granted under that section by virtue of section 195; or if the authority withdraws the notice, except where the notice is withdrawn because planning permission has been granted. However since a TSN may take effect for a maximum of 28 days without appeal any business located on the site could suffer damage before they can be recovered through compensation. If the damage is sufficiently large, or the business sufficiently small then the delay before compensation (where compensation is payable) is paid may have long term negative effects.
26. There are estimated to be around 1500 caravans occupying land without the necessary planning permission, however this represents an historic figure - these sites will have been established over a number of years and most will be going through the planning process. It is unlikely that TSNs will be used in all cases of unauthorised development as other powers are already available. Since the LPA may only serve a TSN against caravans in limited circumstances where it is justified by the potential damage caused, the cases where TSNs are served which might lead to compensation being paid is likely to be very low. These costs are likely to be significant for the parties involved but small for the overall economy. The grounds under which compensation is payable are limited to situations where planning approval had already been granted or planning permission was not required.
27. The costs of a TSN faced by those in breach of planning control in the situation of unauthorised caravan sites will be small but might include the impact of having stopped a business use, as some businesses operate from caravan sites. Under current arrangements a development in breach of planning control is likely to be stopped eventually (either by an enforcement notice or a stop notice). Therefore a TSN may actually reduce the costs faced by some of those in breach of planning control since less money will be spent on an essentially futile development.
28. There are unlikely to be other costs arising from the powers not being commenced.

### ***Environmental***

29. It is possible that by issuing a TSN stopping development even in the limited circumstances prescribed in the regulations that the action of stopping the activity in question will of itself perpetuate environmental damage.
30. There would also be potential for environmental damage if the powers were not commenced because of the delay in serving an enforcement notice and associated stop notice.

### ***Social***

31. The effect of the regulations may make it difficult for Gypsy and Traveller groups to stay together, as further caravans may be excluded from a site.



## **Issues of Equity and Fairness**

### ***Health Impact Assessment***

32. The restrictions on the use of these powers in relation to those living in caravans so that those already on a site may remain may have positive health consequences as it will allow better access to healthcare.

### ***Rural Impact***

33. TSNs may be used proportionately more by LPAs in rural areas, as this is often where caravan sites are established and because they consider it expedient to stop development at an early stage which is in breach of planning control to protect land and environment that is classed as valuable, e.g. Green Belt and Areas of Outstanding Natural Beauty. However, the availability of the new provisions are unlikely to significantly change the way in which rural LPAs operate, although LPAs will generally welcome the new powers. Any rural impact will be felt in some areas more than others because Gypsy caravan sites are found predominantly in only three or four regions.

### ***Race Equality Impact Assessment***

34. The regulations offer some protection to Gypsies and Travellers in certain circumstances. Without the regulations the TSN powers, if they are commenced, could be used in a way that would have a disproportionate impact on a small ethnic minority. Only Gypsies and Travellers are likely to be affected by the unrestricted use of the powers as they are the only ethnic minorities that have a tradition of living in caravans. The regulations allow for a presumption against the use of TSNs against those whose main residence is a caravan, but do not prohibit the use of TSNs in such cases in exactly the same way that the primary legislation prohibits their use against dwellinghouses.
35. The regulations provide that a TSN 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 except where 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 TSN has effect. A TSN may be used to prohibit the stationing of any additional caravans on land, on which there is already stationed a caravan. The TSN 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 consider implications for public health before taking action and should allow basic temporary caravan site facilities including sanitary requirements.
36. The effect of the regulations will have a positive impact with regard to Gypsies and Travellers - without these regulations, then under the TSN powers in the primary legislation, LPAs would be able to use TSNs against all caravans in breach of planning control, where they consider it expedient to do so. Gypsies and Travellers are the only minority groups who have a tradition of living in caravans so there is no impact on any other minority ethnic group.

### ***Consultation with small business***

37. The precise detailed operation of the powers will be a matter for LPAs, but the Regulations set out conditions when the powers should be used. The draft regulations should have no impact on the operation of small business, as they relate to use of the powers against caravans used as a main dwelling.

***Competition assessment***

38. The competition filter test indicates that the proposals will have no effect on competition.

***Enforcement and sanctions***

- 39. The amendment will give power to LPAs to take early action against unauthorised development. It will be a discretionary power.
- 40. LPAs will decide if a TSN has not been complied with and whether they would take further action through prosecution.
- 41. If the TSN is not complied with, and a person is taken to court and convicted of an offence he is liable on summary conviction to a fine not exceeding £20,000, or on conviction on indictment, to an unlimited fine.

***Monitoring and review***

42. Monitoring of the use of the TSNs will form part of the normal quarterly statistical return on planning matters to ODPM, and we shall seek feedback from local planning authorities on the use and effectiveness of the new provisions, after a year.

***Consultation***

- 43. **Within Government** - The TSN provisions were approved by way of clearance via Ministerial Committee on the Legislative Programme and Ministerial Committee on Economic Affairs, Productivity and Competitiveness for incorporation into the Planning and Compulsory Purchase Act 2004.
- 44. **Public consultation** - yes, in part, but not in detail via the 2002/03 Enforcement Review consultation, and in detail in this consultation on the draft Regulations and accompanying Circular. We held face-to-face meetings with the Gypsy and Traveller Law Reform Coalition and the Local Government Association.

**Summary and recommendations**

The TSN provisions in the Planning and Compulsory Purchase Act 2004 give local planning authorities a discretionary enforcement power to issue a TSN at the start of unauthorised development. However as they stand these provisions could prohibit the continuing stationing of a caravan even where the caravan is the main place of residence of the occupier. It is therefore recommended that additional regulations be introduced to avoid the potential for a disproportionate impact on established Gypsy and Traveller groups.

**Declaration**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

**Signed** .....

**Date**

Keith Hill

Minister of State for Housing and Planning

Office of the Deputy Prime Minister