

BRIEFING on Part 4 of the Police, Crime, Sentencing and Courts Bill - the criminalisation of trespass and new police powers to tackle unauthorised encampments

Plenary Session 18th January 2022

Item 9: Legislative Consent Motion on the Police, Crime, Sentencing and Courts Bill: Motion 2

“Culture is fading because we are getting forced to leave it behind. We can’t live our way of life. They can’t provide sites; they won’t put planning on private sites through so what do they want us to do. We can’t live on side of the roads anymore; they just want us in houses. The culture of Travelling is going.” (Bill, Romanichal, North Wales)

Key points:

1. We urge the Senedd to withhold legislative consent to Part 4 of the Police, Crime and Sentencing Bill because of its impact on devolved matters.
2. If enacted, this legislation will discriminate against Gypsies, Roma, and Travellers, (groups protected by the Equalities Act 2010), leading to criminalisation, risk of poverty, homelessness and placing increased pressure on families and social services.
3. We believe this will undermine existing Welsh legislation and policy, is not supported by the majority of the police or international evidence, and fails to deal with the primary issue, lack of appropriate residential transit and residential sites in Wales.
4. We urge the Senedd to ensure local authorities **meet their statutory duty** to provide sufficient residential site provision and quality transit sites and stopping places or to impose penalties on local authorities where statutory duties are not met.

What is Part 4 of [The Police, Crime and Sentencing Bill and Courts Bill](#)?

The UK Government are currently passing legislation through Parliament for wide ranging reform to policing in England and Wales.

Part 4 of this legislation includes making ‘trespass with intent to reside’ a criminal offence and gives authorities extra powers to seize vehicles – which in many cases are family homes or essential for work purposes – as well as impose fines and imprisonment.

We believe The Bill – with its tremendously broad scope – represents one of the most serious threats to civil liberties in recent history. It infringes the European Convention on Human Rights, as incorporated in UK domestic law by the Human Rights Act 1998 and hands the police and the Home Secretary sweeping new powers to undermine Gypsy and Travellers’ nomadic way of life.

Why does Part 4 matter so much to Gypsy, Roma, and Traveller communities?

The punitive nature of this Bill which will undoubtedly criminalise people specifically from these protected ethnic groups is discriminatory and a clear breach of the Equality Act 2010.

Part 4 as currently drafted, could result in families with no other legal place available to park their vehicle(s) resulting in the seizing of homes and possessions, rendering people without any of their domestic facilities, transport, or employment resources. This risks criminalisation, driving families into poverty, homelessness, children taken into care and increased demand on social care agencies at a time of unprecedented need with an under-resourced social care system.

Impact on children

[Wales Rights of Children and Young Person's Measure](#) places a duty on Welsh Ministers when carrying out their functions to have due regard to the rights of children as set out under the [UNCRC](#). Specifically, the 2014 Welsh duty to provide sites is a direct implementation of a long-standing recommendation by the Committee on the Rights of the Child to provide culturally appropriate accommodation and is unique in the UK.

We believe the right to family life and to enjoy and practice culture and traditions of minority groups should not just be **respected but facilitated**. In our view these proposals are a clear violation of and in breach of the following articles:

Article 2: The right to non-discrimination - this is targeted at Gypsies and Travellers, who include ethnic groups protected by the Equalities Act.

Article 3: The best interest of children – the proposals seek to criminalise parents, seize children's homes rendering them potentially homeless and vulnerable to entering state care and further raising barriers to accessing health and education rights.

Article 30: 'A child belonging to such a minority shall not be denied the right, in a community with other members of his or her group, to enjoy his or her own culture, to progress and practice his or her own religion or language.'

What should current legislation in Wales achieve?

Legal, clearly designated sites, transit or residential, mean that local authorities can more easily ensure that the nomadic way of life is facilitated and that settled communities and people from the Gypsy & Traveller communities living or travelling through Wales can do so safely, legally and harmoniously.

The 2018 Welsh Government Plan '[Enabling Gypsies, Roma and Travellers](#)' confirms a clear commitment and actions to:

- continue to focus on ensuring sufficient culturally appropriate Gypsy and Traveller residential and transit sites are created in Wales.
- challenge engrained health and education outcomes which prevent these communities from fulfilling their potential.
- foster good relations between Gypsy, Roma and Traveller communities and wider society.

[Part Three of the Housing \(Wales\) Act 2014](#) places a legal obligation and brought back a statutory duty (repealed by the CJPOA 1994) on local authorities in Wales to both assess (S101) and provide (S103) for residential and transit provision for *Gypsies and Travellers*

residing in or resorting to its area. A definition of a residential site and a transit site are in the footnote below.¹

This makes clear the commitment of the devolved government to providing permanent sites so that Gypsy and Traveller families have access to a legal place to station their vehicles, have secure, quality accommodation that enables them to access facilities, health, education, and work whilst living in traditional extended family groups. It also makes clear that transit provision is necessary *‘in order to provide a route for Gypsies and Travellers to maintain a nomadic way of life,’* a right enshrined in [Article 8 of the ECHR](#).

Furthermore [Welsh Guidance on Managing Unauthorised Encampments](#) sets clear guidelines for local authorities to respond to encampments in their area, including the need to carry out a welfare check and link in the family with any services needed; establish reasons for the encampment and the suitability and availability of the land (or alternatives that can be identified) with a view to establishing agreement with the encamped family(ies) as to length of stay, facilities needed and any other agreements to ensure the encampment can continue. This predates and is similar to the [‘Negotiated Stopping’](#) model adopted or being explored by some local authorities and provides a humane and proportionate response to respect nomadic traditions and to acknowledge the lack of any alternatives available to Gypsies and Travellers in Wales.

Although in **principle** most local authorities have signed up to this guidance and have regional protocols with the Welsh Police Forces there is **no monitoring** to ensure that the guidelines are properly and consistently implemented across Wales by councils and police forces. There is a need for a clearer duty on local authorities to formalise and monitor these arrangements in light of the potential impacts of this Bill on Gypsy and Traveller communities

Despite the requirement for 5 yearly accommodation assessments overall data on how much progress has been made does not appear to have been collected following the introduction of the 2014 duty – or any current assessment of the continued shortfall of need for sites in Wales; the last [Wales- wide review](#) was sixteen years ago (Niner 2006)

What we do know is that the duty has not led to **ANY** transit sites in Wales to date and no local authority has been held accountable for the failure to meet this requirement.

Enacting Part 4 of the Police Bill on top of legal rights not being met is contradictory and forces nomadic families in Wales into an impossible position when Wales has committed to so much more.

¹ **Residential site:** A permanent residential site can be privately owned or owned by the Local Authority. This site will be designated for use as a Gypsy and Traveller site indefinitely. Residents on these sites can expect to occupy their pitches for as long as they abide by the terms of their pitch agreements. Working space may also be provided on, or near, sites for activities carried out by community members.

Transit sites: are permanent facilities designed for temporary use by occupiers. These sites must be designated as such and provide a route for Gypsies and Travellers to maintain a nomadic way of life. Individual occupiers are permitted to reside on the site for a maximum of 3 months at a time. Specific terms under the Mobile Homes (Wales) Act 2013 apply on these sites. Working space may also be provided on, or near, sites for activities carried out by community members (<https://gov.wales/sites/default/files/publications/2019-03/undertaking-gypsy-and-traveller-accommodation-assessments.pdf>)

Bad legislation

This legislation penalises and does not address the real needs of the communities i.e., provision of sufficient, quality accommodation and stopping places both permanent and transit to support and facilitate nomadic traditions.

It is disproportionate and based on conjecture potentially before any proper assessment of families' needs can take place – i.e., the police can use their powers if they think that 'damage, disruption, or distress' is *likely* to result from an encampment.

The majority of the police do not support the criminalisation of trespass. [Research](#) has shown that 75% of police responses to the 2018 Home Office consultation indicated current powers were sufficient or proportionate, while 84% of police forces did not support the criminalisation of unauthorised camps; 93% of police bodies called for better site provision as the solution to unauthorised encampments.

The National Police Chiefs Council and the Association of Police and Crime Commissioners said: "The lack of sufficient and appropriate accommodation for Gypsies and Travellers remains the main cause of incidents of unauthorised encampment and unauthorised development by these groups".

The proposals conflicts with the legislative and policy framework of the Welsh Government and its devolved powers and responsibilities including to core human rights commitments; the new [draft guidance](#) issued by the Home Office actually states that *the police, alongside other public bodies, should not gold-plate human rights*.

It is likely to give rise to constitutional legislative issues and /or challenges both to local authorities and to the Welsh Government unless modified. If not, then legal challenges in Wales might render the Bill unworkable. International comparisons² with Ireland show that combining a statutory duty while criminalising trespass is ineffective, while similar legislation in the Netherlands has had a catastrophic impact on the nomadic way of life.

We urge you to vote to withhold consent by the Senedd for Part 4 of the Police, Crime, Sentencing and Courts Bill and send a strong message of support to Wales's Gypsy, Roma and Traveller communities

"The Travelling life in my family goes back over three hundred years in Wales, they had stopping places where local people would gather to hear their story-telling and dance to the Gypsy fiddles and harps. All over Wales you can see 'Y Ion Sipsy/Gypsy Lane' the 'achin tans' where our families stopped, cared places to us where birth, marriage and death occurred. By outlawing these culturally rich practices of stopping places an entire legacy of Welsh culture is threatened with silence and erasure. Without 'place' there will be no meaning to our Welsh Romani cultural identity and our contributions to Welsh culture will become empty and blown

² This initial comparative analysis is ongoing research by Travelling Ahead- TGP Cymru – copies can be made available

away like leaves in the wind.” (Allison Hulmes, Director, British Association of Social Workers and Founder member, Association of Gypsy, Roma, and Traveller Social Workers).

This briefing has been developed and is supported by a coalition of individual representatives, advocates from Gypsy, Roma and Traveller communities in Wales, alongside allies representing a number of civil society advocacy, social justice, legal, cultural and criminal justice agencies including:



[Travelling Ahead @TGPCymru](#)



[BASW Cymru](#)



[The Gypsy, Roma and Traveller Social Workers Association](#)



[Gypsies and Travellers Wales,](#)



[Travellers Against Racism](#)



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