EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (TEMPORARY STOP NOTICE) (ENGLAND) (REVOCATION) REGULATIONS 2013

2013 No. 830

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Statutory Instrument revokes the *Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005* (SI No. 2005/206) which prescribes the circumstances in which a local council cannot use a Temporary Stop Notices in respect of caravans used as main residences.

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

3.1 None

4. Legislative Context

4.1 Sections 171E-H of the Town and Country Planning Act 1990 provides the legislative framework for local planning authorities' use of Temporary Stop Notices. These are a planning enforcement power which can be used to prohibit unlawful development with immediate effect.

4.2 Section 171F sets out the restrictions on use of Temporary Stop Notices and gives the Secretary of State the power to prescribe additional restrictions. To this end the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005, restricts the use of Temporary Stop Notices in respect of caravans which are used as a main residence unless 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 as to outweigh any benefit to the occupier of the caravan for the period for which the TSN has effect.

4.3 The new provision will remove this current restriction on local planning authorities' ability to serve Temporary Stop Notices on caravans which are used as a main residence where there is a suspected breach of planning control. This will mean local planning authorities will determine whether the use of a Temporary Stop Notices in these circumstances is a proportionate and necessary response.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Temporary Stop Notices enable local planning authorities to place an immediate block on development which breaches planning control. They were introduced in March 2005 to enable local planning authorities to take swifter action against unauthorised development; Temporary Stop Notices can take effect immediately and apply for a 28-day period. This enables the local planning authority to consider whether further enforcement action is required.

7.2 Section 171E of the Town and Country Planning Act 1990 enables a local planning authority to issue a Temporary Stop Notice if they think that there has been a breach of planning control and that it is expedient that the activity, or any part of it, which amounts to the breach, is stopped immediately. In order to safeguard the rights of travellers SI 2005/206 was introduced prohibiting the use of Temporary Stop Notices in relation to caravans used as main residences unless *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 temporary stop notice has effect*.

7.3 The Government is of the view that SI 2005/206 acts to restrict the use of Temporary Stop Notices in some circumstances where their use may be beneficial, and that a blanket national requirement is out-of-step with a planning system that seeks to ensure that decisions are taken at the local level in the best interests of the communities they serve wherever possible.

7.4 More generally the Government is of the view that unauthorised development undermines confidence in the planning system. The Government is of the view that it is inappropriate that there should be the same restriction in respect of the use of Temporary Stop Notices as regards dwelling houses and caravans occupied as main residences. In comparison with buildings used as dwelling houses, unauthorised development in relation to caravans used as main residences can often cause a more immediate and significant impact on the local area. The protection of the environment and amenity is a legitimate aim and an important objective in the public interest. Revoking SI 2005/206 will enable local planning authorities to respond swiftly and effectively to such alleged breaches of planning control, ensuring local planning authorities' powers in this area are the same as for other types of development.

7.5 Revoking SI 2005/206 will only remove national prescription, and it will of course remain for local planning authorities to consider on a case by case whether taking enforcement action is necessary and proportionate in the circumstances, and balancing these considerations with their responsibilities under the Human Rights Act 1998 and Equalities Act 2010.

8. Consultation outcome

8.1 Public consultation was undertaken between 21 December 2012 and 13 February 2013. In addition, to ensure the consultation engaged effectively with travellers,[1] the Government also held three oral hearings attended by representatives of Gypsy and Traveller communities, lawyers and planning consultants. Although they have not been formally included in the statistical analysis of the consultation responses, outcomes from the oral hearings are included in this document where relevant issues are raised. Many of the participants also submitted responses directly to the consultation. A total of 67 responses were received to the consultation. Local authorities represented the largest group of respondents. There was also strong representation from membership and representative bodies which included a significant number of traveller groups as well as professional planning specialist groups.

8.2 The majority of respondents (70%) to the consultation, of which most were local authorities, agreed that the revocation of SI 2005/206 will improve councils' ability to tackle unauthorised development in relation to caravans. Specifically, the new powers would enable councils to take swifter action against suspected breaches of planning control, preventing further unauthorised development and reducing the costs associated with enforcement proceedings. It was also felt that the changes will complement existing powers, enabling councils to consider whether further enforcement action was necessary and represented a proportionate response in these circumstances.

8.3 It was noted that unauthorised development in relation to caravans occurs very differently to buildings. In particular, the length of time involved in building a dwelling house means that there are more opportunities to take effective enforcement action during the construction process. Similarly, where there has been a change of use, the impact on the local amenity of an area is likely to be less significant given that the building is already in place. Conversely, unauthorised development in relation to caravans can happen very quickly with limited opportunities to take early and effective action, whilst the impact of such development on the local amenity of the area can be significant. Giving councils powers to respond quickly where it does occur is therefore critical in ensuring that the planning rules apply equally to all.

8.4 Approximately 40% of respondents felt that the impact of the changes on caravan occupants would be unacceptable. In particular, a number of responses argued that the change of regulations would disproportionately

[1] Defined in *Planning policy for traveller sites* as including Roma Gypsies, Irish Travellers and persons of nomadic habit of life '*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'.*

affect Gypsies and Travellers and would therefore be discriminatory on the grounds of racial discrimination under the Equality Act 2010. Similarly, others raised concerns about the impact of the changes on occupants' Human Rights, recognising that Gypsies and Travellers already experience poor outcomes in various areas. Others noted, however, that it will remain for local councils, under their duties as public authorities, to consider human rights and equalities implications when determining whether to issue a Temporary Stop Notice against a caravan used as a main residence. Evidence from the consultation responses demonstrates that councils are aware of the need to take account of Human Rights and equalities considerations in determining whether to issue a Temporary Stop Notice. To safeguard against local councils using these new powers inappropriately, local councils' decisions to issue a temporary stop notice can be legally challenged under the Judicial Review process.

8.5 The Government's formal response, including the summary of outcomes from the consultation, was published on 12 April and can be found on the Government's website.

9. Guidance

9.1 Following the consultation, the Government announced its intention to revoke Statutory Instrument 2005/206 on 29 March 2013 (https://www.gov.uk/government/news/improving-councils-powers-to-tackle-unauthorised-development).

9.2 The Government will also write to local councils to inform them of the scope of change to regulations and the date that these changes will take effect.

9.3 The consultation responses demonstrated that guidance would aid the implementation of changes to Temporary Stop Notices. This included support for local councils in considering and balancing human rights and equalities issues when determining whether to use a Temporary Stop Notice. Our intention therefore is to produce light-touch guidance to assist local councils to use these powers effectively and with due consideration. We intend to produce this guidance in summer 2013, in line with the wider review of all planning practice guidance currently underway.

9.4 The aim of the guidance will be to assist councils in:

- taking account of human rights and equalities considerations;
- balancing these considerations against the impact of the unauthorised development on the local area;
- determining whether action is proportionate and appropriate; and
- understanding the procedure for issuing a Temporary Stop Notice.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

10.4 An equalities statement has been published on the impact of the revocation of regulations and can be found at xxx

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department for Communities and Local Government receives regular feedback from local planning authorities, professional bodies and the general public on all aspects of planning. We will also monitor progress through the Department's Gypsy and Traveller Liaison Group which meets regularly and evaluate the success and impact of these changes.

13. Contact

Tom Bristow or Owen Neal at the Department for Communities and Local Government can answer any queries regarding the instrument.

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