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## The road looks bleak for Gypsy and Traveller community in the UK.

Please note that Gypsy should be spelt with a higher case G but in English and Welsh law the lower case "gypsy for the purpose of planning law" is used and is also known as "gypsy status."

Life is changing yet again for Gypsy people in the UK: on August 31<sup>st</sup> 2015 the Government changed the definition of Gypsy and Traveller people for the purposes of planning law.

The definition issue in relation to "gypsy status" is a complicated one; briefly, when the Caravan Sites Act 1968 sought to clarify who was a Gypsy for the purpose of the Caravan Sites Act, there was no consultation with the community but instead a definition was carried forward from a criminal law case, *Mills v Cooper*<sup>1</sup> 1967. No one foresaw that others may try and claim status some thirty years later, at that time in the sixties there were no new travellers on the road. The judge in the *Mills v Cooper* case was however uncomfortable enough to say that;

*"I am hoping that those words will not be considered as those of a statute".* ( Parker CJ 103 Para H)

He was totally ignored on that statement, as only one year later the Caravan Sites Act 1968 was drafted with the very unsatisfactory "*regardless of race or origin*" words drafted into the basis of the 1968 definition. Consequently status is something that changes with circumstance, it was not an ethnic definition.

To have an ethnic definition or a cultural and traditional basis would have by now provided for a relatively small community and provide for those that have never known any other life and had no choice of being a Gypsy and was not a "lifestyle choice".

There has been over 20 years of changing status post Criminal Justice Act of 1994 ( which saw the 1968 Caravan Sites Act repealed) and the case law has evolved. Again some very unsatisfactory principals which have seen members of the same family split, some found to come within the definition the others not. Circular 1/94, ODPM<sup>2</sup> indicated that families themselves should try and find land and were thwarted by onerous criteria based policies.

<sup>1</sup> *Mills v Cooper* – [1967] 2 All ER 100

<sup>2</sup> Circular 1/94 Office of the Deputy Prime Minister now Department of Communities and Local Government



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Unsatisfactory provision saw the 1/94 planning circular come and go and in 2006 after much lobbying the planning circular for Gypsy and Traveller sites came into being it set about basically putting “a plaster” on case law that had been detrimental to the Gypsy community the worst of these being a case in 2004, *Berry*<sup>3</sup>. This case followed on from *Gibbs*<sup>4</sup> 1994, a case which deemed that a “gypsy” was someone who travelled looking for work. Romany Gypsy people in particular were very unhappy with this definition which again ignored traditional and cultural rights.

There is something perverse in someone being too old or too ill to be a Gypsy (basically the principal in the *Berry* case). A very wordy definition came into being through the planning circular of 2006<sup>5</sup> to try and remove the damage to Gypsy identity, but now the Government has removed the words “or permanently” by the Ministerial statement, mentioned above.

“Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependant’s educational or health needs or old age have ceased to travel temporarily or permanently”...

By removing the words or permanently from the definition indicates, that Gypsy or Traveller people can never have a base to travel from and worse those that have been on sites for some years could be deemed not [G]ypsies for the purposes of planning law. They haven’t been travelling far afield for work and they cannot settle permanently.

3 *Wrexham CBC v National Assembly for Wales & Berry* [2003] EWCA Civ 835.

4 *R v South Hams District Council, ex parte Gibbs and other appeals* [1994] 4 All ER 1012

5 Planning for Gypsy and Traveller Caravan Sites Circular, ODPM 01/2006



The Government has also now followed through with amendments to the Housing Act 2004 with the Housing and Planning Bill 2016 now also an Act<sup>6</sup>. There was debate over the intentions to remove s225 and s226. However this Bill went through the House for the third time and on the 12<sup>th</sup> May 2016 obtained Royal Assent, now making it an Act.

This will take away the need to undertake Gypsy and Traveller Accommodation Needs Assessments (s225) and the removal of the wider definition (s226) of Gypsy and Traveller people both discussed above.

These changes have huge implications. In the latest prospectus produced by the Homes and Communities Agency "Shared ownership and affordable homes programme 2016 to 2021 prospectus – (13 April 2016)", under Chapter 2, Products (pages 6-8) reference is now made only to Help to Buy, Shared Ownership, Rent to Buy and Specialist Homes for older, disabled and vulnerable people i.e. "traveller" pitches have totally disappeared.

<sup>6</sup> The Housing and Planning Act 2016.