

Security of tenure for residents of authorised sites

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Many Gypsies and Travellers who reside in their caravans in accordance with their traditional way of life, live on authorised caravan sites which are rented from public and private landlords. This paper details the security of tenure which they enjoy living on such sites in England and Wales and outlines other rights which they enjoy under the Mobile Homes Act 1983 (as amended) and secondary legislation.

Gypsies and Travellers

1. The term "Gypsies and Travellers" will be used throughout this paper (except where it is indicated otherwise) to include: Romani Gypsies, Irish Travellers, Scottish Gypsy Travellers, Welsh Gypsy Travellers (or Kale), New Travellers and Travelling Showpeople.

Rented site provision

2. Some Gypsies and Travellers live in their caravans on privately owned and rented sites. Many others reside in their caravans on local authority run sites.
3. There are more than 300 local authority sites currently in existence and about 40% of the Gypsy and Traveller population living in caravans reside on such sites. Most were established at the time when the Caravan Sites Act 1968 (CSA) imposed a duty on county councils, London boroughs (and in Wales, county boroughs) to exercise their powers under Caravan Sites and Control of Development Act 1960 (CSCDA) s.24 to "provide adequate accommodation for gypsies residing in or resorting to their area" (CSA 1968 s.6).
4. The CSA 1968 duty was repealed in 1994 by the Criminal Justice and Public Order Act 1994. However, CSCDA 1960 s.24 remains in force and gives local authorities the power:

"within their area to provide sites where caravans may be brought, whether for holidays or some other temporary purposes or for use as permanent residences, and to manage the site or lease them to some other person."

Security of tenure

5. The security of tenure afforded to Gypsies and Travellers has evolved over the years and the level of protection from eviction has been different for those living on private and public sites.
6. The CSA 1968 gave Gypsies and Travellers no real protection against eviction from public and private sites; provided that they had been given four weeks' written notice and a court order had been obtained then eviction was considered lawful.

7. That said, CSA 1968 did make eviction without a court order a criminal offence and it protected site residents from harassment by also making acts calculated to affect the peace or comfort of the occupier and the withdrawal or withholding of services or facilities reasonably required a criminal offence (CSA 1968 s.3).
8. The Mobile Homes Act 1983 (MHA) gave both Gypsies and Travellers and others living on private caravan sites (which were classified as "protected sites") security of tenure. The MHA 1983 Sch.1 Pt 1, states that:

"4. The owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the court - (a) is satisfied that the occupier has breached a term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice after a reasonable time; and (b) considers it reasonable for the agreement to be terminated. 5. The owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the court - (a) is satisfied that the occupier is not occupying the mobile home as his only or main residence; and (b) considers it reasonable for the agreement to be terminated. 6(1). The owner shall be entitled to terminate the agreement forthwith if, on the application of the owner, the court is satisfied that, having regard to its condition, the mobile home - (a) is having a detrimental effect on the amenity of the site; or (b) the court considers it reasonable for the agreement to be terminated."
9. The MHA 1983 also laid down a number of other terms that were to be implied in any agreement between an occupier and the owner of a protected site. Those terms related to such issues as the recovery of overpayments, the sale of mobile homes, the re-siting of mobile homes, quiet enjoyment, the owner's right of entry, pitch fees and the obligations of the occupier and owner of protected sites.
10. However, MHA 1983 s.5 made it clear that the term "protected site" did not include any land occupied by a local authority as a caravan site providing accommodation for Gypsies and Travellers. As a consequence Gypsies and Travellers living on public sites were not able to benefit from the security of tenure provisions in the MHA 1983 and remained liable to eviction by local authorities without cause and without any consideration by the court of whether their eviction was reasonable in all the circumstances. Gypsies and Travellers living on public sites complained about the fact that they had no real security of tenure and challenged eviction decision in domestic courts and in the European Court of Human Rights (the "ECtHR").
11. In *Connors v United Kingdom* (66746/01) (2005) 40 E.H.R.R. 9 the ECtHR held that the eviction of an Irish Traveller from a local authority run site in Leeds in accordance with the provisions of the CSA 1968 and without giving him an opportunity to present any defence was a violation of his rights protected by art.8 of the European Convention on Human Rights (ECHR). The ECtHR stated (at para.94):

"However, even allowing for the margin of appreciation which is to be afforded to the State in such circumstances, the Court is not persuaded that the necessity for a statutory scheme which permitted the summary eviction of the applicant and his family has been sufficiently demonstrated by the Government. The power to evict without the burden of giving reasons liable to be examined as to their merits by an independent tribunal has not been convincingly shown to respond to any specific goal or to provide any specific benefit to members of the gypsy community."

12. Following Connors, an amendment was made to CSA 1968 s.4, by Housing Act 2004 s.211 (HA 2004) and the court was given the power to suspend possession orders made against Gypsies and Travellers living on public sites for periods of up to 12 months.
13. However, the Government recognised that the HA 2004 amendment did not go far enough to comply with the Connors judgment and so in 2008 the MHA 1983 was further amended by Housing and Regeneration Act 2008 s.318 so as to ensure that Gypsies and Travellers living on local authority sites in England were granted full security of tenure. That aim was achieved by amending MHA 1983 s.5 so that local authority sites were no longer excluded from the meaning of "protected sites".
14. Though that amendment was simple, it had ramifications. Giving Gypsies and Travellers the security of tenure provided in the MHA 1983 meant that they would also enjoy and be subject to the other rights and obligations laid down by the MHA 1983. In the circumstances, the Government decided to enter into a series of consultations on what, if any, other consequential amendments to the MHA 1983 were necessary before bringing the amending provision into force in England.
15. In the event, further amendments were made to the MHA 1983 as it applies to local authority Gypsy and Traveller sites. Those amendments were then brought into force by five pieces of secondary legislation as of 30 April 2011:
 - Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) Order 2011/1004;
 - Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (England) Order 2011/1005;
 - Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (England) Order 2011/1003;
 - Housing and Regeneration Act 2008 (Commencement No. 8 and Transitional, Transitory and Saving Provisions) Order 2011/1002;
 - Mobile Homes (Written Statement) (England) Regulations 2011/1006.
16. The Welsh Government were slower in bringing the MHA 1983 provisions into force and Gypsies and Travellers living on local authority sites in Wales remained without sufficient protection from eviction until July 2013.

17. In *Buckland v United Kingdom* (40060/08) (2013) 56 E.H.R.R. 16, the manager of a local authority owned site took eviction action against Ms Buckland on grounds of nuisance plus arrears of water rates. HHJ Bidder in the county court suspended the order against Ms Buckland for 12 months upon condition that her son leave the site and that she paid off the water rates arrears. Ms Buckland appealed to the Court of Appeal. It held that the power to suspend, as contained in CSA 1968 s.4, was sufficient to answer the problem identified by the ECtHR in *Connors v UK* and on 18 February 2008 the House of Lords refused Ms Buckland permission to appeal. In May 2008 Ms Buckland left the site. She complained to the ECtHR. Having considered her complaint, the ECtHR concluded that there had been a breach of Ms Buckland's rights protected by art.8 of the ECHR and it stated at para.65:

"As the Court has previously emphasised, the loss of one's home is the most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right to occupation has come to an end."

The ECtHR continued:

"68. However, the fact remains that the applicant was not able to argue that no possession order ought to have been made at all. The possibility of suspension for up to twelve months of the possession order is inadequate, by itself, to provide the necessary procedural guarantees under Article 8. Although further suspensions may be granted, suspension merely delays, and does not remove, the threat of eviction. The Court cannot accept that the fact that an individual may effectively be able to remain in her home in the long-term by making repeated applications to extend suspension of a possession order removes any incompatibility of the procedure with Article 8. It is further significant that in the present case the County Court judge considered the applicant's personal circumstances to be such that suspension was justified and he granted a suspension for the full period sought. In the circumstances it is not possible for the Court to predict what decision he might have reached on the granting of the possession order had he considered it open to him to refuse the grant on the basis of personal circumstances. 69. Finally, the Court observes that an amendment to the Mobile Homes Act 1983 permits a court considering whether to make a possession order to examine the reasonableness of the termination of the licence That amendment has entered into force in England but not in Wales. It would appear that, once it does so, domestic courts in Wales will be able to assess the proportionality of a proposed eviction in compliance with the procedural requirements of Article 8."

18. The Welsh Government undertook a similar consultation process to that which had taken place in England and the amendments to the MHA 1983 as they affected Welsh local authority sites were brought into force by three statutory instruments on 10 July 2013:

- Mobile Homes Act 1983 (Amendment of Schedule 1 and Consequential Amendments) (Wales) Order 2013/1723;
- Housing and Regeneration Act 2008 (Consequential Amendments to the Mobile Homes Act 1983) (Wales) Order 2013/1722;
- Housing and Regeneration Act 2008 (Commencement No. 3 and Transitional, Transitory and Saving Provisions) (Wales) Order 2013/1469.

19. Those Gypsies and Travellers living on local authority sites are now subject to the implied terms laid down in the MHA 1983 (as amended). There are differences between the implied terms relating to those living on sites in England and Wales; in particular, relating to the right to assign, the re-siting of mobile homes, pitch fees and the owner's consultation with a qualifying residents' association.

Mobile Homes Act 2013

20. The Mobile Homes Act 2013 (MHA 2013) only applies to private sites in England (save for one provision which relates to an amendment to provisions in CSA 1968 relating to harassment of occupiers and covers local authority and private sites).
21. The MHA 2013 amends the CSCDA 1960 and implements many of the proposals contained in the DCLG consultation paper: A better deal for mobile home owners (April 2012) and the recommendations made by the Communities and Local Government Select Committee in its report Park Homes (June 2012) Volume I and Volume II. The Committee found "widespread malpractice" in the sector and concluded that the existing legislative framework was 'inadequate'.
22. The MHA 2013 strengthens the legal framework and in particular those provisions relating to licences, site rules and pitch fees.

Mobile Homes (Wales) Act 2013

23. The Mobile Homes (Wales) Act 2013 (MHWA) only applies to private protected sites in Wales. As with the MHA 2013, MHWA 2013 is designed to deal with widespread malpractice and "rogue site owners" on private rented sites and brings forward many of the proposals contained in the Welsh Government White Paper: Homes for Wales: A White Paper for Better Lives and Communities (May 2012). MHWA 2013 introduces an updated licensing regime for mobile home sites and gives local authorities powers to enforce that regime. This includes ensuring that site owners or managers satisfy a fit and proper person test. MHWA 2013 is due to be brought into force on 1 October 2014.

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