

Explanatory Memorandum to The Assessment of Accommodation Needs of Gypsies and Travellers (Extension of Review Period) (Wales) (Coronavirus) Order 2021.

This Explanatory Memorandum has been prepared by the Education and Public Services Group of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Assessment of Accommodation Needs of Gypsies and Travellers (Extension of Review Period) (Wales) (Coronavirus) Order 2021. I am satisfied that the benefits justify the likely costs.

Jane Hutt MS

Deputy Minister and Chief Whip, Member of the Senedd
23 February 2021

PART 1

1. Description

1.1 The Assessment of Accommodation Needs of Gypsies and Travellers (Extension of Review Period) (Wales) (Coronavirus) Order 2021 will extend the current review period (as set out in section 101 of the Housing Act (Wales) 2014) for Gypsy and Traveller Accommodation Assessments from five years to six years, with subsequent review periods to remain at five years.

1.2 The extension period will allow local housing authorities to undertake engagement with Gypsies and Travellers living within their locality in order to assess accommodation needs for these communities as robustly as possible. The impacts of Coronavirus on communities in Wales and the effect that it has had on administration within local housing authorities prevented this engagement taking place within the original prescribed timescale, which is why the extension is required.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

None.

3. Legislative background

Section 101 of the Housing (Wales) Act 2014 (“the Act”) makes provision for the assessment of accommodation needs, by a local housing authority, of Gypsies and Travellers residing in or resorting to its area.

Section 101(3) of the Act defines the “review period”, during which local housing authorities must carry out an assessment of the accommodation needs of Gypsies and Travellers.

The first review period under section 101(3)(a) was the period from 25 February 2015 to 24 February 2016. Under section 101(3)(b) all subsequent review periods were 5 years. The order extends the current review period by one year, so it will now come to an end on 24 February 2022 rather than 24 February 2021. Subsequent review periods will remain at 5 years.

Sections 101(4) and 142(1) of the Act give the Welsh Ministers the power to amend subsection (3)(b) by order.

In accordance with section 142(3)(c) of the Act the draft affirmative procedure applies to orders made under section 101(4). The order must therefore be laid before and approved by a resolution of Senedd Cymru. The proposed coming into force date is 18 March 2021.

4. Purpose and intended effect of the legislation

The purpose of this order is to extend the current five year review period for local housing authorities to carry out their second Gypsy and Traveller Accommodation Assessment. As a result of the extension the date for completion of the assessment will move from 24 February 2021 to 24 February 2022. In practice this will mean that the date by which the assessment must normally be submitted to the Ministers will move from 25 February 2021 to 25 February 2022.

Although some local housing authorities had commenced their assessment early within the five year period, those that had intended to undertake detailed survey work during the summer of 2020 faced significant barriers due to the COVID-19 pandemic and associated measures to control public health risks.

Demographic data on the accommodation needs of Gypsies and Travellers is insufficient for a robust calculation of need, which may only be carried out by a face-to-face census-style survey as set in [statutory guidance](#). By extending the current review period, local housing authorities will be able to undertake the required robust assessment of need based on face-to-face interviews once measures to significantly control the pandemic are in place (as anticipated during 2021). Those local housing authorities that were able to undertake robust engagement and calculation of need, whether in advance or during the COVID-19 pandemic would still be able to submit their GTAA for consideration by the Welsh Ministers to the original timescale. Maintaining a robust assessment of need will help ensure Gypsies and Travellers are provided with sufficient culturally-appropriate accommodation.

Whilst local housing authorities that have not carried out an assessment will be in breach of the duty in s.101(1) of the Housing (Wales) Act 2014 between 25 February 2021 and 18 March 2021, this represents the minimum achievable breach possible in current circumstances.

5. Consultation

A formal consultation has not taken place. However, on the 16 July 2020 the Welsh Government wrote to all local authorities in Wales to acknowledge the challenges of completing the needs assessment to support the Gypsy Travellers Accommodation Assessments and share four options for consideration:

- Keep the status quo and require all authorities to undertake an assessment by 25 February 2021.
- Permit assessment surveys to be undertaken remotely where possible and in-person where this was not possible.
- Permit assessment surveys to be undertaken remotely where possible and not require in-person where remote contact was not possible.
- Extend the review period by 12 months.

12 local authorities responded and the feedback was as follows:

- 11 local authorities confirmed their preferred option was for an extension of up to 12 months.
- 1 local authority did not support an extension, wishing to press ahead with their GTAA without delay and proposing changes to the statutory methodology in line with option 4

In addition, an engagement event was held with local authorities on the 17th September where the options were also discussed and indication given that the Minister would consider allowing an extension should this offer useful support to local authorities.

An expert stakeholder group comprising those working with Gypsies and Travellers and individuals from these communities, discussed the proposals on 2 July 2020 and provided clear advice that remote contact methods, including phone calls, would be unlikely to provide robust engagement. They unanimously supported the Welsh Government providing a 12 month extension to the process.

Officials do not plan to undertake formal consultation in addition to the informal consultation already undertaken on this matter. In order to act quickly to provide clarity to local authorities, it is not possible to undertake additional consultation. The flexibility, inherent in the recommended approach, and the general majority support expressed in the informal consultation will allow the Welsh Government to offer bespoke support to any local authority as required.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Four options have been considered in this assessment, these are as follows:

Option 1 - All local housing authorities resume fieldwork provided social distancing measures can be put in place.

Option 2 – Permit non-contact fieldwork and remove the requirement to attempt three on-site household interview attempts from the statutory guidance.

Option 3 – permit non-contact fieldwork to be attempted and require on-site interview if this fails.

Option 4 - Permit an extension of 12 months to the submission of GTAA's and re-submission by request for those currently under scrutiny.

Each of these options is summarised below.

Option 1 - All local housing authorities resume fieldwork provided social distancing measures can be put in place. (This is the return to “business as usual” option).

Pros:

- May permit some local authorities to meet the February 2021 deadline.
- Ensures the maximum number of GTAAs that comply with existing guidance.
- Poses no risk to related Local Development Planning timetables.

Cons:

- Local authorities are very unlikely to be able to recover lost time and submit by February 2021.
- Risk of opposition by community and reduced participation in survey if visitors to sites are perceived as breaking either official health protection rules or being a source of infection. Practice-based feedback suggests that cultural norms in Gypsy and Traveller communities, mean that concerns about infection from outsiders may be particularly strong.
- Fewer people undertaking traditional travel in 2020 may result in systemic under-estimation of transit sites need. Any underestimate of need will be “locked in” until 2026.
- Where external consultants are employed to undertake the GTAA survey, there is a risk they may withdraw from contact rather than put staff at risk.
- Has potential to raise risk of Covid-19 transmission on sites. Caravans and utility blocks are relatively small and whilst it may be possible to ensure a 2m distance in some circumstances, the interviews are likely to exceed 15 minutes. In some circumstances it may be possible to erect temporary outdoor shelters on sites for the purposes of interviews, though not all sites will have a suitable communal location that provides adequate privacy. Whilst it may be possible to reduce the risk of transmission by following social distancing guidance and good hygiene practices; by requiring local authorities to carry out the field work, we potentially expose the community to a greater risk of contracting the disease. If an outbreak of the virus was to follow the completion of site visits, this could anger the community and potentially set back relationships both locally and more widely.
- This risk applies to any site visit conducted as part of option 3 and 4 going forward, but the business as usual approach poses the greatest risk, whatever that is quantified to be. And perhaps the intensity at which they would have to complete the work in order to meet the existing deadline.

Option 2 – Permit non-contact fieldwork and remove the requirement to attempt three on-site household interviews from the statutory guidance. (“No contact”)

Pros:

- May permit some local authorities to meet the February 2021 deadline.
- This methodology is understood by consultants specialising in GTAAs, largely from experience in England.
- Minimises health risk and is compliant with social distancing requirements.
- May reduce cost to local authorities and/or consultants.

- Poses no risk to related Local Development Planning timetables.

Cons:

- Local authorities may still not be able to recover lost time and submit by Feb 2021.
- Not compliant with the statutory guidance, which sets out the intention for surveys to be conducted on a face-to-face basis.
- In order to give effect to this option, supplementary statutory guidance would need to be published permitting departure from the extant statutory guidance.
- No local authority has expressed a preference for this option, although the largest consultant undertaking GTAA's does support it.
- Gypsies and Travellers with unmet need are unlikely to have contact numbers known to consultants (and may not have phones).
- Risk of opposition by community and reduced participation in survey.
- Fewer people undertaking traditional travel in 2020 may result in systemic underestimation of transit site need.
- Risk of misrepresentation and gatekeeping, as it would not be possible to ensure that a respondent on the phone is a resident of an identified household. In addition, where a concealed household (a second or third household on a pitch) is present, respondents would be less likely to disclose their presence and the interviewer could not request their (third party) contact details from the respondent.
- Any underestimate of need will be "locked in" until 2026.

Option 3 – permit non-contact fieldwork to be attempted and require on-site interview if this fails. ("Reduced contact")

Pros:

- May permit some local authorities to meet the February 2021 deadline.
- This methodology is understood by consultants specialising in GTAA's, largely from experience in England.
- May reduce cost to local authorities and/or consultants.
- Reduces health risk.
- Maximises potential interviews by providing choice to participants on managing their risk.
- By retaining the requirement to conduct interviews in person, this option would in practice default to the in-person interview (i.e. option 1) where a local authority lacked contact details.
- Poses no risk to related Local Development Planning timetables.

Cons:

- Local authorities may not be able to recover lost time and submit by Feb 2021.
- Risk of opposition by community and reduced participation in survey.
- This option is not described in the existing statutory guidance. Although some local authorities may be able to depart from the guidance whilst maintaining a robust identification of need, some local authorities may not.

- In order to give effect to this option, supplementary guidance will be required to permit local authorities to use this approach even if it results in reduced identification of need.
- Fewer people undertaking traditional travel in 2020 may result in systemic underestimation of transit site need.
- Risk of misrepresentation and gatekeeping
- Any underestimate of need will be “locked in” until 2026.
- May appear to undermine Welsh Government or Public Health Wales messaging on reducing non-essential contact.

Option 4 - Permit an extension of 12 months to the submission of GTAA's and re-submission by request for those currently under scrutiny. (“Extend review period”)

Pros:

- Provides a methodology consistent across all local authorities and with the statutory guidance.
- Relieves pressure on local authorities and the Welsh Government during the pandemic.
- Likely to result in most robust levels of need being correctly identified over the next five years, particularly transit site need.
- Provides an evidence base for planning considerations that is robust and most likely to address emerging need over the coming five years.
- This option is supported by the Welsh Government specialist stakeholder group made up those working directly with Gypsies and Travellers on sites, some of whom are also community members.
- This option is supported by the majority of local authorities who responded to officials.

Cons:

- Where need identified under existing GTAA's has been met, delay on replacement GTAA's may stall new projects. This is because evidence gathered in GTAA's is required to support planning consent, either through Local Development Plan or planning applications, and Welsh Government funding for additional pitches is only available where there is evidence of additional need.
- An extension to the review may be perceived as delaying action for the communities. This can be mitigated through clear communication with these communities.
- Without mitigation, the extension period does pose a risk to a small number of Local Development Planning timetables; specifically Monmouthshire, RCT, Conwy and Ceredigion. To mitigate this risk policy officials will work with each local authority to plan submission and prioritise assessment to avoid delays to the Local Development Planning process. This work is already underway.

If the assessments are delayed, whilst this gives a local authority longer to complete the assessments and gather the information, this could delay the identification of need amongst Gypsy and Traveller communities. If the assessments are required to continue, in whatever capacity (with varying

changes to the methodology in place), the assessments may be inaccurate if the data gathering is not robust and significantly options 1 – 3 may expose the community to an increased risk of transmission of coronavirus.

In bringing forward option 4 and amending primary legislation, we have noted the feedback provided by our stakeholders who work with the communities. They report that Gypsy and Traveller communities on many sites in Wales are withdrawing from contact with non-residents including withdrawal from schools, even amongst those placing a high value on education. Practice based feedback suggests that Gypsies and Travellers have cultural norms around hygiene, cleanliness and disease that include seeing outsiders as being a potential source of contamination and disease. During the pandemic it is important to consider how welcome unknown professionals will be on sites and whether this will inhibit the important field work.

7. Costs and benefits

Each of the options could potentially have a negative impact on the community. If the assessments are delayed, whilst this gives a local authority longer to complete the assessments and gather the information, this could delay the identification of need amongst the community. If the assessments are required to continue, in whatever capacity (with varying changes to the methodology in place), the assessments may be inaccurate if the data gathering is not robust and significantly options 1 – 3 may expose the community to an increased risk of transmission of coronavirus.

There are very limited specific financial costs and benefits associated with each of the four options.

Option 1 – as the default option, this would provide the baseline against which the other options would be assessed and creates no additional financial costs or benefits. This option would give rise to significant impacts on those in need of culturally-appropriate accommodation, as assessments would not robustly identify all the required need. Without stable and sustainable accommodation, reduced access to healthcare, education and employment opportunities will mean these impacts will be long term.

Option 2 – it is unlikely that any significant additional costs would be incurred, nor savings. Whilst there may in some circumstances be a reduction in some costs of undertaking the assessment survey by local authorities, by a reduction in travelling costs for instance, these would be a minor component in the overall cost of undertaking the assessment and would be offset by additional costs in assembling supplementary evidence where surveys were not undertaken. As with option 1, the lack of robust identification of need is likely to result in significant and long term impacts on those in need of culturally-appropriate accommodation.

Option 3 – it is likely that this option would need to be given effect through the publication of additional guidance, which may incur a small additional administrative cost to the Welsh Government and lesser additional administrative cost to local authorities. These would be opportunity costs reflecting the value of an existing member of staff's time rather than an additional financial outlay. It is unlikely that undertaking surveys would be either more or less costly as a result of this option. As with options 1 and 2, the lack of robust identification of need is likely to result in significant and long term impacts on those in need of culturally-appropriate accommodation.

Option 4 – whilst the survey work would be delayed by up to 12 months for some authorities, the assessment would be undertaken against the existing requirements at the same cost. Local authorities who have already progressed their assessment and completed survey work may submit their assessment on the original timescale with no difference to cost. Whilst some assessments will be completed later than the original timescale (by February 2022 rather than February 2021) and these may result in slower delivery of some accommodation, the number of projects delayed are expected to be fewer in number and shorter in duration than projects delayed in options 1-3.

None of the options create or remove new requirements for local authorities to undertake assessments or to meet the need for accommodation identified.

Summary of the preferred option

As there are limited financial differences between the four options, the preferred option is option 4, as the negative impacts on Gypsies and Travellers of a limited number of delayed construction projects in some local areas will be significantly less than the longer delays across many areas that options 1-3 will result in, which would only be addressed following subsequent assessments in five years' time, as local housing authorities are unlikely to undertake assessments more frequently than required.

8. Consultation

An informal consultation event was held with stakeholders who work with Gypsy and Traveller communities. Evidence was provided that Gypsy and Traveller communities on many sites in Wales are withdrawing from contact with non-residents including withdrawal from schools, even amongst those placing a high value on education. Practice based feedback suggests that Gypsies and Travellers have cultural norms around hygiene, cleanliness and disease that include seeing outsiders as being a potential source of contamination and disease. During the pandemic it is important to consider how welcome unknown professionals will be on sites and whether this will inhibit the important field work. Stakeholders provided clear advice that remote contact methods including phone calls would be unlikely to provide robust engagement, not least because many local authorities would be unlikely to have phone numbers of those they needed to contact. The group advised that unauthorised encampments were less frequent and/or different in nature and expressed concerns that assessment of Transit (or other temporary) need was at risk of

underestimation based on the pattern seen in 2020. They unanimously supported a 12 month extension to the process.

All 22 local housing authorities in Wales were contacted in July 2020 and provided with an opportunity to comment on the proposed options. Whilst responses were requested within a week, no formal deadline was imposed and discussions with local authorities on these options continued until September 2020. Eight local authorities provided no response including five who have submitted assessments early and two that are known to be at an advanced stage of completing their assessment. Eleven authorities confirmed their preferred approach was for an extension of 12 months. Only one authority proposed amendments to the methodology combined with an extension of less than 12 months.

9. Competition Assessment

There is no anticipated impact on competition from this proposal. Most assessments are undertaken by local authorities and only one consultancy firm is known to operate in this area, and they have not identified any economic impact as a result of this legislation.

10. Post implementation review

As the desired impact of the legislation is to ensure the completion of robust assessments, the impact of this change will be evaluated once the scrutiny of all replacement assessments in the current review period is complete. This will necessarily be a subjective evaluation and the intention is to incorporate the result of the evaluation into the next review of the statutory guidance “Undertaking Gypsy and Traveller Accommodation Assessments”.