

## Response to the Police, Crime, Sentencing and Courts (PCSC) Bill

May 2021

**Perspectives from Wales:** Written evidence based on focus group discussions on Part 4 of the Bill held on 21 May 2021 with Wales-based organisations and individuals

The contributors to this evidence included individual representatives and advocates from the Gypsy and Traveller communities in Wales alongside or representing a number of civil society advocacy, social justice, legal, cultural and criminal justice agencies:

[TGP Cymru](#) is a Wales wide children and families advocacy charity and its [Travelling Ahead](#) project provides advocacy and support to Gypsy, Roma and Traveller communities across Wales; [Race Alliance Wales](#) is a collective of organisations working to tackle racial injustice; [BASW Cymru](#) is the Welsh arm of the British Association of Social Workers; [The Gypsy, Roma and Traveller Social Workers Association](#) aims to improve social work competence and confidence when working alongside GRT communities and the [Romani Cultural and Arts Association](#) is a community-led organisation working through the arts with Gypsy, Roma and Traveller communities across Wales. Contributions also received from [Gypsies and Travellers Wales](#) and founding members of the **Association of Gypsies and Travellers in Wales**.



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## 1. Key points

- a. We oppose the introduction of Part 4 of this Bill in Wales; it is designed to directly target Gypsy and Traveller communities and their distinct nomadic culture and way of life without providing any of the solutions that are needed to address the continuing shortfall of site provision.
- b. The proposals cut across and conflict with the legislative, policy framework and direction of the Welsh Government and its devolved powers and responsibilities. It is likely to give rise to constitutional legislative issues and/or challenges unless modified. If not, then legal challenges in Wales might render the Bill unworkable, not just in Wales, but across England as well
- c. **We strongly urge the Committee to recommend removal of Part 4 from the Police, Crime, Sentencing and Courts Bill and to instead follow the Welsh example by re-introducing a statutory duty on local authorities to move towards provision of sufficient residential site provision together with quality transit sites and stopping places.**
- d. We believe that under current human right protections (including children's rights) the right to family life and to enjoy and practice culture and traditions of minority groups, should be not just *respected* but *facilitated* as part of a diverse Wales and United Kingdom
- e. The punitive nature of this Bill which will undoubtedly criminalise people specifically from these two ethnic groups is discriminatory and a clear breach of the Equality Act 2010 and does not address the real needs of the communities i.e., provision of sufficient and quality accommodation and stopping places both permanent and transit to support and facilitate nomadic traditions.
- f. Part 4 as currently drafted, could result in families with no other legal place available to park their vehicle(s) resulting in homes and possessions being seized, rendering them not only homeless but without any of their domestic facilities, transport, or employment resources. 'Families' include children, elders and otherwise vulnerable people - increasing risk and vulnerability to communities facing already well documented inequalities, driving families into the criminal justice system, poverty and presenting social care agencies with increased demand at a time of unprecedented need with an under-resourced social care system.
- g. Increased discrimination and hostility towards Gypsy and Traveller communities – negative media, increase in hate crime and a loss of opportunity to enhance cohesive communities and embrace diversity in what should be an inclusive society, not a divisive one.
- h. Sufficient police powers already exist to respond to any encampments that genuinely cause disturbance and damage – indeed the majority of police forces across England and Wales said as much in their responses to the pre-legislative consultations and do not support these new powers - nevertheless the government has chosen this route.

## 2. Gypsies and Travellers in Wales – a brief background

- a. Gypsies and Travellers have been a part of our diverse Welsh society for over 500 years; both Romani Gypsies and Irish Travellers (each are ethnic groups protected under the Equality Act 2010) are long established in Welsh society in communities, towns and villages across all parts of Wales and live permanently and /or travel in and through our cities and rural areas.
- b. Irish Travellers have been recorded in Britain as early as the 8th Century originally as travelling metal workers and are long established in Wales, as well as Wales being an important route for travel to and from Ireland through its ports in the north and the south of the country.

Welsh Romany Gypsies are more correctly called Welsh Kale and have been living in Wales since the 1700's, the ancestors of the original Welsh Gypsies still live in Wales, along with English Romany families all contributing to Welsh society. Welsh Gypsies have been particularly influential in poetry and music, particularly the Harp and have their own indigenous language which is in the process of being promoted and protected for future generations, as a distinct and unique characteristic of Welsh Gypsy culture and identity through the 'Shikawa Romanus'<sup>1</sup>

- c. Unlike England, Wales has a wide umbrella definition in law of 'Gypsies and Travellers' that encompass ethnic, cultural (i.e., 'New' Travellers) and occupational groups (i.e., Showmen, Circus people) – all are distinct – all share the traditions and culture of nomadism. In contrast to England where the recently amended planning definition requires people to prove that they travel in order to be recognised as Gypsies or Traveller for planning purposes - the Welsh definition below applies across all aspects of devolved legislation and policy:

*(a) Persons of a nomadic habit of life, whatever their race or origin, including – (i) 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, and (ii) Members of an organised group of travelling show people or circus people (whether or not travelling together as such); and (b) All other persons with a cultural tradition of nomadism or of living in a mobile home. (S108 Housing (Wales) Act 2014)*

- d. It wasn't until the 2011 census that Gypsy and Traveller citizens had the opportunity to identify by their ethnicity – the data collected ten years ago suggested a population of 2,785 in Wales although this is considered to be an under-estimation in part due to a reluctance to self-ascribe ethnicity for fear of discrimination; this was again seen in the most recent census process with community advocates reporting '*many wouldn't self-identify in the 2021 census because they didn't want to be identified as the current environment is too hostile and they feared persecution.*'

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<sup>1</sup> <https://shikawaromanus.thinkific.com/courses/shikawa-romanus-learning-romany>

Nevertheless, the varied and diverse communities make up a small percentage of Welsh residents probably around 0.1%

### 3. Welsh context

- a. This Bill will impact on communities in Wales and whilst criminal justice is a non-devolved matter there are provision within the Bill that fall within Wales's devolved legislative competence. The timing of the introduction of the Bill coinciding as it did with the Senedd elections in Wales has not allowed for full scrutiny of the fit with Welsh law and policy making or to fully assess the impact on Wales through the Senedd engaging with Welsh citizens.
- b. The Welsh Government nevertheless laid a Legislative Consent Memorandum<sup>2</sup> in March 2021 accompanied by a written statement<sup>3</sup> and stated it is unable to support the proposals in Part 4 regarding 'unauthorised encampments' stating:

*Welsh Government's approach to managing unauthorised encampments has focussed on engagement with communities and investment for adequate provision of authorised sites and enabling local authorities to meet the accommodation needs (residential and transit) of Gypsy, Roma and Traveller communities. This area of work is prioritised again in the forthcoming Race Equality Action Plan, which contains a standalone goal on better addressing accommodation needs of these communities. The proposed clauses put forward by the UK Government focus on enforcement and criminalisation, which undermine and jeopardise the semi-nomadic way of life of Gypsies, Roma and Travellers who may not have anywhere appropriate to station their trailers.*

**We welcome the stance taken by the Welsh Government and would ask the Committee to note the following points on Welsh legislation and policy already in place which provides a proactive and positive framework to support Gypsy and Traveller communities. The Welsh Government approach in our view provides a model that the Westminster Government should be following:**

- c. Part Three of the Housing (Wales) Act 2014<sup>4</sup> places a legal obligation and brought back a statutory duty (repealed by the CJPOA 1994) on local authorities in Wales to both assess (S 101) 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<sup>5</sup>

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<sup>2</sup> <https://senedd.wales/media/f0qbuwra/lcm-ld14256-e.pdf>

<sup>3</sup> <https://gov.wales/written-statement-police-crime-sentencing-and-courts-bill>

<sup>4</sup> <https://www.legislation.gov.uk/anaw/2014/7/part/3>

<sup>5</sup> 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, under the Mobile Homes (Wales) Act 2013. Working space may also be provided on, or near, sites for activities carried out by community members.

- d. This Welsh legislation 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.
- e. The Welsh Government also provides a significant Capital Sites grant (26.4 million to 2021) for local authorities to apply for to support the development of sites and local authorities (under Welsh planning law) are also required to facilitate Gypsies and Travellers to engage with the planning process to develop their own sites, if they are themselves landowners.
- f. This is not a fast process though - prior to the 2014 duty no public sites had been built in Wales for 17 years and between 2014-18 the Welsh Government had invested in 60 new or refurbished residential pitches. However, the assessed unmet need in Wales remains at over 100 for the shortfall of residential pitches and there remain NO transit pitches or provision across the whole of Wales, at this time.
- g. Whilst we are not expert in constitutional law it seems to make no sense to have a legislative duty which drives a process in Wales to create sites and places to stop for Gypsies and Travellers to facilitate the nomadic way of life; and then to create new offences and police powers which will criminalise families living or travelling nomadically in Wales before that legal duty has delivered site provision across Wales.

**The point has already been made that this not only leaves Gypsies and Travellers going about their legal way of life in an innocuous position it also opens up the potential for legal challenges which may well both hinder progress in Wales and make the proposals themselves unworkable.**

- h. Indeed in Wales we can foresee a number of situations where a family could be caught by this new criminal offence precisely because the legal duty in Wales has not yet delivered permanent or temporary accommodation for them i.e. having had their need assessed under the Housing Act by their local council - still waiting for their local council to meet

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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> )

that need so having no other choice than to encamp on land in their local or neighbouring authorities or to encamp short term while travelling for work and cultural reasons. This is neither just nor fair.

- i. Furthermore Welsh Guidance on Managing Unauthorised Encampments<sup>6</sup> already 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 pre-date and is similar to the ‘Negotiated Stopping’<sup>7</sup> model’ adopted or being explored by some local authorities in England and provides a humane and proportionate response to respect nomadic traditions and to acknowledge the lack of any alternatives available to Gypsies and Travellers at this time. Most local authorities have implemented this guidance locally with individual or regional protocols which work alongside those of the four Welsh police Forces.
- j. The 2018 Welsh Government Plan ‘Enabling Gypsies, Roma and Travellers’<sup>8</sup> 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.
- k. Rights of Children: The pre-amble to the Convention on the Rights of the Child sets out the duty of states to “take account of the importance and cultural values of each people for the protection and harmonious development of the Child”.

Wales Rights of Children and Young Person’s Measure<sup>9</sup> 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. In fact, 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.

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<sup>6</sup> <https://gov.wales/managing-unauthorised-camping-guidance>

<sup>7</sup> <https://www.negotiatedstopping.co.uk/>

<sup>8</sup> [https://gov.wales/sites/default/files/publications/2019-02/enabling-gypsies-roma-and-travellers\\_0.pdf](https://gov.wales/sites/default/files/publications/2019-02/enabling-gypsies-roma-and-travellers_0.pdf)

<sup>9</sup> <https://www.legislation.gov.uk/mwa/2011/2/contents>

- I. In our view the proposals in Part 4 are a clear violation of and in breach of the UNCRC and Welsh Ministers will be required to give due regard to the following:
- 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 interests 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

#### **4. Entrenching inequalities**

Many of the responses to the original government consultations, oral evidence to the recent Joint Committee on Human Rights as well as submissions to this Committee have highlighted the huge inequalities already experienced by many from Gypsy and Traveller communities.

We believe this Bill will magnify these and deepen the hostility experienced on a day-to-day basis by so many Gypsies and Travellers including at school, in communities, in the media and even in our democratic institutions where racial slurs and stereotyping are regularly allowed to go unchallenged.

Creating a new criminal offence which effectively targets Gypsies and Travellers only, risks increasing the percentage prison population of Gypsy, Roma and Travellers disproportionality in a system that already sees prisoners for these communities experiencing discrimination and poor outcomes, as reported in the Lammy Review. Barriers created by holding a criminal record will also impact on employment and other opportunities disproportionally, as highlighted by Jannette McCormick in her evidence to the JCHR Committee on May 19<sup>th</sup>, 2021.

The power to seize vehicles (even one vehicle) if ‘intent’ to reside can be proved which are in the majority of cases going to be people’s homes for the whole family, will result in increased homelessness and families unable to draw on their own resources to care for their families. The Association of Gypsy, Roma and Traveller Social Workers and BASW highlight the increased risks this puts on families of social work and other interventions - separating children from their parents due to their traveling culture was a common practice of the state still within living memory for many in Wales as well as elsewhere in the UK.

The issue of disproportionality has been raised by many others arguing against Part 4 of the Bill – Liberty, Friends, Families and Travellers, the Community Law Partnership and evidence given by Marc Willer QC at Garden Court Chambers highlight that to potentially

lose your home when the level of evidence needed to trigger the offence i.e. 'intent' to reside, 'likely to cause' disturbance, damage or distress is so widely open to interpretation, that Liberty have argued 'These measures are a disproportionate...interference in the [nomadic] way of life.'

## 5. Impact statements - community voices

These are a selection of individual contributions gathered from focus group participants and wider community consultations in Wales:

*"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. It's not our proper culture living in a house that is not how we live. I know some do, but it is not for me. A house stops us living in our community; we don't have the support of everyone around us. On a site if you need anything you can go to anyone. It's not like that in a house, you feel like you are on your own"*

*"I live a semi nomadic life in the United Kingdom. I spend my winters on a site in North Wales but in the summer, I ground stop in different places across the United Kingdom and I also pull from site to site, mostly privately owned Gypsy owned sites. Not only am I worried about not being able to stop on bits of grounds in the summer, but I'm also worried about shifting from site to site. Sometimes we pull over for the night or two nights, in between pulling off the sites. I am worried that the police will use this law to fine me and to criminalise me. Even for short stays like one night. Because sometimes it's hard to get onto sites and it takes a couple of days to get onto these sites, if you can even get on at all. Also I am worried that this government is trying to ethnically cleanse me by making my nomadic lifestyle harder to live in the hope of me giving in my lifestyle and my culture. Thank you very much." (B Cooney)*

*"It's almost impossible for Travellers to travel around like they did before. Laws and discrimination make it so much harder. Yes, there are the odd ones that leave behind a mess but the majority respect the places they pull onto and leave the place as they found it, but you won't hear about that in the press because it doesn't sell papers or court interest. It's a massive shame as travelling was a huge part of my upbringing and a huge part of a Traveller culture. Whilst councils are finding money to build new houses to try and meet demand how about considering the travelling community and consider building transit sites where Travellers could pull on and pull off obviously paying rates and what have you."*

*"The Travelling life in my family goes back over two 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' or 'Gypsy Lane' the 'achin tans' where our families stopped. 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 away like leaves in the wind” (Allison Hulmes: Director BASW Cymru and Founder members Association of Gypsy, Roma and Traveller Social Workers)*

*“The problems people get when they are roadside and their homes getting broke up. What is being done about that? Travellers always getting the bad name but their homes being destroyed is ok. There needs to be transit sites..... it’s hard to get planning permission so people are left with nowhere to go, then we get forced into houses. Even when you have your own land, you still have nowhere to go. Councils can’t provide you with anywhere to go and you can’t provide anywhere for yourself to go either, I really don’t know what they expect us to do.”*

*“We need more sites to pull on to stop newspapers and websites causing racists to get vexed at us.”*

*“Every single day you see houses getting built but no Travellers sites that’s racist. Get us more sites or let us have our own sites and help with that.”*

*“Whilst councils are finding money to build new houses to try and meet demand how about considering the travelling community and consider building transit sites where Travellers could pull on and pull off obviously paying rates and what have you.”*

*“A view from a community member who grew up roadside*

*To Think living roadside is an easy lifestyle / Choice, or to in fact think that this way of life somehow is a cop out from the stresses of a “Modern Life “is a gross misrepresentation of the true nature of living roadside, and could not be further from the truth, it’s a hard way of life and it’s always been that way for our people.*

*It’s difficult to explain to someone who hasn’t lived roadside how stressful it is to get evicted or shifted on 6 times in one day.*

*This is definitely not as simple as pick up and go, there are a lot of things to think about, children, access to water, food, showers, work and the most obvious is finding somewhere safe, these are all things the settled community take for granted.*

*A question I’ve had and heard a lot is well “why live like that if it’s so difficult”*

*And it’s a good question, but it’s difficult to answer I normally say*

*If I was to ask you why you stayed in a house, you would pause for a moment a most likely say*

*“I’m not sure...that’s how I grew up... my parents lived in a house”.*

*It's as odd for us to answer as it is for you, being in a trailer for us just feels right, that's not to say living in a trailer is right for everyone in the community, there a now a lot of modern responsibility's that make living nomadically very difficult.*

*This is where I've noticed people's prejudice's and good old fashioned racism kick in, It's definitely a challenge but I can cope with the problems and stresses that modern life poses to Gypsy's and Travellers for example access to doctors, proof of address, access to banks, schooling, and the 1000's of forms that get shoved under your nose in the name of the greater good, But what we shouldn't have to cope with is elected members, individuals who should in practice know more about equality and diversity and the rights of person than any other, activity propose legislation that criminalizes and persecutes ethnicity and nomadic way of life protected by UK law." ( Tom Tom Hendry: Advocate, Trainer and Founder Association of Gypsies and Travellers Wales)*

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