RESPONSE TO DEPARTMENT OF ENVIRONMENT CONSULTATION ON PPS 12: DRAFT POLICY HS 3 (AMENDED) TRAVELLER ACCOMMODATION

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights, providing legal advice and representation in human rights proceedings, and advising on whether a Bill is compatible with human rights. In all of that work, the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and UN systems, and the non-binding ‘soft law’ standards developed by the human rights bodies.

2. The Commission welcomes the opportunity to respond to the consultation on “PPS 12: Draft Policy HS 3 (Amended) Travellers Accommodation” issued by the Department of Environment for consultation from July-September 2011. The Commission welcomes the Minister Alex Attwood MLA’s commitment, set out in the policy aim, to meeting the distinctive accommodation needs of Irish Travellers and supports the proposed policy change to allow planning permission for permanent (serviced) Traveller sites as well as temporary (transit) sites for Travellers in the countryside.

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1 Northern Ireland Act 1998, s.69(1).
2 Ibid, s.70.
3 Ibid, s.69(4).
Proposed policy change and Commission response

3. The Commission has identified the accommodation needs of members of the Traveller community as a priority issue in relation to human rights compliance. The accommodation situation for Travellers in Northern Ireland has been highlighted by the UN and Council of Europe in the monitoring of compliance by the UK with its international treaty obligations and it is essential obstacles to adequate site provision are overcome. Relevant human rights standards include rights to housing, family life but also non-discrimination: any differentials in planning provision which afford less favourable provision for Travellers could constitute unlawful discrimination unless they have objective and reasonable justification.4

4. At present planning policy on Traveller accommodation is set out in Policy HS3 of Planning Policy Statement 12 (PPS 12) ‘Housing in Settlements’. This policy provides for ‘serviced’ Traveller sites (sites for permanent accommodation for caravans), and ‘transit’ sites (sites for temporary accommodation of caravans to facilitate nomadic lifestyles), along with grouped housing within settlements (towns, villages etc.) However, present policy only provides for transit sites and not serviced sites in the countryside (i.e. away from settlements). This situation effectively prevents caravan-dwelling Travellers from settling in the countryside, as opposed to residing temporarily on a transit site. There is provision for other types of permanent accommodation in the countryside and hence a differential exists.

5. The policy change proposed by the Department is to amend Policy HS 3 of PPS 12 and to add serviced (permanent) sites to permitted developments outside of settlement. The Commission has raised the existence of this restriction in the past welcomes this proposed policy change to remedy it.5

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4 This does not mean that all differentials will be discriminatory: differentials can be accepted where there is objective justification, and can even be positive when they are designed to meet the specific needs of disadvantaged groups.

5 The Commission previously wrote to the Department to raise a similar restriction in the wording of draft Planning Policy Statement 21 on Sustainable Development in the Countryside, policy ‘CTY1’ of which had replicated the restriction in HS 3 to Transit sites only. Whilst the wording in PPS 21 was rectified its deferral to ‘HS 3’ retained the restriction (exchange of correspondence, Chief Executive NIHRC 22 June 2009 and Permanent Secretary DoE, 6 August 2009)
6. In addition to the policy change the Commission suggests the Department satisfies itself that the qualifying statements retained in the revised policy, in particular relating to the exceptional release of land, do not unduly restrict the potential for permission to be granted for sites under the policy in a differential manner to other analogous forms of development.

7. The Department should also consider, along with other stakeholders in government, the benefits of the legal and policy framework for Traveller sites providing clear definitions of ‘serviced’ and ‘transit’ sites. Such definitions, which would preferably be set out on the face of legislation, would assist in affording legal certainty as to the standards and provisions for such sites. In particular this could clarify the application of the definitions to sites privately owned by Travellers, as well as those provided by the Housing Executive. Restriction of planning for temporary and permanent sites to publicly-provided (social) provision may constitute a differential if other analogous forms of private development are permitted.

8. The Commission welcomes the policy aim of facilitating culturally appropriate accommodation for Travellers along with the Minister’s commitment to meeting such needs. To this end the Commission would urge examination of other potential barriers to securing permission for Traveller sites within the planning process, along with other powers within the Departments remit. One such legislative provision within the Departments competency which has been raised by the Commission is the ongoing requirement for the Housing Executive to seek site licences from district Councils for its sites, despite the duty for provision of Traveller sites having been transferred from the latter to the former.  

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6 The Caravans (Northern Ireland) Act 1963 exempted local authorities from the need to apply for site licences for their own sites. Under the 1963 Act Traveller sites had been among a number of categories of caravan sites exempt from licensing requirements with district councils not have to apply for site licences for sites they themselves provided. This included, until 1 December 2003, provision of Traveller sites. Under the Housing (Northern Ireland) Order 2003 this power was transferred from Councils to the Housing Executive. However a consequential amendment was not made to reflect this, hence the Housing Executive, in addition to its own statutory requirements, can still be required to have a site licence. During the passage through the Northern Ireland Assembly of what became the Caravans Act 2011 the Commission recommended a clause be added to the Bill remedy this seeming legislative anomaly by amending paragraph 11 of Schedule 1 of the 1963 Act to exempt the Housing Executive, alongside district Councils, from the site licence requirement. The Commission’s concern was that the licensing requirement could constitute, or be used as, an unnecessary additional impediment to the NIHE discharging its function to provide
Relevant human rights standards

9. The rest of this submission will outline for the reference a number of human rights standards relevant to Traveller accommodation.

10. Rights to adequate housing are provided for in international standards to which the UK is party, including the International Covenant on Economic, Social and Cultural Rights (ICESCR). The authoritative interpretation of a framework for 'adequate housing' under the ICESCR includes the 'cultural adequacy' of housing.7 ‘Housing’ should be understood as referring to all types of accommodation. This UN instrument is binding on the UK in international law, but not directly enforceable in the domestic courts. In 2009 the UN body overseeing the UK’s compliance with obligations under the ICESCR raised concerns regarding the present situation of Travellers and urged the provision of sufficient, adequate and secure sites. The Committee also commented on the discriminatory effect of the Unauthorised Encampments (Northern Ireland) Order 2005 (which is under the competency of the Department of Social Development) and urged its review.8

11. The Council of Europe, in relation to compliance with the UK’s obligations under the Framework Convention for the Protection of National Minorities (FCNM), has also singled out the accommodation situation of Irish Travellers. In response to observations on the subject by the FCNM treaty monitoring body the UK stated that in Northern Ireland there was adequate funding for accommodation for Travellers but conceded that there were ‘constraints’ in obtaining the suitable sites needed. The UK argued this was a problem being actively addressed by the Department for Social Development and the Northern Ireland Housing Executive

sites. While it appears that many Councils do not apply this provision, an MLA argued in the debate that some councils have used the provision as a ‘blocking mechanism’ against the provision of Traveller sites (Hansard Northern Ireland Assembly, Consideration Stage: Caravans Bill, 25 January 2011, Anna Lo MLA, p272). An amendment was tabled to the Bill to this effect by MLAs, however the tabling of a ‘petition of concern’ by DUP MLAs to the amendment ensured it would ultimately be defeated and the requirement remains.

7 Committee on Economic, Social and Cultural Rights (13 December 1991), General Comment 4: The Right to Adequate Housing, UN Document number E/1992/23, paragraph 8g.
Subsequently the Council of Europe’s Committee of Ministers adopted a resolution in relation to the UK’s compliance with the FCNM, which included among its issues of concern:

Hostility among some people within the local population and the resistance of certain local authorities to improving the availability of authorised sites have contributed to the fact that a number of Gypses and Travellers continue to live on unauthorised sites and may face eviction orders.  

The main provisions of the European Convention on Human Rights (ECHR) are directly accessible in local courts having been given further effect by the Human Rights Act 1998. That Act provides that legislation must be read and given effect in a manner compatible with ECHR rights. The ECHR does not include an explicit right to housing; however in particular circumstances duties in relation to housing can fall within the scope of ECHR rights, including the right to family life under Article 8, property rights under Article 1 of the First Protocol, and the right to protection from inhuman or degrading treatment under Article 3. These and other ECHR rights have to be read alongside the prohibition of discrimination in Article 14 of the ECHR which provides that the rights “shall be secured without discrimination on any ground”, meaning that differential treatment between protected groups has to be objectively justifiable. The UK courts, legislators and public authorities operating within a framework of ECHR compliance, must have regard to case law from the European Court of Human Rights. This includes Connors v the UK. In Connors the lack of protection against eviction afforded to Traveller sites in England, which contrasted unfavourably with the levels of protection afforded to other tenants, was found to breach Article 8 of the ECHR. Through the Caravans (Northern Ireland) Act 2011 the Northern Ireland Assembly has now legislated to afford security of tenure protections for caravan site dwellers in this jurisdiction.

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11 Application no. 66746/01, 40 EHRR 9.