



National Traveller Organisation Representatives' Submission on Traveller Accommodation Expert Review Governance Recommendation Section 4.5 - Internal Appeals Procedure

The priority of the National Traveller organisations remains the repeal of the Criminal Trespass legislation and the establishment of a network of transient sites. These recommendations of the Expert Review have been echoed as recommendations of the recently published final report of the Joint Committee on Key Issues Affecting the Traveller Community.¹ We recognise the value in creating a well functioning appeals procedure alongside this and welcome the opportunity to contribute towards its development.

The national Traveller organisations suggest there are shared goals, or aims, in reviewing the eviction procedures:

- to avoid evictions where possible through dialogue and consultation
- to affirm the rights of Travellers to the cultural practice of nomadism
- to ensure that eviction procedures are in line with human rights standards; thus remedying Ireland's breach of Article 16 of the Revised European Social Charter
- to recognise and to respond to the complex and distressing experiences of homelessness experienced by some Travellers living on unofficial or roadside sites and ensure their needs are holistically met
- To reduce the monetary and human costs of evictions
- To encourage positive relationships between local authorities and Travellers based on respect, consultation and negotiation
- To encourage positive relationships between Travellers living on unofficial or roadside sites and others living in community
- To foster social inclusion rather than exclusion
- To ensure the approach taken is in keeping with the local authorities' responsibilities under the Public Sector Duty
- To act in the best interests of Traveller children; affirming their entitlement to a childhood free of the trauma of evictions in which their cultural identity is celebrated

¹ Full report available here:

[2021-12-01 final-report-of-the-joint-committee-on-key-issues-affecting-the-traveller-community_en.pdf \(oireachtas.ie\)](https://www.oireachtas.ie/publications/2021-12-01-final-report-of-the-joint-committee-on-key-issues-affecting-the-traveller-community_en.pdf)

A positive and pragmatic approach to responding to the needs of nomadic Travellers will also acknowledge the current Traveller accommodation crisis as a primary reason for the existence of unofficial sites. While nomadism is nominally recognised through the Housing (Traveller Accommodation) Act 1998 in its provision for transient sites, the underdelivery of Traveller specific accommodation, particularly transient sites, has largely negated this right.

In light of the above aims, we see a review of eviction procedures as having three components:

1. A collectively agreed approach by local authorities to facilitating nomadic Travellers, or Travellers living in trailers due to lack of other available Traveller specific or standard accommodation - towards a revised *Guidelines for Accommodating Transient Traveller Families*
2. The steps that should be taken by the local authority prior to the possible issuing of a Section 10 (or similar) notice
3. The steps that can be taken by Travellers served with a notice - ‘The Appeals Procedure’

The Appeals Procedure will be the primary focus of this submission given this was the question posed by the Traveller Accommodation Support Unit, but we would also like to make some preliminary comments and suggestions on the other two components.

Section 1: Towards a New Set of Guidelines for Accommodating Transient Families

The issuing of Section 10 notices is far more common in some local authority areas than in others. This suggests that some local authorities have different approaches to unofficial sites, which may be more in keeping with the aims outlined in the introductory paragraph. There are also approaches from other jurisdictions that could help inform the policies and procedures for local authorities in relation to nomadic families. We have highlighted some such examples below as well as drawing the programme board’s attention to existing departmental guidelines on accommodating transient families, with a view to highlighting the need for the updating and circulation of such guidelines.

Example 1: Negotiated Stopping

Negotiated stopping is an approach used in some local council areas in England. It is based on three agreed principles; that families have the right to travel, that evictions are harmful and there are better solutions. It works by all parties coming to a common agreement for Travellers to use an unused piece of land as a temporary stopping place. Terms are agreed, including time stopped on the land and services to be provided by the local council. This should include water, rubbish disposal and sanitation. Stopping can be agreed for a couple of weeks or months, but most are for around 28 days. There is a designated liaison person to facilitate positive relationships and dialogue and ensure consistency of approach.

Using engagement, rather than enforcement, has meant improving lives with access to services and saving hundreds of thousands of pounds. Leeds City Council using Negotiated Stopping has saved over £230,000 per year on clean up and enforcement costs.²

Example 2: Scottish Guidelines on Unauthorised Encampments

The Scottish Guidelines on Unauthorised Encampments again take a more pragmatic and person-based, relational approach to the management of unofficial sites, which takes into account the council's responsibility to their Public Sector Equality Duty. While recognising there may be situations where the encampment cannot be maintained, for example the site is used for another recognised purpose, or legitimate health and safety concerns, it also facilitates nomadic families to remain on suitable sites for short stays. The guidelines recommend the provision of basic services at these locations and signposts Travellers to any relevant support services they may require. The guidelines include templates for local authorities to monitor responses and assess needs and flowcharts on recommended actions.³

Example 3: Department of Housing Guidelines on Accommodating Transient Traveller Families (1999)

While outdated and not covering all scenarios and possible positive initiatives, the Department has guidelines for accommodating nomadic families which aim “*to assist local authorities in providing appropriate services at reasonable cost to nomadic Traveller families.*” These guidelines could be updated with consultation with Travellers and local authorities in order to collectively meet the aims outlined in the introductory paragraph of this submission.

These guidelines include: *The identification of public land as temporary camping areas*

“Local authorities should, in conjunction with relevant public authorities, identify suitable locations in their functional areas that would accommodate transient Traveller families for short periods.

The provision of services to such sites are without prejudice to other statutory functions of local authorities and should have regard to health, fire safety, environmental, planning, legal and other implications.

Basic services and facilities could include:

² More information on this approach can be found at: [NS Explained — Negotiated Stopping](#)

And at [f0e4bf_aaedccd99b0c42fa9a18878c9bd7fe14.pdf \(filesusr.com\)](#) (*The potential for a negotiated stopping approach in London*)

³ Scottish guidelines available at: [Managing unauthorised camping by Gypsy/Travellers in Scotland: guidance for local authorities - gov.scot \(www.gov.scot\)](#)

- a water supply (piped or a tank);
- portable toilet and washing facilities (shower and/or wash-hand basin);
- waste collection service;
- hard surface for caravans.

In some cases it may be practicable to connect the portable toilets to an existing sewerage scheme and to provide public lighting and electric supply to families.⁷⁴

The availability of practical up to date guidelines modelled on best practice elsewhere and drawn up in consultation with nomadic families could reduce the number of notices being served, and promote positive engagement between local authorities and nomadic families.

Section 2: The steps that should be taken by the local authority prior to the possible issuing of a Section 10 (or similar) notice

The assessment of proportionality as further detailed in Section 3, should be taken prior to the issuing of a notice, and not just considered as part of the proposed internal appeals process. This could be done by means of a checklist, results of which should be accurately recorded, and monitored at a Departmental level. This would also serve the purpose of more accurately monitoring the needs of Travellers living on unofficial or roadside sites, the reasons for their occupation of such sites, i.e. is it due to a choice to live nomadically on a year round or seasonal basis, or is it an iteration of homelessness where Traveller specific accommodation or standard social housing has not been provided.

It would also accurately monitor the number of Travellers living in such situations who are not assessed under the local authority's Traveller Accommodation Programme, or who have been excluded from the housing list. This data should be reported and monitored at a national level to inform policy responses and to improve accountability, and ensure that the accommodation needs of all Travellers are being met.

Such assessments and consultations should be carried out by a designated liaison person, for example a Traveller Liaison Officer, with sufficient training in the area provided. Travellers should be actively recruited for such roles.

Engagement at this stage could also signpost Travellers to existing support services, including local Traveller organisations and relevant health services where requested.

⁴ Irish guidelines available at: [Guidelines for Accommodating Transient Traveller Families](#) (p.9)

Section 3: The steps that can be taken by Travellers served with a notice - Recommendations on 'The Appeals Procedure'

These recommendations were drawn up with support from the Free Legal Advice Centres' Traveller Legal Service.

Background

1. Recommendation 5 of the Governance Section provides that:

The eviction procedure, which allows for the removal of families within 24 hours, needs to be reviewed with a view to providing an internal appeals procedure. This process can be utilised by families who are assessed under a local authority TAP, and should allow for appropriate submissions relating to the individual circumstances of families affected, with particular regard being given to the vulnerable members of those families, including children and their educational requirements, elderly and disabled family members, infant children or pregnant women.

2. Recommendation 5 refers to the procedure contained in section 10 of the Housing (Miscellaneous Provisions) Act 1992 (as amended) (the "**1992 Act**"). It is apparent from paragraph 6.2.5 of the Traveller Accommodation Expert Review Report that Recommendation 5 was influenced by the findings of the European Committee of Social Rights (the "**Committee**") in the case of *ERRC v Ireland*⁵ where the Committee found that section 10 of the 1992 Act breached Article 16 of the European Social Charter (the "**Charter**") concerning the right of the family to social, legal and economic protection. In that regard, the Committee found that:

145. The Committee notes that none of the three sub sections under Section 10 under the Housing (Miscellaneous Provisions) Act 1992 (as amended) permitting eviction provide for prior consultation. Further a notice period of not less than 24 hours cannot be considered as reasonable, particularly in the context of Section 10 (b) under which Travellers may be relocated some distance from where they are currently located nor under Section 10 (c) where there is no obligation to provide alternative accommodation. It notes that the Government maintains in practice Travellers threatened with eviction are consulted and given more than 24 hours notice prior to being issued with a Section 10 Notice. However the Committee finds that this is not sufficient.

146. Lastly the Committee finds that the remedy of judicial review in the absence of legal aid is not sufficiently accessible.⁶

3. The following proposals therefore take account of the Committee's findings. The proposals have also taken into account the requirements of Articles 6 and 8 of the European Convention on Human Rights (the "**ECHR**") concerning the right to private and family life and home, particularly with regard to considerations of proportionality.

⁵ Complaint No. 100/2013

⁶ More detail provided in Appendix 1

4. In addition to Ireland’s obligations pursuant to the Charter and the ECHR, in formulating the proposals, regard was had to standards of constitutional and administrative justice relevant in Irish law.

Prevalence of Section 10 Use

5. It is noted that in addition to Recommendation 5, the Traveller Accommodation Expert Review Report also commented upon the absence of monitoring of the impact of section 10 of the 1992 Act. The Report stated that such impact “*needs to be carefully monitored by a central authority*”.
6. At present, statistics as to the use of section 10 notices are not centrally collated, nor are statistics as to the use of section 10 notices by individual local authorities easily accessible.
7. Independent research undertaken by the Free Legal Advice Centres using freedom of information requests has found that between 2016 and 2021 (up to August), local authorities issued section 10 notices in the following amounts.

Year	No. Section 10 Notices Issued
2016	58
2017	149
2018	178
2019	201
2020	80
2021	136

8. Recommendations as to the need to monitor the use of section 10 notices are made below under “*How would it be monitored?*”.

Responses to Issues Raised

Should an ‘internal appeals procedure’ be an administrative procedure only with no legal standing or should it be a more formal legal process.

9. The appeal mechanism should ultimately be instituted on a statutory basis. However, in the interest of prioritising the implementation of the recommendations, per Pathway 2 of Housing for All, an initial, interim mechanism on a non-statutory basis could be introduced through a Ministerial circular.

10. The procedure for termination of local authority tenancies set out in Part 2 of the Housing (Miscellaneous Provisions) Act 2014 (the “2014 Act”) could be used as a model for the statutory implementation of the appeal mechanism. In particular, section 13 of the 2014 Act, which requires local authorities to apply to the District Court to seek the removal of a person with no lawful authority or right to occupy a council dwelling, should be considered.

When should it be used

11. The appeal mechanism should be available whenever a section 10 notice is issued, not only in instances where the person is assessed under the Traveller Accommodation Programme. .

How would it work

12. On occasions where a section 10 notice is issued, the recipient of the notice should be informed of their right to avail of an internal appeal within a specified period. Wording informing the recipient of their right to appeal should be included on or appended to the notice, with directions as to the specified period within which the appeal should be made to be valid. Further detail as to the appropriate addressee for an appeal should also be set out. The mechanism for notification of an appeal should be accessible to those with literacy or digital literacy issues.
13. The effect of the section 10 notice should be suspended until the period for a valid appeal expires or until after the appeal is concluded.
14. The official charged with considering an appeal should be independent of the department that issued the notice and hold a more senior rank than the initial decision maker.
15. The official charged with considering an appeal should be provided by the initial decision maker with a written statement of reasons for the issuance of the section 10 notice. This statement of reasons should also be provided to the addressee of the notice before they are required to provide submissions. The official should consider whether the statement of reasons addresses all necessary fact and opinion based prerequisites contained within section 10.
16. For example, in the case of any notice that an opinion has been formed (and the reasons for that opinion) that the subject temporary dwelling is in its current location without lawful authority. Or, in the case of a notice issued pursuant to section 10(1)(b), that an opinion has been formed (and the reasons for that opinion) as to the matters at section 10(1)(b) (i) – (iii).
17. Further factors that the official charged with considering an appeal should take into account are considered below under “*the grounds for appeal*” and “*proportionality*”.
18. The recipient of a section 10 notice should be provided with an opportunity to make submissions, either orally or in writing, to the official charged with considering the appeal within a specified period. The content of such submissions is considered further below under “*the grounds for*

appeal” and “*proportionality*”.

19. The official charged with considering the appeal should be authorised to affirm or revoke the section 10 notice. The official’s decision should be communicated to the recipient of the appeal in writing (and orally, if necessary) and should include a statement of reasons for the decision.
20. In circumstances where the official charged with considering the appeal affirms the section 10 notice, a period of time, not less than 72 hours, should be allowed until the notice takes effect.

How would it be monitored

21. The use of section 10 notices should be recorded by local authorities as a matter of course. All section 10 notices should be kept on file by local authorities for an appropriate period. Records of any appeals, including the statement of reasons of the initial decision maker, any submissions received from the recipient of the notice, and the statement of reasons of the official charged with considering the appeal, should also be retained for the purposes of reporting.⁷
22. Statistics on the number of section 10 notices issued; the relevant subsections of section 10 under which notices were issued; how many section 10 notices led to prosecutions; how many section 10 notices led to temporary dwellings being removed by the local authority; how many section 10 notices were appealed and how many appeals were successful should be reported to the Department of Housing, Local Government and Heritage via an annual return.
23. The statistics provided to the Department of Housing, Local Government and Heritage should be published.

The time frame

24. The period of time within which a valid appeal may be made should be sufficient to allow the recipient of the section 10 notice to prepare or make a submission and not less than 72 hours.
25. The official charged with considering the appeal should issue their decision as soon as possible after consideration of the appeal.

Health and Safety and Public Health issues

26. Section 10(1)(b) and 10(1)(c) make provision for the use of section 10 notices where health and safety and public health issues are relevant by allowing local authorities to issue a notice where an opinion has been formed as to stated matters. It is recommended that such opinions should be founded on clear evidence of the relevant risk.

⁷ The government committed to such monitoring in its response to the ECSR findings in 2016: “the introduction of a central government record of data and information relating to eviction may help to assuage concerns in this regard and will be considered by the NTACC sub-group on data collections”

The grounds for appeal

27. To cater for the diverse circumstances in which an appeal of a section 10 notice may arise, the grounds of appeal should not be prescribed. However, the following would constitute relevant grounds:
- a. Failure to comply with provisions of section 10(1) of the 1992 Act:
 - i. Presence of lawful authority (s.10(1));
 - ii. Temporary dwelling not within stated radius of site (s.10(1)(a) and s.10(1)(c));
 - iii. Failure to form opinion as to appropriate alternative site (s.10(1)(a) and s.10(1)(b));
 - iv. Failure to form opinion, or absence of evidence, as to matters at section 10(1)(b)(i) – (iii); and
 - v. Failure to form opinion, or absence of evidence, as to matters at section 10(1)(c) (i) – (iii)
 - b. Failure of section 10 notice to specify matters required by s.10(2); and
 - c. Absence of proportionality (see factors below).

Proportionality

In practice proportionality refers to the principle that a public body should not take steps that have any greater effect on the rights of the individuals affected by the steps than is necessary for the achievement of the public body's aim in taking the steps in the first place.

Important factors in determining proportionality are therefore whether rights are engaged, the aim of the public body, and the courses of action available to it to achieve those aims.

28. Proportionality should be considered by the initial decision maker prior to issuing a section 10 notice and also by the official charged with considering an appeal. Proportionality is a separate consideration from the factual and opinion based prerequisites which must be present in order for a section 10 notice to be issued.
29. An individual to whom a section 10 notice has been issued could refer to the proportionality of the measure in their submissions on an internal appeal.
30. When considering whether the decision to issue a section 10 notice is/was a proportionate measure regard should be had to the following factors:

- a. Whether there has been prior consultation with the residents of the temporary dwelling and, if so, the content of that consultation;
 - b. The length of time that the temporary dwelling has been in its current location and proposed estimated length of the stay where relevant;
 - c. The links (family, employment or education) of the residents of the temporary dwelling to their current location;
 - d. The circumstances which led to the residents of the temporary dwelling residing at their current location;
 - e. The characteristics of those resident in the temporary dwelling, including their age, educational needs, medical needs including Covid-19 risk factors, and whether any resident is pregnant;
 - f. Whether the residents of the temporary dwelling have active applications for social housing support;
 - g. Whether the residents of the temporary dwelling have expressed a preference for Traveller specific accommodation and whether that preference is reflected in the local authority's Traveller Accommodation Programme ("TAP");
 - h. Whether alternative accommodation, including temporary and transient sites, is available
 - i. The suitability of any alternative accommodation for the residents of the temporary dwelling taking into account their circumstances and characteristics;
 - j. The severity of the interference, nuisance or obstruction and the evidence used and reasons for the opinion as to severity;
 - k. The availability of alternative measures not requiring a section 10 notice to remedy the interference, nuisance or obstruction or to obviate the risks posed to health and safety by the temporary dwelling ;
31. The factors outlined above are non-exhaustive and should form the basis upon which a decision to issue a section 10 notice is taken. Insofar as this is the case, the guidance by the DHLGH should iterate that the assessment criteria outlined above should be utilised, prior to the issuing of a section 10 notice.

The factors should be weighed against one another to determine if the section 10 notice is a disproportionate measure.

Use of Internal Appeals Process Beyond Section 10

32. It is recommended that any procedure invoked by a local authority, which entails an interference with an individual's ECHR and Constitutional rights should be subject to an internal appeals process

Other issues to be considered in relation to eviction procedures:

- The use of private security companies for evictions is not appropriate, and should be monitored and regulated. Conflict of interest in this regard should be assessed and prevented. An example of such practices in one local authority area is the use of a private security company for evictions who also hold the tender for the management and maintenance of a Traveller accommodation site, and who are also involved in the impounding of animals.
- Disproportionate Garda responses should be monitored and prevented
- Evictions should never take place in winter or at night. Notices should not be served on Fridays where there is reduced possibility of securing support or legal advice within the notice period. In line with departmental circulars, they should not be occurring during Covid 19.

Appendix 1 - Protections for Persons Threatened with Eviction

In order to comply with the Revised European Social Charter, the Committee, in 2016, stated that legal protection for persons threatened with eviction must be prescribed by law and include:

- an obligation to consult the affected parties in order to find alternative solutions to eviction;
What consultation process took place?

- an obligation to fix a reasonable notice period before eviction;
What notice period was given?

- a prohibition to carry out evictions at night or during winter;
What time of date and time was the notice served, and enforced?

- access to legal remedies:

- access to legal aid;

- Have the persons concerned had access to legal aid and remedies?*

- compensation in case of illegal evictions.

Furthermore, when evictions do take place, they must be:

- carried out under conditions respecting the dignity of the persons concerned;
What considerations were given to the dignity of the persons concerned?

- governed by rules sufficiently protective of the rights of the persons;

- accompanied by proposals for alternative accommodation
*What proposals for alternative accommodation were made?*⁸

Adherence to these standards should be reported on and monitored.

⁸ Available at: [Decision on the merits : European Roma Rights Centre \(ERRC\) v. Ireland, Complaint No. 100/2013 \(coe.int\)](#)

Appendix 2 - Other Recommended Reading on Nomadism

Misli Crush Misli, Irish Travellers and Nomadism, available at: [Microsoft Word - MISLI.CRUSH.MISLI_3.doc \(itmtrav.ie\)](#)

Progressing the Provision of Transient Accommodation to Facilitate Nomadism, available at: [Microsoft Word - Nomadism.doc \(itmtrav.ie\)](#)