

# FFT Factsheet



## Section 61

### Situations in which Section 61 can be used by the police

In the summer of 1999, The Association of Chief Police Officers (ACPO) Public Order Sub-Committee issued their new Guidance Document on the use of The Criminal Justice and Public Order Act 1994 (CJ&PO or CJA) by the police with regards to collective trespass or nuisance on land. The document begins:

*“This guidance draws on the experience of police officers who have dealt with large scale trespass or nuisance to land in the years since the Act took effect. Police Officers who have to deal with groups of people, who have moved onto land for varying purposes are faced with unenviable choices. Prompt action can often defuse a situation and regain the land for the occupier’s use. However, this has to be balanced against the view that moving people on may create a further trespass nearby or lead to disorder or disruption of the normal life of the community.”*

*What is clear is that each case should be looked at on its merits and the pros and cons weighed up.”*

The document then goes on to summarise the law with regards to the use of Section 61 of the CJA, which in brief is as follows:

Firstly, the Senior Police Officer (of any rank) present at the scene may issue a direction to leave the land if he/she has reasonable grounds to believe (1) “that two or more persons are trespassing on the land and (2) they are present there with the common purpose of residing there for any period.” However, before this direction can be issued, the officer must (3) ensure that reasonable steps have been taken by or on behalf of the landowner/occupier to ask them to leave and (4) either :

that any of the persons have caused damage to the land or property or used threatening, abusive or insulting words or behaviour towards the occupier or his family/agents.

that those persons have between them six or more vehicles on the land. Don’t forget that when stationary/parked up (i.e., not being driven down a highway), the

authorities will count a towing vehicle and a caravan or trailer as two separate vehicles.

Therefore, a total of four criteria must be met before the police can issue a direction to leave land. Failure to comply with a direction to leave the land or a return to the land within three months is an imprisonable and/or finable offence. Any Constable in uniform may arrest anyone they reasonably suspect is committing such an offence without a warrant.

Please note that the Association of Chief Police Officers (ACPO) guidelines states that the use of Section 61:

*“.....is not unfettered – it must be exercised reasonably and the standard of reasonableness will vary according to the situation. The use of Section 61 is not restricted by the compulsory need for local authorities to consider detailed welfare issues....It was the intention of Parliament to separate the powers granted under Section 61 from those granted under Section 77. Local Authorities have other responsibilities including the Housing and Education Acts...These are not Police responsibilities. Ours are to enforce the Criminal Law, prevent crime and to maintain order. However, Mr. Justice Collins (Ex parte Small 1998) said that the police must pay regard to humanitarian and welfare issues prior to using Section 61.”*

Although the extent to which enquiries are carried out is an operational one for the officer in charge, this is a major breakthrough as there is no mention of any duty on the police to take such matters into consideration in the Act or Circular 1/94. That the police have chosen to mention the case in the guidelines means that they view it to have weight.

The guidelines also state:

*“Standards of behaviour expected from those trespassing should be the same as those expected from the settled community. However, officers will need to be aware of the responsibility placed upon them to provide the same standard of service as would be expected to those living in settled communities. This applies to all groups of travellers who should not, for example, be subjected to their vehicles being stopped and searched without good reason or required to produce their documents just because they are recognisably from traveller communities.”*

Finally, there is a clarification of what the police consider “damage” to land to be. Previously, it had been argued that simply driving across land or even urinating on land was enough to constitute damage, making it very easy to fulfill one of the four criteria mentioned earlier before a direction to leave land can be issued. The guidelines state:

*“The Act does not define damage but makes reference to the Criminal Damage Act 1971 when defining property. A common sense approach is therefore necessary when defining damage to land or to property on the land. It has included churned up ground caused by heavy vehicles; diesel spillages; animal and human excrement; destroyed fencing and spoiled crops. The dumping of litter and rubbish by travellers and gypsies is often the most frequent nuisance factor associated with illegal trespass. This may fall within the legal category of damage dependent on the severity of the situation found and each case will need to be judged on its merits.”*

A few other points to bear in mind are that

*“directing unfit vehicles onto the public highway is inappropriate and officers planning enforcement action under Section 61 will need to make practical arrangements for the removal of unfit vehicles to a safe place.”*

Although this will usually be interpreted as impounding and towing away, the guidelines do remind officers that

*“seizure of such a vehicle (i.e., caravans and living vans) may render the owner and others homeless, so welfare considerations do need to be anticipated and catered for.”*

The other thing to bear in mind is that many local authorities will offer mechanical assistance and diesel to avoid a heavy or difficult eviction. Although they may be hesitant about offering this service themselves, it is always advisable to draw their attention to any mechanical difficulties and request assistance.

And finally, please bear in mind that the definition of land in this context does not include:

1. buildings other than agricultural or scheduled monuments

2. a highway unless it is a footpath, bridleway or byway open to all traffic, or road used as a public path or a cycle track.

Although we do not recommend being confrontational with the police, it is important to understand the law and what conditions they need to take account of. Often, simply pointing out that they may be acting unlawfully and referring them to their own guidelines will be enough to make a constable think twice and decide to check with his/her superiors before proceeding.