



BRIEFING PAPER

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Police powers: unauthorised encampments

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This briefing provides information for England only.

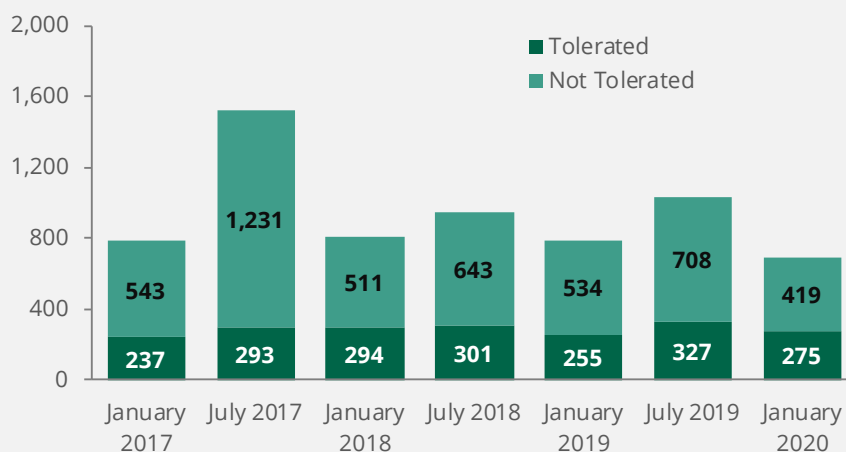
This briefing paper is part of a series which discuss police powers in England and Wales. The series is introduced by the briefing [police powers: an introduction](#).

1. What are unauthorised encampments?

Unauthorised encampments occur when trespassers occupy land belonging to private landowners or public authorities. The term is associated Gypsy and Traveller sites.

As at January 2020, **3% of Gypsy and Traveller caravans in England were on unauthorised encampments (694 caravans)**. 419 of those caravans were on sites “not tolerated” and 275 were on tolerated sites.¹

Unauthorised encampments in England



Most Gypsy and Traveller caravans in England (88%) were situated on authorised sites in January 2020. 9% of Gypsy and Traveller caravans were in “unauthorised developments” (sites built on land owned by Gypsy and Travellers but without the appropriate planning permission).

¹ Ministry of Housing Communities & Local Government, [Traveller caravan count: January 2020](#), June 2020, table 1a

2. Powers

Local authority powers

Local authorities have their own set of powers to deal with unauthorised encampments. **Local authority powers are not discussed in this briefing.**

The Government says local authorities have a “clear leadership role” in tackling unauthorised encampments.² Police guidance states that the “lead role” in the management of unauthorised encampments “will be with local authorities”.³

The Government has outlined the [powers available to local authorities and the police](#). The Library’s briefing [Gypsies and travellers: planning provisions](#) discusses local authority powers.

Public order powers

[Sections 61-62E](#), *Criminal Justice and Public Order Act 1994* provides the police with powers to direct those in unauthorised encampments to leave land based on their behaviour.

[Section 61](#) allows senior officers to direct those in an unauthorised encampment to leave land if:

- their encampment consists of **six or more** vehicles; **or**,
- the landowner has taken reasonable steps to ask them to move **and** they have caused damage to the land/ property **or** have used threatening, abusive or insulting behaviour to the landowner, their family or employees.

[Section 62A](#) of the 1994 Act allows a senior officer to direct those in an unauthorised encampment to leave land if:

- their encampment consists of **at least one** vehicle and caravan,
- the landowner has asked the police to move the encampment; **and**,
- the local authority can provide a suitable pitch for the caravans elsewhere within their local authority area.

Failure to comply with a direction issued by the police under section 61 or 62A of the 1994 Act is an offence.⁴ It is also an offence for someone who has been issued a direction to return to the relevant site within three months.⁵ Those convicted of these offences can be imprisoned for up to three months or fined.⁶ The police also have powers under [section 62](#) and [62C](#), of the 1994 Act to seize their vehicles.

Use of police powers

The National Police Chiefs Council (NPCC- the coordinating body for UK police forces) has issued operational guidance on [policing unauthorised encampments](#). This guidance has been agreed by all chief officer’s in England, Wales and Northern Ireland. It is kept under review by the NPCC’s [Diversity, Equality & Inclusion Coordination Committee](#).

The guidance emphasises (as is standard for police powers) that officers *must* consider the human rights and *Equalities Act 2010* protections of those in unauthorised

² Department for Communities and Local Government, Home Office, Ministry of Justice, [Dealing with illegal and unauthorised encampments: A summary of available powers](#), March 2015,

³ NPCC, [Operational Advice on Unauthorised Encampments](#), 2018, p8

⁴ [s61\(4\)](#) & [s62B](#), *Criminal Justice and Public Order Act 1994*

⁵ Ibid

⁶ [s61\(4\)](#) & [s62B\(3\)](#), *Criminal Justice and Public Order Act 1994*

encampments.⁷ It says the “mere presence of an encampment without any aggravating factors should not normally create an expectation that police will use eviction powers”.⁸ It says the police should “consider becoming involved” in the removal of unauthorised encampments” when:⁹

- Local amenities (for example parks, school fields and village greens) are affected.
- There is a “significant” impact on the environment.
- There is local disruption to the economy. For example, the encampment is on a shopping centre car park, industrial estate or agricultural land.
- The behaviour of those in the encampment causes a “significant disruption to the local community”.
- There is a danger to life. For example, the encampment is on a motorway.
- There is a need to take action to prevent anti-social behaviour.

Working with local authorities

The NPCC guidance says:

The lead role for decision making should rest with the local authority and the use of police powers should not normally be considered as a first response.¹⁰

It says officers should make an early site visit to a new unauthorised development with a representative from the local authorities to assess what action is required.¹¹ It also says forces should develop ‘Joint Agency Protocols’ with local authorities (and other partners) for the management of unauthorised encampments.¹²

Anti-social behaviour powers

The police and local authorities have a range of powers to deal with anti-social behaviour which may be applicable to the policing of unauthorised encampments. The Library briefing [Tackling anti-social behaviour](#) provides a detailed discussion of these anti-social behaviour powers.

The NPCC guidance says officers should visit new unauthorised encampments as soon as possible to start a dialogue with the people living there. It advises officers to ask people in unauthorised sites and the neighbouring settled community to follow a ‘code of conduct’ as a way of preventing anti-social behaviour.¹³

3. Government proposals for reform

The Government is currently considering two proposals to reform the policing of unauthorised encampments. It is committed to **either** legislate for a new criminal offence **or** to strengthen the police powers in the 1994 Act.

The Government ran a consultation ([Strengthening police powers to tackle unauthorised encampments](#)) on both options in early 2020 (closed on 4 March). It has not yet responded to the consultation. On 2 December 2020, Kit Malthouse (Minister for Policing and Crime) said:

⁷ NPCC, [Operational Advice on Unauthorised Encampments](#), 2018, p5

⁸ Ibid, p9

⁹ Ibid

¹⁰ Ibid, p8

¹¹ Ibid, p5

¹² Ibid, p8

¹³ Ibid, p5 & Appendix A

4 Police powers: unauthorised encampments

We made a clear manifesto commitment to act on the issue of unauthorised encampments and I remain determined to ensure police have the powers they need. I intend to publish our response to the consultation and to bring forward legislation later this session.¹⁴

The Government is committed to legislating in its forthcoming *Police Powers and Protections Bill* (a Queen's Speech Bill). The Bill is set to include:

Potential measures to criminalise the act of trespassing when setting up an unauthorised encampment in England and Wales, and the introduction of new police powers to arrest and seize the property and vehicles of trespassers who set up unauthorised encampments.¹⁵

Criminalising unauthorised encampments

Trespass to land is not generally a criminal offence unless some special statutory provision makes it so.¹⁶ Typically, trespass is a civil issue. In civil law, trespass to land consists of any unjustifiable intrusion by a person on the land in possession of another. It is actionable in the courts whether or not the claimant has suffered any damage.¹⁷

The Government is **not** proposing to make "trespass" a criminal offence, but it is **considering** making a new offence which would criminalise the act of trespassing when making an unauthorised encampment. It says the proposal "would not affect ramblers, the right to roam or rights of way".¹⁸

The Government is considering making it an offence "to enter or occupy land subject to certain conditions being met" and consulted on what those conditions could be.¹⁹ As discussed above, failure to comply with a police direction to leave land occupied as part of an unauthorised encampment is already a criminal offence.

The Home Office is suggesting a new offence similar to one that exists in the Republic of Ireland.²⁰ Under [Part IIA](#) of the Republic of Ireland's *Housing (Miscellaneous Provisions) Act 2002*, people commit an offence if they occupy land or bring an object onto land when likely to cause substantial damage or prevent people from accessing/ utilising the land.²¹ Garda can require those who commit the offence to provide their name or issue them a direction requiring them to leave. Failure to comply with such a Garda instruction is an offence for which people can be arrested without warrant. Those guilty of these offences are liable to a fine of €3,000 or one-month imprisonment.

Strengthening police powers

The Government is considering amending [Sections 61-62E](#) of the *Criminal Justice and Public Order Act 1994* as an **alternative to making a new criminal offence**.²² It is considering:²³

Examples of criminal offences involving trespass

- Squatting in a residential building ([s144, LASPO](#)).
- Trespassing on a protected site ([s128, SOCAP](#)).
- Aggravated trespass ([s68, CJPOA](#)).
- Failure to comply with a direction to disband an unauthorised encampment ([s61-s62E, CJPOA](#)).

¹⁴ [PQ120147, Travellers: Caravan Sites](#), answered 2 December 2020

¹⁵ HM Govt, [The Queen's Speech 2019](#), 19 December 2019, p73

¹⁶ CPS, [Criminal Justice and Public Order Act 1994: Table of offences involving trespass](#), undated; CPS, [Table of other statutory offences involving trespass](#), undated

¹⁷ LexisNexis, Trespass—overview, undated [MPs and their staff can access via the Library's [resources services](#)]

¹⁸ HM Govt, [Response to 'Don't criminalise trespass'](#), April 2020

¹⁹ Home Office, [Strengthening police powers to tackle unauthorised encampments](#), November 2019, p10

²⁰ Ibid

²¹ [Part IIA](#), s19C, *Housing (Miscellaneous Provisions) Act, 2002* [Republic of Ireland statute book]

²² Home Office, [Strengthening police powers to tackle unauthorised encampments](#), November 2019, p15

²³ Ibid, p6

- Amending section 62A to allow the police to direct those in unauthorised encampments to authorised sites in neighbouring local authority areas. At present the police can only move unauthorised encampments to authorised sites **within** the local authority area.
- Amending sections 61 and 62A to prohibit those directed from land from returning within twelve months. At present those directed to leave land under the 1994 Act cannot return within three months.
- Amending section 61 to lower the number of vehicles needing to be involved in an unauthorised encampment before it can be used from six to two.
- Amending section 61 to enable the police to remove trespassers from land that forms part of the highway.

3.1 Concerns

Effectiveness

Friends, Families and Travellers (FFT- a Traveller's rights organisation) obtained police submissions to the *strengthening police powers* consultation via a Freedom of Information request. They say the FOI responses show that many senior police officers are not in favour of criminalising trespass and think the current police powers framework is sufficient.²⁴ FFT quote the NPCC as saying:

The lack of sufficient and appropriate accommodation for Gypsies and Travellers remains the main cause of incidents of unauthorised encampment and unauthorised development by these groups.²⁵

FFT argue that the problems caused by unauthorised encampments are more effectively tackled by providing more authorised space for nomadic Travellers.²⁶

The Government has previously recognised "the need for transit sites to be available in order for the powers of local authorities and the police to be fully utilised in responding to unauthorised encampments".²⁷ It says its proposal to empower the police to move Gypsy and Travellers to sites in neighbouring local authorities will "make it more likely that the police could act where there is a shortage of site capacity in one particular area."²⁸

The Local Government Association (LGA) say "strengthened police powers offer the potential to help tackle unauthorised encampments" but "in isolation they are unlikely to solve the problems caused by them". The LGA says the strengthening of police powers must be matched by a "willingness to use them". They argue that the police, local authorities and the courts need to be better supported (both financially and with guidance) to deal with unauthorised encampments expeditiously.²⁹

²⁴ FFT, [Police repeat calls for more sites, rejecting Home Office proposals to criminalise trespass](#), 9 September 2020

²⁵ *The Guardian*, [Revealed: police oppose Traveller and Gypsy camp crackdown](#), 14 November 2020

²⁶ FFT, [Police repeat calls for more sites, rejecting Home Office proposals to criminalise trespass](#), 9 September 2020

²⁷ HM Govt, [Government response to the consultation on powers for dealing with unauthorised development and encampments: A summary of consultation responses and the way forward](#), February 2020, p36

²⁸ Home Office, [Strengthening police powers to tackle unauthorised encampments](#), November 2019, p12

²⁹ LGA, [LGA response to Government consultation on strengthening police powers to tackle unauthorised encampments](#), 4 March 2020

Discrimination

Gypsy and Travellers are protected under the [Equality Act 2010](#) as a recognised ethnic group. Everyone enjoys a right to a family and private life under Article 8 of the [European Convention on Human Rights](#) (ECHR).

Those representing the traveller community and human rights advocates have opposed proposals to strengthen police powers/ criminalise unauthorised encampments. These stakeholders argue that strengthening the existing legal framework will put Gypsy and Travellers at risk of further discrimination.

The Government has acknowledged its proposals “could have an adverse impact on some members” of the Traveller community. However, it also “recognise(s) the distress that local communities and businesses face as a result of unauthorised encampments”. The Government sought proposals for “mitigating action to limit any disproportionate impact on the Travelling community” as part of their *strengthening police powers* consultation.³⁰

Article 8 rights

Increasing the likelihood that Gypsy and Travellers will face criminal sanctions for establishing unauthorised encampments risks interfering with their article 8 rights. In *Bromley LBC v Persons Unknown* Lord Justice Coulson noted:

I consider that there is an inescapable tension between the article 8 rights of the Gypsy and Traveller community and the common law of trespass. The obvious solution is the provision of more designated transit sites for the Gypsy and Traveller community. It is a striking feature of many of the documents that the court was shown that the absence of sufficient transit sites has repeatedly stymied any coherent attempt to deal with this issue. The reality is that, without such sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Convention.³¹

Access to public services

Liberty (a human rights campaigning organisation) argues that allowing the police to move Gypsy and Travellers in unauthorised encampments to neighbouring local authorities will “inevitably disrupt access to schooling and medical care”.³² Gypsy and Travellers have some of the worst outcomes of any group across a range of social indicators (including education and health).³³ The Government’s proposals could exacerbate these problems.

Over-representation in prison

Clinks (a charity which supports volunteer organisation working in the criminal justice system) argues that criminalising unauthorised encampments could increase the overrepresentation of Gypsy and Travellers in prison.³⁴

³⁰ Home Office, [Strengthening police powers to tackle unauthorised encampments](#), November 2019, p20

³¹ [Bromley LBC v Persons Unknown](#), para 100

³² Liberty, [Spring 20: Criminalisation of trespass](#), undated, p6

³³ See: House of Commons Library, [Gypsies and Travellers](#), 9 May 2019, section 2

³⁴ Clinks, [Clinks response to the Home Office consultation on strengthening police powers to tackle unauthorised encampments](#), April 2020, p3

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