



**FRIENDS,  
FAMILIES &  
TRAVELLERS**

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# **Understanding eviction powers: the Police, Crime, Sentencing and Courts Act 2022 and the impact on nomadism**

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## INTRODUCTION

*In terms of the powers of eviction that existed prior to the introduction of the Police Act, a lot of these notes are derived from the Legal Action textbook 'Gypsy and Traveller Law' edited by Marc Willers QC and Chris Johnson, Third Edition, December 2020.*

1. This training pack is intended to assist those who are advising Gypsies and Travellers who have to resort to unauthorised encampments. The pack will give an understanding of the new offence that has been created and amendments to the current police powers of eviction.
2. It is important to remember that when Gypsies and Travellers stop on an unauthorised encampment this is, in itself, a civil offence and not a criminal offence. That is unless they have been evicted from that land recently using one of the police powers of eviction. In which case they cannot return within 12 months or unless there is an injunction on the land (see further below). If they have not been evicted from the land recently and if there is not an injunction on the land, then the point is that the new offence makes it much, much easier for them to become criminalised (as will be explained further below).
3. In the Guidance which accompanies the Police, Crime, Sentencing and Courts Act (hereafter Police Act 2022) the Government attempt to depict the new offence created in the Police Act 2022 as being for more serious situations, as will be highlighted in detail below. The fact is that this offence is made so wide, vague and extensive, that it makes eviction using this method much easier than under the existing provisions (when we are referring to existing provisions we are referring to s.61 and s.62 A-E).
4. It should be pointed out there were two failed attempts to argue that the existing police powers of eviction were incompatible with the Human Rights Act 1998.<sup>1</sup> However, given the even more wide and extensive nature of the new offence, it is believed that there is clear scope for a declaration of incompatibility with regard to the Human Rights Act.

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<sup>1</sup> See *R(Fuller and Others) -V- Chief Constable of Dorset Constabulary and the Secretary of State for the Home Department* [2002] 3 All ER 57 and *R (McCarthy) -V- Chief Constable of Sussex Constabulary and the Secretary of State for the Home Department* [2007] EWHC 1520 (Admin).

## **EXISTING POWERS OF EVICTION OF UNAUTHORISED ENCAMPMENTS**

### **Civil Procedure Rules Part 55**

5. These can be used by anyone with sufficient interest in the land including, potentially, a licensee. A local authority or other public authority can also use these types of proceedings. Two clear working days' notice must be given of any hearing. A possession order can be made at the hearing. However, these are not criminal proceedings and do not create a criminal offence unlike the proceedings under Criminal Justice and Public Order Act 1994 (hereafter CJPOA 1994).

### **Common Law Powers of Eviction**

6. The use of common law powers does not involve any court hearing or the need for any court order. These powers can be used and frequently are used by private landowners. Eviction using these powers can be very swift. However, it should be noted that, with private landowners, there is not usually any possibility of a defence and certainly no defence under Article 8 of the Human Rights Act 1998 and no defence arguing that welfare or other considerations have not been taken into account.
7. The Government advises that public authorities should not use common law powers of eviction. Thus the Office of the Deputy Prime Minister *Guidance on Managing Unauthorised Camping* (2004- hereafter "The 2004 Guidance") states at para 6.5:

*The Government believes that Local Authorities should always follow a route which requires a court order. As local authorities and public bodies, authorities must have regard to considerations of common humanity or other statutory duties, and must ensure that the human rights of unauthorised campers are safeguarded.*

### **Wide Injunctions**

8. Since 2015 some local authorities have been obtaining what have become known as "wide injunctions". These are injunctions covering large areas of public land which effectively ban Gypsies and Travellers from stopping on that land. Normally the land covered by these injunctions are the kind of places that Gypsies and Travellers often need to stop (given the lack of authorised stopping places).

9. Wide injunctions are not strictly speaking a method of eviction but, effectively, they have the same effect. Because, if a Gypsy or Traveller stops on a piece of land that already has an injunction on it, once they are informed of the existence of the injunction, they will be committing an offence, unless they leave that land.
10. Following a Judgement by Mr. Justice Nicklin in May 2021<sup>2</sup> (it was thought that local authorities would stop using these injunctions. Unfortunately, the judgment of Mr. Justice Nicklin was overturned by the Court of Appeal<sup>3</sup> in January 2022 and local authorities are already looking to renew or obtain such injunctions.

### **CJPOA 1994 – Section 61**

11. Section 61 states:-

*(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and –*

- (a) that any of those persons have caused damage to the land or to property on the land or used threatening, abusive, or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or*
- (b) that those persons have between them six or more vehicles on the land,*

*he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.*

12. Failure to comply with such a direction to leave may result in arrest without a warrant and impoundment of vehicles. Section 61 (4) contains the details of the offence:

*If a person knowing that a direction under subsection (1) above has been given which applies to him –*

- (a) fails to leave the land as soon as reasonably practicable, or*
- (b) having left again enters the land as a trespasser within the period of 3 months beginning with the day on which the direction was given,*

*he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 4 on the standard scale, or both.*

13. It used to be the case that s.61 did not apply to a “highway” but that has now been amended by the Police Act 2022

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<sup>2</sup> London Borough of Barking and Dagenham and Others -V- Persons Unknown and Others [2021] EWHC 1201 (QB)

<sup>3</sup> [2022] EWCA Civ 13

14. Before the police serve a notice under s.61, reasonable steps must have been taken by or on behalf of the occupier to ask the Gypsies or Travellers to leave.
15. The leading case on this issue is *R (Fuller) -V- Chief Constable of the Dorset Constabulary and the Secretary of State for the Home Department*<sup>4</sup>. The case involved an unauthorised encampment on a former rubbish tip. After a period of “toleration”, and following an incident at the site concerning a confrontation between two police officers and certain Travellers, the police and the local authority simultaneously served removal directions which expired at the same time. This action was quashed by the High Court. Giving judgment, Stanley Burnton J gave a useful summary of the effect of CJPOA 1994 s.61:

*In construing section 61 of the 1994 Act on the basis of common law principles, it is necessary to bear in mind that because it creates a criminal offence it is to be narrowly construed. Indeed, it creates a draconian procedure. I accept the claimants’ point that Travellers are likely to comply with the direction under Section 61 through fear of arrest and the forceable removal and detention of their vehicles and though they may have an arguable justification for remaining on the land. Section 61, must, I think, be all the more narrowly construed for that reason.*

*The claimants submitted...that section 61 (1) assumes that the steps taken by the occupier to ask the Travellers to leave have been ineffective. i.e. they have refused to leave. Whereas section 61 (1) (a) applies to persons who have already been guilty of criminal or other misconduct, section 61 (1) (b) applies to persons who may have been perfectly well-behaved. It seems to me that Parliament was unlikely to have intended to bring the criminal law to bear on such trespassers who had not refused to leave when asked. On this basis, section 61 (1) is to be read as impliedly requiring that the trespassers have not complied with the occupier’s request that they leave as a condition of the making of a direction by the police under the section (Para 69).*

16. In other words, the occupier must give notice to leave before there can be any question of the police serving a s.61 removal direction. Thus, for example, a private landowner might give 48 hours’ notice for the Gypsies or Travellers to leave. If they have not left at the end of that 48 hour period, then the police can decide to use s.61.
17. If a local authority (or other public authority) has failed to take account of humanitarian considerations before deciding to evict Gypsies or Travellers residing on their land without permission, then it is arguable that their failure to do so may, in itself, mean that reasonable steps have not yet been taken by the occupier. In the *Fuller* case, Stanley Burnton J stated:

*In my judgment, a local authority must consider the Convention rights of trespassers and their human needs generally when deciding whether or not to enforce its right to possession of that land (Para 74).*

18. It is clear, therefore, that a local authority must make enquiries into welfare issues before it can come to a decision on eviction.

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<sup>4</sup> [2002] 3 All ER 57

## **Amendments to Section 61 brought in by the Police Act**

19. S.64 of the Police Act 2022 makes amendments to s.61 of the CJPOA 1994.
20. Firstly, in terms of the criteria for the police taking action under s.61, it adds to the previous criteria so that it now reads: ‘that any of those persons has caused damage, disruption or distress...’
21. Secondly the prohibited period (and this also applies to s.62A) is extended from three months to twelve months.
22. Finally, the meaning of ‘land’ in terms of s.61 now includes ‘a highway’ (which was previously excluded from that meaning).

## **CJPOA 1994 – Section 62A**

23. S.62A exists alongside CJPOA 1994 s.61. In other words, the police can use either power, provided of course, the necessary criteria are met.
24. S.62A, which is entitled ‘Power to remove trespassers: Alternative site available’, states as follows:-
  - (1) *If the senior police officer present at a scene reasonably believes that the conditions in subsection (2) are satisfied in relation to a person and land, he may direct the person –*
    - (a) *to leave the land;*
    - (b) *to remove any vehicle and other property he has with him on the land.*
  - (2) *The conditions are –*
    - (a) *that the person and one or more others (‘the trespassers’) are trespassing on land;*
    - (b) *that the trespassers have between them at least one vehicle on the land;*
    - (c) *that the trespassers are present on the land with the common purpose of residing there for any period;*
    - (d) *if it appears to the officer that the person has one or more caravans in his possession or under his control on the land, that there is a suitable pitch on a relevant caravan site for that caravan or each of those caravans;*
    - (e) *that the occupier of the land or a person acting on his behalf has asked the police to remove the trespassers from the land...*

*(5) The officer must consult every local authority within whose area the land is situated as to whether there is a suitable pitch for the caravan or each of the caravans on a relevant caravan site which is situated in the local authority's area.*

25. The inclusion of the word 'suitable' is important. The 2004 Guidance states:-

*The meaning of suitable pitches not defined in the legislation. Of course, it is for the courts to interpret legislation, but the Secretary of State considers that a **suitable pitch** is one that provides basic amenities including water, toilets and waste disposal facilities. Other factors include the potential for community tension and issues of public order/anti-social behaviour need to be considered especially where the trespasser intends to remain on the site for the 3 month period. This could include an authorised transit site or stopping place. There should be a reasonable expectation that the pitch will be available for peaceful occupation for at least 3 months, except where the trespasser is expected to move on before that time.*

26. Additionally, the 2004 Guidance states:-

*A suitable pitch will only be available if there are currently no waiting lists for that site.*

27. If a Gypsy or Traveller is evicted by the police using s.61 and it is felt that the eviction was unlawful, the only resort may be a police complaint. However, if a Gypsy or Traveller is evicted by the Police under s.62A and it is felt that the eviction was unlawful, there would still be justification in lodging a court challenge (by way of judicial review) due to the effective 3 month ban from the local authority area.

### **Amendment to Section 62A by the Police Act**

28. S.62(9) and (10) of the Police Act amends s.62A – E of the 1994 Act by extending the prohibited period from three months to twelve months, for example, s.62B now reads:

*(1) A person commits an offence if he knows that a direction under s.62A(1) has been given which applies to him and –*

- (a) he fails to leave the relevant land as soon as reasonably practicable, or*
- (b) he enters any land in the area of the relevant local authority as a trespasser before the end of the relevant period with the intention of residing there.*

*(2) The relevant period is the period of twelve months starting with the day on which the direction is given.*

29. As mentioned above the Government Guidance states that a 'suitable pitch' should be a pitch that is available for up to three months. Most if not all such suitable pitches will be on transit sites. The Mobile Homes Act 1983<sup>5</sup> states:

*... 'transit pitch' means a pitch on which a person is entitled to station a mobile home under the terms of the agreement for a fixed period of up to three months.*

30. Rather amazingly it would seem that, even if you comply with the notice under s.62A and go to the suitable pitch, since that suitable pitch will almost certainly only be available for three months, you will, effectively, be banned from the local authority area for a further nine months as soon as you leave that pitch.
31. There is no mention of this incongruity in the 2022 Guidance which calls into question whether this has been properly taken into account by the Government. Can it be reasonable and proportionate for someone who has complied with the notice under s.62A to continue to be banned from the local authority area for a further 9 months?

### **CJPOA 1994 – Section 77**

32. Section 77 states:

*(1) If it appears to a local authority that persons are for the time being residing in a vehicle or vehicles within that authority's area –*

- (a) on any land forming part of a highway;*
- (b) on any other unoccupied land; or*
- (c) on any occupied land without the consent of the occupier,*

*The authority may give a direction that those persons and others with them are to leave the land and remove the vehicle or vehicles and any other property they have with them on the land.*

33. The offence is defined by Section 77(3) as follows:

*If a person knowing that a direction under sub-section (1) above has been given which applies to him –*

- (a) fails, as soon as practicable, to leave the land or remove from the land any vehicle or other property which is the subject of the direction, or*
- (b) having removed any such vehicle or property again enters the land with a vehicle within the period of 3 months beginning with the day on which the direction was given,*

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<sup>5</sup> Schedule 1, Part 1, para 1(4)(b)

*he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.*

34. Importantly, in order to get a conviction for an offence, the local authority will need to go to the magistrates' court under Section 78. Therefore, unlike with evictions using the police powers and unlike with evictions using the powers under the new offence (see further below), a person cannot be arrested and their vehicles cannot be impounded if they fail to leave by the deadline given by the local authority. Additionally it is extremely rare to come across local authorities who, if they do go to the magistrates' court, seek anything other than a removal direction i.e. an order that the vehicles be removed from the land in question.

## **SPECIFIC CHALLENGES TO THE ABOVE EVICTION ACTIONS**

35. We discuss here certain specific challenges that can be made against the eviction actions we have outlined so far. It should be emphasised that especially with regards to eviction actions taken by the police, there may simply not be enough time to actually lodge any challenge and to prevent the eviction taking place. Nevertheless please note the possibility of proceeding with a challenge in a case involving S.62A even if the eviction has taken place since otherwise Gypsies and Travellers may be banned from the relevant local authority area (see above at para 28).

### **Article 8**

36. Article 8 of the European Convention on Human Rights (ECHR) states that everyone has the right to respect for their private and family life, their home and their correspondence.
37. In *Winterstein v France* the European Court of Human Rights (ECtHR)<sup>6</sup> provided a very important judgment on the question of eviction of unauthorised encampments of Gypsies and Travellers in the context of Article 8. The applicants, 25 French citizens, had been living in mobile homes in a French town for many years. The site where the applicants' mobile homes were situated was a protected natural area under the Land-Use Plan of the local department. The authorities never sought to enforce judgments against the applicants to leave the land, even after many years, but the authorities had taken steps to re-locate several families. Four of the applicants' families received social housing, two families moved to another part of the country, and the rest of the applicants remained on the same land.

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<sup>6</sup> [2013] ECHR 984

38. Initially a Judge dismissed the action of the municipality to evict the residents. Another action was brought by the municipality before the Tribunal which ordered the defendants to leave the land within 3 months from the date of the judgment and pay a 70 euro fine per person for each day of delay. The French Court of Appeal upheld the Tribunal's judgment. The applicants did not proceed with an appeal, as they were denied legal aid.
39. The 25 applicants complained to the ECtHR, claiming that the court order amounted to a violation of Article 8 taken alone and in conjunction with Article 14 (prohibition of discrimination). The ECtHR decided unanimously that the eviction of the Travellers from the land they occupied for many years amounted to a violation of their right to private and family lives. The ECtHR stated:
- The Court would emphasise in this context that numerous international instruments, some of which have been adopted within the Council of Europe, emphasise the necessity, in the event of the forced eviction of Roma and Travellers, of providing them with alternative housing, except in cases of force majeure.*
40. This case is a good example of where Article 8 can possibly be used to challenge an eviction action, especially where the local authority concerned have failed to take account of possible alternative locations.

### **Best interests of the child**

41. In an eviction situation involving children, it is essential that their interests are taken into account as a primary consideration (see Article 3(1) of the United Nations Convention on the Rights of the Child 1989 and especially the case of *ZH (Tanzania) v Secretary of State for the Home Department*<sup>7</sup>).
42. A good example of where an eviction was prevented by arguments concerning the best interests of the child is the decision in *Eastwood v Surrey CC*<sup>8</sup>. This case is a county court judgment and, thus, not strictly speaking authoritative since county court judgments cannot bind other courts. However, it does provide us with a useful example of how the arguments can be used as a defence to eviction action.
43. Mr and Mrs Eastwood were squatting on a vacant pitch on a Surrey County Council site. The Council threatened eviction action. Mrs Eastwood was pregnant and shortly before the possession proceedings were commenced she gave birth to a son. A district judge made a possession order. The Eastwoods appealed against that decision on the basis that the best interests of the child had not been taken into account. They were successful in their appeal and the matter was sent back to the district judge.

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<sup>7</sup> [2011] UKSC 4.

<sup>8</sup> Surrey County Court, 12 February 2014, unreported.

When giving judgment, HHJ Raeside reviewed the relevant authorities from other cases and having done so, applied the law to the facts of the case as follows:

27. *In my view the Appellants have clearly established that the Local Authority has failed to place the child's needs in primary place in their decision making process. The report discusses the pregnancy as a 'health problem' but nowhere is there any mention of the child itself; of the child's likely needs, or the impact on the child if possession proceedings were commenced, or if an eviction order was made. One would expect to see some sort of analysis of the welfare needs of the child and its parents balanced with the need for the LA to run a fair system of allocation of places, remembering at all times that the child's needs are the primary consideration.*
28. *I recognise that the authorities state that in most cases the needs of a child can be adequately represented by consideration of the needs of the parents. But the authorities go on to give clear guidance about the role that the child's best interests must have in the decision-making process. Looking at the papers I do not get the impression that any thought at all was given to the needs of the child or his welfare...*
- 29...*in those circumstances, the possession order must be set aside with the matter to be listed urgently before [the district judge] for further directions. I anticipate that the Local Authority will give further thought and consideration to its decision, and may exercise its decision making functions anew.*

### **The Welsh Duty**

44. Part 3 of the Housing (Wales) Act (H(W)A) 2014 deals with Gypsies and Travellers. H(W)A 2014 s.103 introduces a duty to meet assessed needs, stating:

*(1) If a local housing authority's approved assessment identifies needs within the authority's area with respect to the provision of sites on which mobile homes may be stationed the authority must exercise its powers in s.56 of the Mobile Homes (Wales) Act 2013 (power of authorities to provide sites for mobile homes) so far as may be necessary to meet those needs.*

45. The Mobile Homes (Wales) Act 2013 s.56 states:

*A local authority may within its area provide sites where mobile homes may be brought, whether for holidays or other temporary purposes or for use as permanent residences, and may manage the sites or lease them to another person.*

46. Before the duty to provide caravan sites was repealed by the CJPOA 1994, it was possible to apply for a judicial review of a local authority's decision to evict an unauthorised encampment, challenging the decision on grounds that the local authority in question had failed to provide sufficient (or any) sites<sup>9</sup>.
47. As a result of s.103, it should be possible once again in Wales to argue that an eviction should not take place if the local authority have not complied with their duty to meet the assessed need for Gypsy and Traveller sites.

### **Compliance with guidance on managing unauthorised encampments**

48. In the *Atkinson* case<sup>10</sup>, Sedley J (as he then was), made it clear that when considering the eviction of unauthorised encampments local authorities should comply with the Department of the Environment (DoE) Circular 18/94:

*Detailed analysis of [passages from the Circular] and debate about what legal force, if any, an advisory circular of this kind possesses has been made unnecessary by the realistic concession of counsel for both local authorities that whether or not they were spelt out in a departmental circular the matters mentioned...would be material considerations in the public law sense that to overlook them in the exercise of a local authority's powers under Sections 77 to 79 of the Act of 1994 would be to leave relevant matters out of account and so jeopardise the validity of any consequent step. The concession is rightly made because those considerations in the material paragraphs which are not statutory **are considerations of common humanity**, none of which can be properly ignored when dealing with one of the most fundamental human needs, the need for shelter with at least a modicum of security. ((1995) 8 Admin LR 529 and 535, our emphasis).*

49. The *Atkinson* case made it clear that a public law challenge may be possible if a local or other public authority failed to comply with or have proper regard to Government guidance on the management of unauthorised encampments. It should be noted that there are important differences between much of the English and Welsh Government guidance.
50. Nowadays, it is very common for local authorities and police forces to have their own written policies on the management of unauthorised encampments (sometimes in the form of joint protocols) and it is important for advisers and representatives to check whether those policies have been followed in any given case. The failure to follow such a policy or protocol may also give rise to a public law challenge.

<sup>9</sup> See *West Glamorgan CC v Rafferty, R v Secretary of State for Wales ex parte Gilhanev* [1987] 1 WLR 457.

<sup>10</sup> *R v Lincolnshire CC ex parte Atkinson; R v Wealden District Council ex parte Wales and Stratford*

51. In England, DoE Circular 18/94 remains in place but additionally two other sets of important guidance have been introduced: the Office of the Deputy Prime Minister (ODPM) *Guidance on managing unauthorised camping* (the 2004 Guidance) and the ODPM/Home Office *Guide to effective use of enforcement powers – Part 1: Unauthorised encampments* ([the 2006 Guidance](#)).

52. Both sets of guidance lay a great deal of emphasis on taking account of welfare considerations and making proper enquiries into welfare matters before deciding to evict any encampment. For example, at para 77 of the 2006 Guidance it is stated:

*Local authorities should ensure that in accordance with their wider obligations, and to ensure that they comply with Human Rights legislation, proper welfare enquiries are carried out to determine whether there are pressing needs presented by the unauthorised campers and that, where necessary, the appropriate agencies are involved as soon as possible.*

53. The 2004 Guidance states at para 5.20:

*Any welfare needs of unauthorised campers are a material consideration for local authorities when deciding whether to start eviction proceedings or to allow the encampment to remain longer. Welfare needs do not give an open-ended ‘right’ for unauthorised campers to stay as long as they want in any area. For example, the presence of a pregnant woman or school age children does not, per se, mean that an encampment must remain indefinitely. To defer an eviction which is justified on other grounds, the need must be more immediate and/or of a fixed term.*

54. We recommend that advisers who assist Gypsies and Travellers in eviction situations in England make sure that they are fully aware of the terms of both the 2004 and 2006 Guidance.

55. In Wales, the Welsh Government have produced the *Guidance on Managing Unauthorised Camping* [2013](#).

56. Importantly the Welsh Guidance, stresses the need to take into account welfare considerations and the availability of alternative locations thus the Welsh Guidance states:

*41. Effectively, if an unauthorised encampment arises and there are no alternative authorised pitches in the area, local authorities have three clear paths relating to how they can resolve the encampment. **Each** option should be carefully considered:*

***Path 1** – to seek and obtain possession of the occupied site (eviction proceedings)*

***Path 2** – to ‘tolerate’ the Gypsy or Traveller occupiers, if only for a short time, until an alternative site can be found or the occupiers move on voluntarily.*

**Path 3** – *to find an alternative site, if only on a temporary basis, and offer the Gypsy or Traveller occupiers the chance to move onto it (emphasis in guidance).*

57. Indeed, both the English and Welsh Guidance suggest that local authorities should consider the toleration of an unauthorised site or the provision of an alternative site before a decision is taken to evict Gypsies and Travellers. The approach local authorities should take was considered in *R (Casey and Others) v Crawley BC and the ODPM*<sup>11</sup>. The case involved a group of Irish Travellers who were living on two unauthorised encampments, both on the same local authority's land. It was accepted that the sites of the encampments were not ideal locations. Burton J concluded that the welfare enquiries that had been carried out were sufficient to comply with the 2004 English Guidance. He also took account of the fact that the local authority had been trying to identify a location for an authorised site and, in all the circumstances, he concluded that the decision to evict was not unlawful.

58. Very importantly, Burton J framed three options that were available to the Defendant Local Authority and, effectively, those are the three options that are now contained in the Welsh Guidance (see above) and, indeed, that is where the three options in the Welsh Guidance derive from. Burton J continued:

*If, in a given situation, reactively the Council can find for travellers on an unauthorised site another temporary toleration site where lawfully, and notwithstanding the lack of planning permission, they can be temporarily sited, that would be a suitable administrative decision and exercise of Option 3: but there is no need for them to have a pro-actively identified pool [of such sites] ready, even if that were feasible (para 55 (ii)).*

59. In this context, the possibility of what has become known as 'negotiated stopping' (as developed by Leeds Gypsy and Traveller Exchange) may be very important.

### **The police must take account of welfare considerations.**

60. Home Office Circular 45/94 states in relation to the police use of its powers under s.61 that:

*The decision whether or not to issue a direction to leave is an operational one for the police alone to take in the light of all the circumstances of the particular case. But in making this decision, the senior officer at the scene may wish to take account of the personal circumstances of the trespassers; for example, the presence of elderly persons, invalids,*

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<sup>11</sup> [2006] EWHC 301 Admin.

*pregnant women, children and other persons whose well-being may be jeopardised by a precipitate move.*

61. The National Police Chiefs' Council's *Operational Advice on Unauthorised Encampments (2018)* ('the NPCC Advice') also indicates that the Police should themselves take account of welfare considerations. At page 5, para 4 of the NPCC Advice it is stated:

*Initial contact should be made with the people on the site, and an assessment made of the impact of its location, as well the behaviour displayed by the occupants. The occupants should be spoken to in order to establish their identities and location of last site, and to ascertain their views on desired duration of stay **as well as any pressing welfare needs.*** (our emphasis).

62. The new draft *Statutory Guidance for Police on Unauthorised Encampments (the PCSCA 2022 Guidance)* also refers to welfare enquiries on page 12 as follows:

*Police should ensure that, in accordance with their wider Equalities and Human Rights obligations, proper welfare enquiries are carried out to determine whether there are pressing needs presented by those on unauthorised encampments and that, where necessary, the appropriate agencies (including Local Authorities) are involved as soon as possible.*

*However, the police, alongside other public bodies, should not gold-plate human rights and equalities legislation. The police have been given strong powers to deal with unauthorised encampments and when deciding whether to take action, they should consider the harms caused by the unauthorised encampment...and that the state may enforce laws to control the use of an individual's property where that is in accordance with the general public interest.*

*Each case should be dealt with on its own merits by police. This includes considering the potential impact issuing a direction to leave, arresting a person or seizing a vehicle may have on the families involved and on the vulnerable, before taking an enforcement decision.*

*If necessary, enforcement action against those on the unauthorised encampment could be delayed while urgent welfare needs are addressed.*

63. The statement that the police 'should not gold-plate human rights and equalities legislation' has understandably come under a great deal of criticism. The simple fact is that, when dealing with extremely draconian new eviction powers, the Equality Act

2010 and the Human Rights Act 1998 must inevitably be addressed and are vital tools for ensuring that decisions are reasonable and proportionate.

64. The fact that the 2022 Guidance is directed just at the police is confusing. As we will see below in terms of the new offence under section 60C, the occupier or the representative of the occupier can serve a notice and the occupier or the representative must make an assessment of whether significant damage, distress or disruption has been caused or is likely to be caused. Presumably the occupier or the representative should take account of this Guidance to the police but that is not made clear. If the notice is given by the occupier or the representative and the occupier or the representative then informs the police that the notice has not been complied with, the fact that this Guidance is directed at the police suggests that the police must then make their own assessment of whether significant damage, distress or disruption has been caused or is likely to be caused. This would suggest a two-stage process where the notice has been given by the occupier or the representative but this is not made clear either.

### **The Equality Act 2010**

65. The PCSCA 2022 Guidance makes reference in certain places to the Equality Act 2010.

66. At page 4 it is stated:

*Police should also continue to consider their obligations under human rights legislation, their Public Sector Equality Duty and wider equalities legislation.*

67. At page 12 it is stated:

*Police should ensure that, in accordance with their wider Equalities and Human Rights obligations, proper welfare enquiries are carried out to determine whether there are pressing needs presented on those on unauthorised encampments and that, where necessary, the appropriate agencies (including Local Authorities) are involved as soon as possible.*

68. Finally, at page 13, it is stated:

*The Equality Act 2010 makes it unlawful to treat someone less favourably than others because of their protected characteristic, including race (which includes a person's ethnic or national origins and nationality).*

*The Public Sector Equality Duty applies to the police and places a duty on the police to have due regard to the need to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between persons of different racial groups.*

69. Romany Gypsies and Irish Travellers are defined as separate ethnic groups for the purposes of the Equality Act 2010<sup>12</sup>.

70. The Public Sector Equality Duty, is set out in Equality Act 2010 s.149 and reads:

*(1) A public authority must, in the exercise of its functions, have due regard to the need to –*

*(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

*(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*

*(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it...*

### **Government departments and other public authorities**

71. Both the English and Welsh Guidance make it clear that government departments and other public bodies must take account of welfare considerations though it is acceptable for them to request the local authority to provide them with the necessary information. As the 2004 English Guidance states, at para 5.10:

72. *Because local authorities have appropriate skills and resources to enable them to make (or to co-ordinate) welfare enquiries, it is considered good practice for local authorities to respond positively to requests for assistance in making enquiries from the police or other public bodies.*

73. The 2013 Welsh Guidance states, at para 83:

*As local authorities have appropriate skills and resources to enable them to make (or co-ordinate) welfare assessments, it is considered good practice for local authorities to respond positively to requests for assistance in undertaking these assessments from the police or other public authorities.*

### **Private landowners**

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<sup>12</sup> see *CRE v Dutton* [1989] 2 WLR 17 and *O'Leary v Allied Domecq* [2000] 29 August, unreported, Central London County Court, HHJ Goldstein).

74. It is not possible to take any of the potential challenges mentioned above against private landowners. The only question might be whether the landowner or private occupier concerned has a right to take the action i.e., do they own the land or do they have a lease or licence of the land.

## THE NEW OFFENCE

### Offence relating to residing on land without consent in or with a vehicle

75. S.63 of the Police Act inserts s.60C into the 1994 Act.

### When does Section 60C apply?

76. S.60C(1) states:

*Subsection (2) applies where –*

- (a) a person aged 18 or over ('P') is residing, or intending to reside, on land without the consent of the occupier of the land,*
- (b) P has, or intends to have, at least one vehicle with them on the land,*
- (c) one or more of the conditions mentioned in subsection (4) is satisfied, and*
- (d) the occupier, a representative of the occupier or a constable requests P to do either or both of the following –*
  - (i) leave the land;*
  - (ii) remove from the land property that is in P's possession or under P's control.*

77. Whereas, in order to use both s.61 and s.62A, there needs to be at least two people on the land, in the new Police Act 2022 it can be just one person in one vehicle.

78. It is questionable whether the phrase 'intending to reside' is, in fact, redundant. The 2022 Guidance states:

*Under s60C (4) a person can be committing the offence if they are not yet physically on the land if they are likely to cause significant damage, disruption or distress (page 6).*

79. This is repeated later on in the Guidance where it is stated:

*As with 'likely to cause', the police will need to assess each case and consider whether there is an intention to reside. An example could be where a person is not yet*

*physically on the land but is in a car just outside of the land and has already placed several of their belongings on the land, thus indicating an intention to reside (page13).*

80. In the latter example, an offence could be caused even when P is not on the land because the occupier, a representative of the occupier or a constable can request P to 'remove from the land property that is in P's possession or under P's control'. However, if P is not on the land and does not have any of his or her property on the land but the police, the occupier or a representative of the occupier believe that P intends to move onto the land and to reside on the land without the consent of the occupier, then it does not appear that an offence can be committed at that moment.

81. Section 60C(8) replicates the definition of 'vehicle' contained in the 1994 Act at s.61(9), and is a very wide definition, stating that a vehicle includes:

- (a) any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to form part of such a vehicle, and any load carried by, and anything attached to, such a vehicle, and*
- (b) a caravan as defined in s.29(1) of the Caravan Sites and Control of Development Act 1960*

82. Clearly, therefore, the caravan and the towing vehicle count as two vehicles. A vehicle will include a barrel top wagon or vardo or other traditional horse-drawn wagon.

83. It is also important to note that s.60C(9) states:

*For the purposes of this section a person is to be considered as residing or having the intention to reside in a place even if that residence or intended residence is temporary, and a person may be regarded as residing or having an intention to reside in a place notwithstanding that the person has a home elsewhere.*

84. This replicates the position with s.61 and s.62A. For example, a Gypsy or Traveller who has a pitch on a local authority rented site but who is away travelling perhaps for work purposes or perhaps to visit a festival and who stops on an unauthorised encampment, can commit the offence despite the fact that they have a home elsewhere.

85. It is stated, at s.60C(8), that:

*'occupier' means the person entitled to possession of the land by virtue of an estate or interest held by the person.*

86. Therefore, someone who has a lease or a licence of the land also comes under the term 'occupier'.

87. Additionally, under s.60C(8) it is stated that:

*'land' does not include buildings other than –*

- (a) *agricultural buildings within the meaning of paragraphs 3 to 8 of Schedule 5 to the Local Government Finance Act 1988, or*
- (b) *scheduled monuments within the meaning of the Ancient Monuments and Archaeological Areas Act 1979.*

88. Thus, for example, if you parked your vehicle inside a derelict warehouse it would appear you could not be found to be committing the offence. However, since the derelict warehouse is likely to be in private ownership, then the owner could potentially use very swift common law powers of eviction.

### **How is the offence committed?**

89. S.60C(2) states:

*P commits an offence if –*

- (a) *P fails to comply with the request as soon as reasonably practicable, or*
- (b) *P –*

- (i) *enters (or having left, re-enters) the land within the prohibited period with the intention of residing there without the consent of the occupier of the land, and*
- (ii) *has, or intends to have, at least one vehicle with them on the land.*

90. Under S.60C (3) the ‘prohibited period’ is the period of 12 months beginning with the day on which the request to leave was made.

91. The phrase ‘reasonably practicable’ is also used in relation to s.61 and 62A. In the case of *Kruppa v DPP*<sup>13</sup>, the Divisional Court considered the meaning of the phrase ‘reasonably practicable’ and concluded that the question whether something was ‘reasonably practicable’ should be considered objectively and was not a matter that could be determined solely by the police officer’s view of what was reasonable. However, in *Fuller*<sup>14</sup>, Stanley Burnton J adopted a very narrow interpretation of the phrase in the context of removal directions and stated that:

*If the trespassers have failed to comply with the occupier’s request, there is no reason for a direction not to take immediate effect.*

92. On this point, it is important to note, that under s.61 the local authority must take ‘reasonable steps’ before the police can take action (see the case of *Fuller*), this is not the case with the new offence.

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<sup>13</sup> [1989] Crim LR 295

<sup>14</sup> [2002] 3 All ER 57 at 70

93. A potential defence to the charge is to show that there is a 'reasonable excuse' for failing to leave the land or for entering the land again within the prohibited period (s.60C(6)).

94. The 2022 Guidance stages at pages 11-12:

*A person can show they have a reasonable excuse for failing to leave the land or for entering again within the prohibited period.*

*Police will be expected to consider what constitutes a reasonable excuse depending on the factual circumstances of each case,*

*The following examples are unlikely to be considered as reasonable excuses:*

*a) the vehicle has broken down; the legislation states a vehicle is any vehicle, whether or not it is in a fit state for use on roads and includes any chassis or body, with or without wheels*

*b) the attendance of events*

*c) the attendance at an appointment, unless for medical reasons to which the police and courts deem a reasonable excuse for residing on land without permission applies*

95. It seems from this list that 'reasonable excuse' is very narrow indeed. Most unfortunately it does not include 'proportionality' in terms of Article 8 of the Human Rights Act.

96. However, as discussed below at para 112, the central problem is that the matter is unlikely to ever get to court (where 'reasonable excuse' could be argued) because the Gypsies and Travellers concerned will almost certainly leave the land to avoid arrest and impoundment of their vehicles (i.e. their homes).

### **What are the conditions relating to the offence?**

97. S.60C(4) states:

*The conditions are –*

*(a) in a case where P is residing on the land, significant damage or significant disruption has been caused or is likely to be caused as a result of P's residence;*

*(b) in a case where P is not yet residing on the land, it is likely that significant damage or significant disruption would be caused as a result of P's residence if P were to reside on the land;*

*(c) that significant damage or significant disruption has been caused or is likely to be caused as a result of conduct carried on, or likely to be carried on, by P while P is on the land;*

*(d) that significant distress has been caused or is likely to be caused as a result of offensive conduct carried on, or likely to be carried on, by P while P is on the land.*

98. There are several words and a couple of new phrases here that are not contained in s.61 or s.62A. These are: 'significant'; 'disruption'; 'likely to be caused'; 'offensive conduct'; and 'distress'.
99. It is very unclear how these new words and phrases contained in this offence will be used and interpreted. There would seem to be a lot of scope for the police or the occupier to use their own interpretations of these words and phrases.
100. The 2022 Guidance has a long section discussing the meaning of the word 'significant'. This is from page 7 of the Guidance stating:

*The factual circumstances of each case will determine whether a 'significant' level of damage, disruption or distress has been caused or is likely to be caused and this will be for police and courts to assess.*

*The assessment of this will depend on the individual facts of each case; it is important to remember that at least one of the below must be caused or likely to be caused by the person's conduct or residence on the land or a likelihood of either of these. Such harms, disruption or distress could include, but are not limited to:*

- (a) local communities being prevented from accessing or using facilities, such as school sports fields, parks and car parks.*
- (b) property on the land is damaged or the land itself is damaged, including agricultural land.*
- (c) forcing entry to the land has caused damage to any fixtures or fittings.*
- (d) the environment is damaged, including excessive littering, fly-tipping, excessive noise and smell from waste or smoke due to bonfires.*
- (e) interference with water, energy or fuel supplies.*
- (f) impacting the ability of workers or customers to access shopping centres, businesses, or agricultural land, if this results in the loss of lawful use of the land.*
- (g) distress caused by offensive conduct such as verbal abuse and threatening behaviour. This may include a level of distress which changes behaviour, rather than distress which amounts to 'disgust'. For example, this may include behaviours which may cause fear when walking close to the encampment which prevents a person leaving their house.*

*These are some of the factors that the police could consider when assessing whether damage, disruption or distress is significant. If the police deem the harms to not be significant, then the offence under Section 60C would not apply. However, powers under Section 61 and s.62A of the CJPOA 1994 can still be used, providing the conditions are met.*

*Some of the factors for police to consider could also include:*

*How are landowners and users of the land affected? If local sports teams cannot use the facilities due to damage caused by people residing or intending to reside on land, or because the land is severely obstructed, then this could be deemed significant damage or disruption. The size and scale of the land occupied/damage caused is relevant when considering how landowners and land users are affected. If the land comprises of a small park and there are several vehicles, then the police/court may deem this to be more significant than fewer vehicles on a large park.*

*How frequently is the land used? People residing or intending to reside on an industrial estate or shopping centre car park could significantly disrupt people's ability to go about their lawful business and impact trade. However, if the unauthorised encampment is in the corner of a local field or park then it might not be causing significant disruption. An unauthorised encampment on an abandoned piece of land may equally not be causing significant disruption or harm.*

*How is the environment being damaged? A small amount of rubbish may not be judged by the courts to constitute significant damage to the land. However, excessive smells, noise, bonfires and large amounts of rubbish which might interfere with a person's right to go about their business or daily life may be considered significant by the police/court.*

*Police will be expected to deal with each case on its own merits and determine through gathering evidence if the threshold of significant has been met. If it has not been met, the other CJPOA powers may be used.*

101. While some of the examples given in this long section probably can be described as being 'significant', some of the other examples do not appear to be that 'significant'. Re-emphasising a point we have already made, if the police or the occupier decide that they think that the disruption, damage or distress are or are likely to be 'significant', then how are we ever going to find out if that is correct if the matter is not brought before the courts because of the threat of arrest and/or impoundment of vehicles.

102. 'Damage' is already included in the s.61 offence. S.60C(8) states:

*'damage' includes –*

*(a) damage to the land;*

- (b) *damage to any property on the land not belonging to P;*
- (c) *damage to the environment (including excessive noise, smells, litter or deposits of waste).*

103. To give an example of what we mean about these matters not coming before the courts and, therefore, it never becoming clear what these words and phrases mean, we are not aware of a single case that has come before the courts since the introduction of the word 'damage' in s.61 of the CJPOA 1994 that has looked at what the meaning of 'damage' might be. Is it breaking a lock? Is it squashing grass? Is it damaging a fence? After all these years, we still really do not know what it is and this leaves a great deal of opportunity for the person giving the notice to make their own decision as to what it means. However now we have several other new terms and phrases that the person giving the notice can give their own interpretation, to which interpretation may never be challenged. (See further below).
104. In terms of 'disruption' s.60C(10) states:
- 'Disruption' includes interference with –*
- (a) a person's ability to access any services or facilities located on the land or otherwise make lawful use of the land, or*
  - (b) a supply of water, energy or fuel.*
105. The same definition is inserted into the interpretation section for s.61 (new s.61 (10)).
106. The definition of 'disruption' does appear to be very wide. For example, someone who normally takes their dog for a walk across a piece of open land is clearly carrying out a lawful activity. If there are vehicles in the way of his or her usual route across the land, does that amount to disruption even though he or she could take an alternative route. If it is disruption, is it 'significant'? Once again these would appear to be very subjective decisions especially if the decision is that disruption is likely to be caused.
107. Strangely 'distress' is not contained within the new interpretation section of s.60C(8) but is contained in the definition section of s.61 at s.61(10) where it is stated:
- ... 'distress' means distress caused by –*
- (a) the use of threatening, abusive or insulting words or behaviour or disorderly behaviour, or*
  - (b) the display of any writing, sign, or other visible representation that is threatening, abusive or insulting.*
108. Once again, how is it going to be assessed whether this is 'likely to be caused'?
109. 'Likely to cause' is dealt with in the 2022 Guidance where it is stated at page 12:
- Relating to the new offence under s.60C only, a person will be committing an offence if they have caused, or are likely to cause significant damage, disruption, or distress while residing or with an intention to reside. This enables the police to prevent further repeated significant harms, rather than waiting until the damage has taken place*

*again. This is particularly useful where those who cause damage return to the same land or move a short distance away only to re-enter it, or enter other land and cause the same type of damage.*

110. It should be said that the reference to 'prevent further repeated significant harms' does seem to imply that 'likely to cause' can only be used where there is evidence of a previous incident of what is described in the Guidance as significant harm. It would appear that, if there is no such evidence, 'likely to cause' should not be used according to the Guidance. It is further reiterated in the 2022 Guidance where it is stated at page 13:

*As is the case for other criminal offences, the police will need to collect evidence to form reasonable grounds to suspect a person has committed the offence and the offence will have been committed only where the specific conditions have been met.*

111. With regard to 'offensive conduct', s.60C(8) states:

*... 'offensive conduct' means –*

- (a) the use of threatening, abusive or insulting words or behaviour, or disorderly behaviour, or*
- (b) the display of any writing, sign, or other visible representation that is threatening, abusive or insulting...*

112. This is exactly the same definition as for 'distress' under the amended s.61. Therefore it would appear that 'distress' and 'offensive conduct' mean the same thing.

### **Possible sanctions**

113. The potential sanctions for the offence is contained in s.60C(5):

*A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale [up to £2,500], or both.*

114. Seizure and, if convicted, potential forfeiture of vehicles is dealt with at s.60D to s.60E. It should be remembered that arrest and potential seizure and forfeiture of vehicles were already potential consequences of s.61 and s.62A.

115. The difference between, on the one hand, s.61 and s.62A and, on the other hand, the new offence under s.60C is not so much the consequences of committing the offence but the breadth of the conditions and criteria involved which may lead to it being much

more likely that this new offence will be used and will have catastrophic consequences for those subject to this new law.

### **Common Land**

116. There is a specific section added to s.60C with regard to common land and that is at s.60C (7). The local authority can step in as 'the occupier' if those in charge of the common land cannot be identified. In many cases, the local authority itself will be in charge of the common land.

### **Specific Challenges**

117. Though there are possibilities for challenges, as outlined above, if a deadline for leaving the land has been reached, the advice to the Gypsies and Travellers concerned will be to leave the land and thus avoid arrest and impoundment of vehicles (which can take place before there is any court order). Doubtless, Gypsies and Travellers will leave the land when faced with such a notice once the deadline approaches or is arrived at.

118. In the case of s.61 evictions, once the eviction has taken place the Gypsies and Travellers concerned would probably not be interested in taking any legal challenge even if it was felt that the eviction had been carried out unlawfully. It may have been difficult to make such a challenge in any event because, in a sense, the matter had now become academic because the eviction had taken place. This new offence is so wide and so much more draconian that it may be possible for Gypsies and Travellers, even after they have been evicted, to take a challenge. It may be very important that such challenges are brought to try and contain any unlawful use of this new offence and to also seek guidance from the courts as to the meaning of some of these words and phrases mentioned above.

119. Aside from that, all of the challenges mentioned above can potentially be applied to the new offence. There may also be challenges about, for example, whether Gypsies or Travellers were likely to cause significant damage, distress or disruption, or whether there had or had not been offensive conduct.

### **General Challenge**

120. CLP have been instructed by two Travellers (and we hope that other Gypsies and Travellers will instruct us as well) to take a general challenge to Part 4 of the PCSCA 2022. That challenge would seek to argue that Part 4 is so draconian and so potentially devastating for Gypsies and Travellers who, through no fault of their own, do not have authorised places to stop but who are continuing their nomadic way of life, that it could be said to be incompatible with the Human Rights Act 1998 and especially

with Article 8 (the right to respect for private and family life and home) and Article 14 (discrimination). Since that challenge has not yet been taken forward, we will not go into any more detail here. We would point out that, though we hope such a challenge will proceed and we obviously hope that such a challenge will be successful, this will clearly take a great deal of time to progress and, in the meantime, will not provide a solution to what is happening on the ground.

## Key points for advisers

121. How can Gypsies and Travellers and those advising them deal with this matter on a day to day basis? The 2022 Guidance emphasises the fact that there should be significant harm and advisers will want to stress this to the police and/or the local authority and/or any other public authority. As we say above, 'likely to cause' appears to be a phrase that should only be used if there is evidence of previous significant harm.
122. It will be very important for Gypsy and Traveller organisations to know what is happening around England and Wales with the use of this new offence. If you are an adviser, you need to firstly ascertain that it is this new offence that is being relied on. Then you need to find out the reason that is being used for serving the notice. Obviously you need to note down where the incident is taking place and any attempts to persuade the police, the occupier or the representative of the occupier not to proceed. Advisers should also note if an eviction takes place which will probably involve the Gypsies or Travellers involved, voluntarily leaving the land.
123. It is hoped that Moving for Change will be co-ordinating information on what is happening on the ground and that information can be fed into them.
124. The Community Law Partnership are very happy, of course, to answer any queries and are available for any Gypsies or Travellers who are facing eviction under the new offence (or, indeed, under any other method of eviction). Our telephone advice line is 0121 685 8677 Monday to Friday 9am to 1pm.

## About us

Friends, Families and Travellers is a leading national charity that works to end racism and discrimination against Gypsy, Roma and Traveller people and to protect the right to pursue a nomadic way of life. [www.gypsy-traveller.org](http://www.gypsy-traveller.org)

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