

ACPOS Operational Guidance for the Management of Unauthorised Encampments of the Gypsy/Traveller Community

1. INTRODUCTION

- 1.1 This document relates to Gypsy/Travellers (or Gypsy and Traveller when used separately) and police involvement with them when they occupy land without authority. It aims to give officers advice when faced with the unauthorised encampment of Gypsy/Travellers. The Guidance is suitable for small to medium sized encampments, the sort generally encountered across Scotland. The Guidance is based on a presumption against prosecution and applies only to the physical occupation of land and does not give Gypsy/Travellers any other protection against contravention of statute or common law.
- 1.2 For the purposes of this Guidance, the term Gypsy/Traveller relates to Scottish, English, Welsh, Irish and Romani Travellers, however does not include Fairground/Show People or New (Age) Travellers. New (Age) Travellers may pose separate and particular management issues from those encountered in dealings with Gypsy/Travellers. (See 4.2.)
- 1.3 The Advisory Committee on Scotland's Travelling People and the Scottish Parliament Equal Opportunities Committee have each produced a series of recommendations in their latest reports on how the various agencies should co-operate when working with Gypsy/Travellers. The main thrust of their recommendations is of joint partnership working with the main focus on negotiation and co-operation.
- 1.4 Local Authorities are viewed as the Lead Agencies in the management of Gypsy/Traveller issues and services in their respective areas of responsibility, e.g. unauthorised encampments. It is a matter for local discretion (following discussion by the Local Authority with key partners) whether it is appropriate to evict an unauthorised encampment. There is, however, a responsibility on all relevant public authorities to resolve issues affecting the community with sensitivity and compassion, giving due regard to Human Rights and wider Diversity issues.
- 1.5 For the purposes of this Guidance Gypsy/Travellers will be regarded as a minority ethnic community group. Should a member of the Gypsy/Traveller Community be the victim of crime or subjected to racist behaviour or perceived racist behaviour the matter will be dealt with in accordance with individual Force recording and monitoring procedures.
- 1.6 Use of the expression 'tolerance' when attributed to Gypsy/Travellers and our interaction with them is unacceptable and will no longer be used.

2. INTENTION

- 2.1 To ensure that the Police Service, generally, has due regard to the need to eliminate racial discrimination and to promote equality and good race relations in carrying out its functions (Race Relations (Amendment) Act, 2000)
- 2.2 To encourage a multi-agency approach to dealing with unauthorised encampments that takes cognisance of the rights and responsibilities of the Gypsy/Traveller community.
- 2.3 To provide guidance for officers on receipt of calls relating to unauthorised encampments.
- 2.4 To clarify the police role when in attendance at civil eviction proceedings.
- 2.5 To detail our internal procedure, ensuring consistency of approach.
- 2.6 To give guidance in enforcement decisions and subsequent liaison with the Procurator Fiscal.

3. METHOD

- 3.1 Police officers are likely to be made aware of encampments in various ways e.g., a complaint by a member of the public, a patrolling officer coming across an encampment, a landowner complaining of an encampment or via the local council.
- 3.2 If encountered by a police officer on patrol, the officer will advise Command and Control so that an incident log can be commenced. Details provided should include the location and number of living units. Thereafter the relevant Local Authority Traveller Liaison Officer/Point of Contact (where these are in place) should be informed by Command and Control. The Local Authority Traveller Liaison Officers are generally available on weekdays and during normal working hours. However if necessary they can be contacted out of office hours in accordance with local arrangements.
- 3.3 If informed of an unauthorised encampment by a member of the public, not the landowner or a representative of the Local Authority, the officer will again advise Command and Control as per 3.2 and provide details of its exact location and number of living units. The Local Authority should be informed as at 3.2. Any other issue raised by a member of the public, including an allegation of criminal activity, will be dealt with and investigated as normal and the complainant/victim will be informed of the resultant police action.
- 3.4 If informed by a landowner that Gypsy/Travellers are encamped without authority the role of the Police will include ascertaining whether the landowner has advised them that they are encamped without authority. The landowner should be given the details of the Local Authority Traveller Liaison Officer/Point of Contact (available from Control Rooms or Operations Room) and advised to contact that person. The Police will visit the site and advise the Gypsy/Travellers that their presence has been the subject of complaint. The landowner should be advised to report any criminal behaviour and of the potential for recourse to civil action to seek eviction, unless there are overriding public safety issues to consider. Again the police officer should advise Command and Control giving details of the exact location and the number of living units. It will be necessary for the police, in addition to the above, to also make contact with the Local Authority Traveller Liaison Officer/Point of Contact. Reciprocal arrangements to communicate pertinent information to the Police should be agreed by Local Authorities.
- 3.5 The Local Authority Traveller Liaison Officer/Point of Contact will be responsible for informing the landowner, as soon as possible, of the result of their negotiation with the Gypsy/Travellers and for keeping the landowner informed of any developments as they occur.
- 3.6 Attendance at every unauthorised encampment may not be necessary although there may be occasions when the Local Authority Traveller Liaison Officer/Point of Contact will request that the Police attend. Such requests will be considered at local level and a decision as to Police response taken in light of the circumstances. It is suggested good practice for Forces to consider the nomination of a local Gypsy/Traveller Police Liaison Officer who should make contact with Gypsy/Travellers with a view to engaging with individuals and families with regard to wider crime prevention, community and personal safety matters, (in recognition that Gypsy/Travellers may well be victimised and will benefit from Police advice and assistance.)
- 3.7 If in attendance at a site where Sheriff's Officers are to execute a civil warrant, the police role will be to ensure that the peace is kept and not to participate in the eviction.

4. PROSECUTION CONSIDERATIONS

- 4.1 There is a general presumption against prosecution for the unauthorised encampment of Gypsy/Travellers relating to trespassory offences, although this presumption may be overridden by public interest considerations, dependent upon the circumstances.
- 4.2 If the question of prosecution, for unauthorised encampment has to be faced, the Trespass (S) Act 1865 and the Roads (S) Act 1984 are two possible considerations. For very large unauthorised encampments of Gypsy/Travellers (primarily on the grounds of serious disruption to the life of the

community) Section 14 of the Public Order Act 1986 may be considered. (See Appendix A for explanation of offences and Police Powers in relation to them.) Circumstances, which may give rise to considering a prosecution option, are likely to be:

- a) Where a suitable alternative stopping place has been identified* and the Gypsy/Travellers have refused to re-locate within a reasonable time. (A number of Local Authorities are introducing Stopover/Stopgap or Transit sites, which may provide a solution in some areas)

** It will be the responsibility of the Local Authority to identify a suitable alternative stopping place.*

- b) Where the use of a particular site by Gypsy/Travellers or the excessive size of the encampment causes a road safety or public health hazard.
- c) Where the same Gypsy/Travellers have been repeatedly moved from the same site only to return. In such circumstances it may also be relevant to consider what action might have been taken by the landowner/Local Authority to prevent such further access.

Section 61 and 62 of the Criminal Justice and Public Order Act 1994 may also have relevance when dealing with certain trespass issues. However use of powers contained within Sections 61 and 62 of the Criminal Justice and Public Order act, 1994 should only be considered when negotiation and civil means have been exhausted **or** the particular encampment requires immediate removal on undue public nuisance or public safety grounds.

Failure by a Local Authority to assess or to make provision for the needs of Gypsy/Travellers will serve to reinforce the presumption against prosecution. However the presumption may be overridden by other public interest considerations arguing in favour of prosecution. This may include serious disruption to businesses and/or members of the public as a result of offensive or criminal behaviour by Gypsy/Travellers.

- 4.3 Enforcement in these circumstances will be a decision for the Duty Senior Officer (not below the rank of Inspector) responsible for the area in question. Discussions with the Procurator Fiscal and Local Authority representatives will normally take place at an early stage before enforcement decisions are made.
- 4.4 The Procurator Fiscal may also advise on the course of action to be taken, dependant on the particular circumstances in each case, but the decision would generally be an operational matter for the Police having regard to the general presumption against prosecution and the Lord Advocates Guidelines relating to liberation. Options are likely to be, a) report for summons (if considered appropriate) or, b) arrest and report from custody or on undertaking. In any event the Procurator Fiscal will be informed as soon as possible of the decision taken by the Senior Police Officer.

Time limits for prosecution under the Trespass Act are usually short and the purpose of the prosecution would be to deal with one of the three sets of circumstances outlined at 4.2. A degree of urgency may therefore be required and the use of an undertaking (if considered appropriate under the circumstances) rather than custody is likely to be the best option.

- 4.5 Procurators Fiscal are in possession of Crown Office guidance on this subject that directs them in relation to the presumption against prosecution but still allows them discretion where the public interest served to override the presumption.
- 4.6 **Prosecution, in terms of Gypsy/Travellers encamped without authority, should therefore only be considered as a last resort when all other options have been exhausted.**

5. PUBLIC RELATIONS

- 5.1 The Police have no power to direct Gypsy/Travellers onto any land. It will be the responsibility of the Local Authority to advise Gypsy/Travellers to move to a designated site, or Stopover/Stopgap or Transit site (if available).
- 5.2 The Police are not empowered to remove or clear sites except where legislation empowers them to do so.
- 5.3 It is the responsibility of the landowner to take steps to secure, protect and reclaim their own property. In cases where crimes, such as vandalism etc have taken place, the Local Authority and the Police can provide advice, etc to the landowners in this respect.

6. HUMAN RIGHTS

- 6.1 Officers are reminded that any actions taken regarding the Gypsy/Traveller Community should be proportionate and necessary to ensure compliance with Human Rights legislation.

Article 8;

- Everyone has the right to respect for private and family life, home and correspondence.

- There shall be no interference by a public authority with the exercise of this right except such as, in accordance with the law, is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others.

and Article 14;

- The enjoyment of the rights and freedoms set forth in the convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, associated with a national minority, property, birth or status.

- 6.2 Nothing in the foregoing should stop officers executing their duty concerning the investigation, detection and reporting of offenders for any criminal behaviour that may be occasioned during the period of encampment.

7. CONCLUSION

These guidelines are designed to complement policy and guidance produced by each Local Authority in Scotland. Whilst Local Authorities will take a lead role in the Management and Service response to unauthorised encampments, the role of the police will remain balanced and consistent, with the overriding principle of support for the Local Authority, to ensure that the peace is maintained.

- 7.1 It is intended that this Guidance document be reviewed annually during April and in this respect it will be necessary for each Force, in conjunction with the Local Authority, to introduce measures to monitor and evaluate it's effectiveness.

Appendix A

Trespass offences relevant to Scotland

1. The Trespass (Scotland) Act 1865

Section 3 creates the following offence:

- (1) Every person who lodges in any premises, or occupies or encamps on any land, being private property, without the consent and permission of the owner or legal occupier of such premises or land, and every person who encamps or lights a fire on or near any road or enclosed or cultivated land, or in or near any plantation, without the consent and permission of the owner or legal occupier of such road, land, or plantation, shall be guilty of an offence punishable as hereinafter provided. (Section 3, as amended by Schedule 1 Pt. VI, Statute Law (Repeals) Act, 1973 and Schedule 9, Roads (Scotland) Act, 1984).
- (2) Subsection (1) above does not extend to anything done by a person in the exercise of the access rights created by the Land Reform (Scotland) Act 2003 (asp 2).

2. The Criminal Justice and Public Order Act 1994

(a) Powers to remove trespassers on land

Section 61 creates the following offence of collective trespass:

S.61 –

- (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 has 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.
- (2) Where the persons in question are reasonably believed by the senior police officer to be persons who are not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after those persons became trespassers before he can exercise the power conferred by that subsection.
- (3) A direction under subsection (1) above, if not communicated to the persons referred to in subsection (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.
- (4) 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 three 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 three months or a fine not exceeding level 4 on the standard scale, or both.

(4A) Where, as respects Scotland, the reason why these persons have become trespassers is that

they have ceased to be entitled to exercise access rights by virtue of-

(a) their having formed the common purpose mentioned in subsection (1) above or

(b) one or more of the conditions specified in paragraphs (a) and (b) of that subsection having been satisfied,

the circumstances constituting that reason shall be treated, for the purposes of subsection (4) above, as having also occurred after these persons became trespassers.

(4B) In subsection (4A) "access rights" has the meaning given by the Land Reform (Scotland) Act 2003 (asp 2.).

(5) A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without a warrant.

(6) In proceedings for an offence under this section it is a defence for the accused to show –

(a) that he was not trespassing on the land, or

(b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

(7) In its application in England and Wales to common land this section has effect as if in the preceding subsections of it –

(a) references to trespassing or trespassers were references to acts and persons doing acts which constitute either a trespass as against the occupier or an infringement of the commoners' rights; and

(b) references to "the occupier" included the commoners or any of them or, in the case of common land to which the public has access, the local authority as well as any commoner.

(8) Subsection (7) above does not –

(a) require action by more than one occupier, or

(b) constitute persons trespassers as against any commoner or the local authority if they are permitted to be there by the other occupier.

(9) In this section –

"common land" means common land as defined in section 22 of the [1965 c.64.] Commons Registration Act 1965;

"commoner" means a person with rights of common as defined in section 22 of the [1965 c.64.] Commons Registration Act 1965;

"land" does not include –

(a) buildings other than –

(i) agricultural buildings within the meaning of, in England and Wales, paragraphs 3 to 8 of Schedule 5 to the [1988 c.41] Local Government Finance Act 1988 or, in Scotland, section 7(2) of the [1956 c.60] Valuation and Rating (Scotland) Act 1956, or

(ii) scheduled monuments within the meaning of the [1979 c.46] Ancient Monuments and Archaeological Areas Act 1979;

(b) land forming part of -

(i) a highway unless it falls within the classifications in section 54 of the [1981 c.69] Wildlife and Countryside Act 1981 (footpath, bridleway or byway open to all traffic or road used as a public path) or is a cycle track under [1980 c.66] Highways Act 1980 or the [1984 c.38] Cycle Tracks Act 1984, or

(ii) a road within the meaning of the [1984 c.54] Roads (Scotland) Act 1984 unless it falls within the definitions in section 151(2)(a)(ii) or (b) (footpaths and cycle tracks) of that Act or is a bridleway within the meaning of section 47 of the [1967 c.86] Countryside (Scotland) Act 1967;

“the local authority”, in relation to common land, means any local authority which has powers in relation to the land under section 9 of the Commons Registration Act 1965;

“occupier” (and in subsection (8) “the other occupier”) means –

(a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him; and

(b) in Scotland, the person lawfully entitled to natural possession of the land;

“property”, in relation to damage to property on land, means –

(a) in England and Wales, property within the meaning of section 10(1) of the [1971 c.48] Criminal Damage Act 1971, and

(b) in Scotland, either

(i) heritable property other than land, or

(ii) corporeal moveable property,

and “damage” includes the deposit of any substance capable of polluting the land;

“trespass” means, in the application of this section –

(a) in England and Wales, subject to the extensions effected by subsection (7) above, trespass as against the occupier of the land;

(b) in Scotland, entering, or as the case may be remaining on, land without lawful authority and without the occupier’s consent; and

“trespassing” and “trespasser” shall be construed accordingly;

“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 have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and

(b) a caravan as defined in section 29(1) of the [1960 c.62] Caravan Sites and Control of Development Act 1960;

and a person may be regarded for the purposes of this section as having a purpose of residing in a place notwithstanding that he has a home elsewhere.

(b) Supplementary powers of seizure

Section 62 creates the following powers:

S. 62 –

- (1) If a direction has been given under section 61 and a constable reasonably suspects that any person to whom the direction applies has, without reasonable excuse –
 - (a) failed to remove any vehicle on the land which appears to the constable to belong to him or to be in his possession or under his control; or
 - (b) entered the land as a trespasser with a vehicle within the period of three months beginning with the day on which the direction was given, the constable may seize and remove that vehicle.
- (2) In this section, “trespasser” and “vehicle” have the same meaning as in section 61.

3. The Public Order Act 1986

Sections 14 and 14A impose conditions on assemblies and prohibit trespassory assemblies respectively.

a) Imposing conditions on public assemblies

Section 14 –

- (1) If the senior police officer, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, reasonably believes that -
 - (a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or
 - (b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right to do,

he may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.
- (2) In subsection (1) ‘the senior police officer’ means –
 - (a) in relation to an assembly being held, the most senior in rank of the police officers present at the scene, and
 - (b) in relation to an assembly intended to be held, the chief officer of police
- (3) A direction given by a chief officer of police by virtue of subsection (2)(b) shall be given in writing.
- (4) A person who organises a public assembly and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.
- (5) A person who takes part in a public assembly and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.
- (6) A person who incites another to commit an offence under subsection (5) is guilty of an offence.

- (7) A constable in uniform may arrest without warrant anyone he reasonably suspects is committing an offence under subsection (4), (5) or (6).
- (8) A person guilty of an offence under subsection (4) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.
- (9) A person guilty of an offence under subsection (5) is liable on summary conviction of a fine not exceeding level 3 on the standard scale.
- (10) A person guilty of an offence under subsection (6) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both, notwithstanding section 45(3) of the Magistrates' Courts Act 1980.

(b) Prohibiting trespassory assemblies

Section 14A –

- (1) If at any time the chief police officer of police reasonably believes that an assembly is intended to be held in any district at a place on land to which the public has no right of access or only a limited right of access and that the assembly –

(a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's right of access, and

(b) may result – (i) in serious disruption to the life of the community, or (ii) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument,

he may apply to the council of the district for an order prohibiting for a specified period the holding of all trespassory assemblies in the district or a part of it, as specified.

- (2) On receiving such an application, a council may –

(a) in England and Wales, with the consent of the Secretary of State make an order either in the terms of the application or with such modifications as may be approved by the Secretary of State; or

(b) in Scotland, make an order in the terms of the application.

- (3) Subsection (1) does not apply in the City of London or the metropolitan police district.

- (4) If at any time the Commissioner of Police for the City of London or the Commissioner of Police of the Metropolis reasonably believes that an assembly is intended to be held at a place on land to which the public has no right of access or only a limited right of access in his police area and that the assembly –

(a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's right of access, and

(b) may result – (i) in serious disruption to the life of the community, or (ii) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument,

he may with the consent of the Secretary of State make an order prohibiting for a specified period the holding of all trespassory assemblies in the area or a part of it, as specified.

- (5) An order prohibiting the holding of trespassory assemblies operates to prohibit any assembly which –

(a) is held on land to which the public has no right of access or only a limited right of access, and

(b) Takes place in the prohibited circumstances, that is to say, without the permission of the occupier of the land or so as to exceed the limits of any permission of his or the limits of the public's right of access.

- (6) No order under this section shall prohibit the holding of assemblies for a period exceeding 4 days in an area exceeding an area represented by a circle with a radius of 5 miles from a specified centre.
- (7) An order made under this section may be revoked or varied by a subsequent order made in the same way, that is, in accordance with subsection (1) and (2) or subsection (4), as the case may be.
- (8) Any order under this section shall, if not made in writing, be recorded in writing as soon as practicable after being made.
- (9) In this section and sections 14B and 14C –

“assembly” means an assembly of 20 or more persons;

“land” means land in the open air; “occupier” means – (a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him; or (b) in Scotland, the person lawfully entitled to natural possession of the land, and subsections (1) and (4) includes the person reasonably believed by the authority applying for or making the order to be the occupier;

“public” includes a section of the public; and

“specified” means specified in an order under this section.

- (9A) In relation to Scotland, the references in this section to the public's rights (or limited right) of access do not include any right which the public or any member of the public may have by way of access rights within the meaning of the Land Reform (Scotland) Act 2003 (asp 2).
- (10) In relation to Scotland, the references in subsection (1) above to a district and to the council of the district shall be construed –
- (a) as respects applications before 1st April 1996, as references to the area of a regional or islands authority and to the authority in question; and
- (b) as respects applications on and after that date, as references to a local government area and to the council for that area.
- (11) In relation to Wales, the references in subsection (1) above to a district and to the council of the district shall be construed, as respects applications on and after 1st April 1996, as references to a county or county borough and to the council for that county or county borough.

“limited”, in relation to a right of access by the public to land, means that their use of it is restricted to use for a particular purpose (as in the case of a highway or road) or is subject to other restrictions.

(c) Interpretation

Section 16, In this part –

“the City of London” means the City as defined for the purposes of the Acts relating to City of London police;

“the metropolitan police district” means that as defined in section 76 of the London Government Act 1963

“Public assembly” means an assembly of 20 or more persons in a public place which is wholly or partly open to the air;

“public place” means –

(a) any highway, or in Scotland any road within the meaning of the Roads (Scotland) Act 1984, and

(b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

“public procession” means a procession in a public place.

4. Various Other Legislation

Additional powers and offences are contained in the Roads (Scotland) Act 1984, The Road Traffic Act 1988, the Refuse Disposal Amenity Act 1978 and other statutory legislation.