

Research Briefing

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# Police powers: unauthorised encampments



## Summary

- 1 What are unauthorised encampments?
- 2 Police powers to respond to unauthorised encampments
- 3 Reaction to the reforms

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## Summary

### What are unauthorised encampments?

**“Unauthorised encampments”** occur when trespassers occupy land belonging to private landowners or public authorities without permission. The term is typically associated with Gypsy, Roma and Traveller sites.

As at January 2022, in England there were 515 Traveller caravans reported on unauthorised encampments (ie on land not owned by Travellers). This amounts to 2% of the total number of Traveller caravans recorded in 2022.

### Police powers to respond to unauthorised encampments

The Criminal Justice and Public Order Act 1994 (CJPO Act) sets out the main police powers to respond to unauthorised encampments.

Part 4 of the Police, Crime, Sentencing and Courts Act (PCSC Act) significantly amended the CJPO Act and expanded the powers that police have in relation to unauthorised encampments.

The amended powers came into force for England and Wales on 28 June 2022.

### What powers do the police now have?

#### **Policing those residing on land without consent in or with a vehicle**

Section 60C-E of the CJPO Act provides a criminal offence for “residing on land without consent in or with a vehicle”. For the offence to apply the trespasser must have at least one vehicle with them. The trespasser’s residence or conduct on the land must also have caused (or be likely to cause) significant damage, disruption, destruction, or distress.

The landowner, someone representing the landowner, or the police can ask those who have met the criteria of this offence to leave the land. If the individual(s) trespassing fails to leave “as soon as reasonably practicable” after being requested to, the police can arrest them. The police can also seize and remove vehicles from those suspected of this offence.

## Directing trespassers in unauthorised encampments to leave land

[Section 61](#) of the CJPO Act enables senior officers to direct those in an unauthorised encampment to leave land if:

- they are in an encampment that consists of six or more vehicles;
- any member of the encampment has “caused damage, disruption or distress”; or
- their encampment is on (or partly on) a highway.

[Section 62A](#) of the CJPO Act also allows a senior officer to direct those in an unauthorised encampment consisting of at least one vehicle and caravan to leave land if the local authority can provide a suitable pitch for the caravans elsewhere within the area.

Failure to comply with a police direction to leave is an offence. It is also an offence to return to land within twelve months of being directed to leave by the police.

The police can also, under [section 62](#) and [62C](#) of the CJPO Act, seize vehicles from those that they have directed to leave if the individual(s) have failed to remove their vehicles or have attempted to re-enter the land as a trespasser within the prohibited 12-month period.

## The use of police powers

Local authorities are the lead agency for responding to unauthorised encampments. They are responsible for driving a multi-agency response that is supported by the police. Local authorities have their own [set of powers](#) to deal with unauthorised encampments which are **not** discussed in this briefing.

The Secretary of State [is required](#) to issue statutory guidance to the police on the use of their powers to respond to unauthorised encampments. The first [draft version](#) was published in October 2021.

The National Police Chiefs Council (NPCC), the coordinating body for UK police forces, has also provided additional [guidance with operational advice on responding to unauthorised encampments](#) (PDF). The guidance says that:

the mere presence of a group unauthorised encampment without any aggravating factors should not normally create an expectation that police will use eviction powers.

## Reactions and concerns

The [National Farmers Union said](#) that there had been an increase in reports of “illegal encampments on farmland involved in anti-social behaviour, such as criminal damage, fly-tipping and intimidation” and welcomed the measures to help respond to this. The strengthened police powers were also [welcomed by the Local Government Association](#) but who also said the powers needed to be matched by a “willingness to use them”.

Those representing Gypsy, Roma and Traveller communities, and human rights advocates, however have [strongly opposed](#) the criminalisation of unauthorised encampments and the strengthening of police powers to respond to those occupying them. They have raised concern that this approach:

- discriminates against Gypsy, Roma, and Traveller communities and [disproportionately interferes with their human rights](#) (PDF);
- will negatively impact the health and wellbeing Gypsy, Roma, and Traveller people and put them at [greater risk of homelessness](#) (PDF); and
- will fail to address the [lack of authorised site availability](#) for communities.

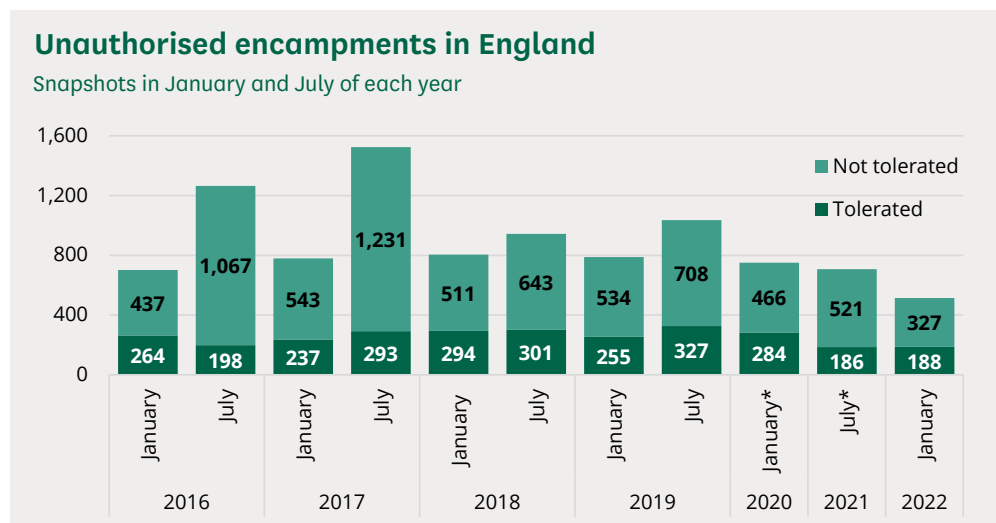
The Government has [acknowledged](#) that there could be “an adverse impact on some members” of Gypsy, Roma, and Traveller communities. However, it says this needs to be balanced with “the distress that local communities and businesses face as a result of unauthorised encampments”.

# 1 What are unauthorised encampments?

“**Unauthorised encampments**” occur when trespassers occupy land belonging to private landowners or public authorities without permission. The term is typically associated with Gypsy, Roma and Traveller sites. There is also a type of unauthorised site referred to as an “**unauthorised development**”. This describes sites built on land owned by travellers but without the appropriate planning permission.

Twice a year, local authorities in England carry out counts of caravans on Traveller sites. Central government then collates and publishes this data.

Most Traveller caravans in England (88%) are on authorised land. Of those that aren't, the vast majority (82%) are on land owned by Travellers in unauthorised developments. As at January 2022, in England, there were 515 Traveller caravans reported on unauthorised encampments (ie on land **not** owned by Travellers). This amounts to 2% of the total number of Traveller caravans recorded in 2022 and was 235 fewer caravans than the 750 reported in January 2020 as being in unauthorised encampments (representing a 31% decrease).<sup>1</sup>



Source: Department for Levelling Up, Housing and Communities, [Traveller caravan count: January 2022](#) and previous editions: table 1

Notes: Shows number of caravans on sites not on travellers' and Gypsies own land.

\* The count was not conducted in July 2020 or January 2021 due to pandemic restrictions.

<sup>1</sup> Department for Levelling Up, Housing and Communities, [Traveller caravan count: January 2022](#), 15 June 2022

Unauthorised sites<sup>2</sup> are further classified into “**tolerated**” and “**not tolerated**”. A tolerated site is where the local authority has decided to allow (or will likely allow) the encampment or development to remain for an indefinite period of time and has not sought the removal of those occupying the site from the land or their vehicles/property. Of the 515 caravans recorded in 2020 as being in unauthorised encampments, 188 (36%) were “tolerated”.<sup>3</sup>

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<sup>2</sup> Both unauthorised encampments and unauthorised developments

<sup>3</sup> As above



## 2 Police powers to respond to unauthorised encampments

### 2.1 An overview of the legislation and guidance

#### 1 Local authority powers

Local authorities have their own set of powers to deal with unauthorised encampments. The Government says local authorities have a “clear leadership role” in tackling unauthorised encampments<sup>4</sup> which is “supported by police”.<sup>5</sup>

Local authority powers are **not** discussed in this briefing. The Library’s briefing [Gypsies and travellers: planning provisions](#) discusses local authority powers.

Sections 60C-60E, 61, and 62A-62F of the Criminal Justice and Public Order Act 1994 (CJPO Act) set out the main police powers to respond to unauthorised encampments and direct those occupying them to leave land.

In 2022, the Police, Crime, Sentencing and Courts Act (PCSC Act) received Royal Assent. [Part 4](#) of the PCSC Act significantly amended the CJPO Act, strengthening police powers to respond to unauthorised encampments and introducing a new criminal offence for “residing on land without consent in or with a vehicle”. These amended powers came into force for England and Wales on 28 June 2022.<sup>6</sup>

The PCSC Act also introduced a new [section 62F](#) into the CJPO Act which requires the Secretary of State to issue statutory guidance to police on their powers in the CJPO Act that relate to unauthorised encampments. It also gives the Secretary of State power to revise the guidance when they see fit. There are no statutory rules about how this guidance should be drafted,

<sup>4</sup> Department for Communities and Local Government, Home Office, Ministry of Justice, [Dealing with illegal and unauthorised encampments](#), March 2019, p1

<sup>5</sup> Home Office, [Draft Statutory Guidance for Police on Unauthorised Encampments](#) (PDF), October 2021, p2

<sup>6</sup> A more in-depth comparison of the differences between the new law and the law prior to the PCSC Bill and the policy background is available in the Library briefing, [Police, Crime, Sentencing and Courts Bill 2019-21: Part 3 and 4- Public order and unauthorised encampments](#).

revised, and published. In October 2021, the Government published [a draft version of this guidance](#).<sup>7</sup>

The National Police Chiefs Council (NPCC), the coordinating body for UK police forces, has also updated its operational guidance on policing unauthorised encampments to reflect the changes in police powers following the PCSC Act.<sup>8</sup> The guidance has been produced by the NPCC's Diversity, Equality and Inclusion Co-ordination Committee. It is not mandatory to follow in order for police to exercise their powers lawfully, but it covers the options police are advised to consider when responding to unauthorised encampments and when using their amended powers. NPCC recommends their guidance is read alongside the Government's statutory guidance.

The NPCC's guidance emphasises (as is standard for police powers) that officers must consider the human rights<sup>9</sup> and Equality Act 2010 protections<sup>10</sup> of people in unauthorised encampments when exercising their powers. The Government's draft statutory guidance also reminds the police of their wider equalities and human rights obligations but notes the police:

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.<sup>11</sup>

## 2.2

# A new criminal offence: residing on land without consent in or with a vehicle

## The offence

[Sections 60C-E](#) of the CJPO Act<sup>12</sup> set out a new criminal offence of “**residing on land without consent in or with a vehicle**”.

Under section 60C, a person over the age of 18 commits an offence if they reside (or intend to reside) on land without consent and:

- they intend to have or have **at least one vehicle** with them;
- **one or more conditions** outlined in subsection 60C(4) are met; and

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<sup>7</sup> At the time of writing a final version had not been issued.

<sup>8</sup> NPCC, [Operational Advice – Trespassing On Land Without Consent / Unauthorised Encampments](#) (PDF), 27 June 2022

<sup>9</sup> As above, see for example p11

<sup>10</sup> As above, see for example p8

<sup>11</sup> Home Office, [Draft Statutory Guidance for Police on Unauthorised Encampments](#) (PDF), October 2021, p14

<sup>12</sup> As introduced by [section 83](#) of the PCSC Act

- they fail “as soon as reasonably practicable” to leave the land or remove from the land property that belongs to them when **requested to by the owner, someone representing them, or the police**.

The conditions in subsection 60C(4) – of which at least one must be met for the offence to apply – are, that the individual in question:

- has caused or is likely to cause “**significant damage or disruption**” because of their **residence on the land**;
- would likely cause significant damage or disruption by their residence on the land **if** they were to reside there (where they do not currently already do so);
- displays (or is likely to display) conduct whilst on the land which has caused - or is likely to cause - **significant damage or destruction**; or
- carries out (or is likely to carry out) **offensive conduct** whilst on the land that has caused - or is likely to cause - “**significant distress**”.

### What does damage and disruption mean?

For the purposes of this offence, “**damage**” includes damage to land or any property on the land that does not belong to the trespasser. It also encompasses damage to the environment including excessive noise, smells, litter, or deposits of waste.<sup>13</sup>

“**Disruption**” means interference with a person’s ability to access:

- any services or facilities on the land or the ability to make lawful use of the land;
- water, energy, or fuel supplies; or
- agricultural buildings and monuments/archaeological areas.<sup>14</sup>

### Enforcement and penalty

The fact that landowners (or someone representing them) are able to ask trespassers to leave land and it could be an offence not to comply, means an offence could be committed before the police themselves have issued a direction to the trespassers to leave.<sup>15</sup> This could give the police **the power to arrest individuals as soon as they arrive at a scene where landowners**

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<sup>13</sup> Section 60C(8), Criminal Justice and Public Order Act 1994

<sup>14</sup> As above

<sup>15</sup> This was not previously been the case. Prior to the PCSC Act, it was only a criminal offence for a person in an unauthorised encampment to not comply with a request to leave land if it had been made by the police. Landlords only have this power with regards to this specific criminal offence. Police have broader powers to direct trespassers to leave land which it remains a criminal offence not to comply with. This is discussed in section 2.3 of this briefing.

**have asked those individuals to move** in accordance with the new legislation.

Police officers also have the **power to seize and remove any relevant property, including vehicles**, from those they “reasonably suspect” have committed this offence. Property seized by the police under this power can be kept for up to three months.<sup>16</sup> If a person goes on to be convicted of the offence, the courts can then issue forfeiture orders for the items the police seized.<sup>17</sup>

The offence is summary only. This means if an individual is charged, the offence is only triable at a magistrates’ court. If convicted there is a maximum sentence of three months’ imprisonment, a fine not exceeding £2,500, or both.<sup>18</sup>

It is also **a criminal offence to re-enter land** within twelve months of being asked to leave without a “reasonable excuse” for doing so.<sup>19</sup> This would attract the same maximum penalty of three months’ imprisonment, a fine not exceeding £2,500, or both.

## Does the new offence criminalise trespass?

Trespass to land is typically a civil issue and not generally a criminal offence. In civil law, trespass to land consists of any unjustifiable intrusion by a person on the land in possession of another. It is actionable in the courts whether or not the claimant has suffered any damage.

Aggravated trespass is already a criminal offence under [section 68](#) of the CJPO Act. It occurs when one or more people trespass on land and intimidate the landowner (or others who are lawfully on the land) or deter/disrupt them from carrying out lawful activity on the land.

When the Government consulted<sup>20</sup> on powers to respond to unauthorised encampments, the Government sought views on criminalising trespass. When the Government proposed adding an additional criminal offence to aggravated trespass there were mixed views. 66% of people responding on behalf of local authorities to the 2019 consultation supported a new criminal offence for intentional trespass.<sup>21</sup> However the Government also stated that “Many of the responses opposed the proposals to criminalise trespass”.<sup>22</sup>

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<sup>16</sup> [Section 60D](#), Criminal Justice and Public Order Act 1994

<sup>17</sup> [Section 60E](#), Criminal Justice and Public Order Act 1994

<sup>18</sup> [Section 60C\(5\)](#), Criminal Justice and Public Order Act 1994

<sup>19</sup> Section 60C(2)(b), Criminal Justice and Public Order Act 1994

<sup>20</sup> **Note:** the Government ran two consultations prior to the PCSC Act. One in 2018 for views on the [available powers for dealing with unauthorised developments and encampments](#) and a second consultation between November 2019 and March 2020 [on strengthening police powers to respond to unauthorised encampments](#) with proposals for how the Government would deliver this. These consultations are discussed in more detail in section 3.1 of this briefing.

<sup>21</sup> Home Office, [Government response to the consultation ‘Strengthening police powers to tackle unauthorised encampments’](#) (PDF), 8 March 2021, p23

<sup>22</sup> As above, p10

Concern was raised by some stakeholders that criminalising trespass could have unintended consequences and cast the net too wide, impacting ramblers and eroding access to the countryside.<sup>23</sup> An e-petition against the proposal called the idea “extreme, illiberal and unnecessary” and garnered 134,932 signatures.<sup>24</sup>

The new measures brought in by the PCSC Act do not criminalise trespass. They are instead designed to criminalise the act of trespassing when making an unauthorised encampment.<sup>25</sup> The Act’s explanatory notes reiterate that “the provisions do not capture ramblers and those who wish to enjoy the countryside” because to commit the offence a person must be “residing in or intending to reside in, or with, a vehicle”.<sup>26</sup>

## Guidance on applying the new criminal offence

The NPCC guidance emphasises that the word “significant” is “crucial in establishing if any criminal offence has been committed under this new legislation”.<sup>27</sup> Police are directed to the draft statutory guidance from the Government, which says that assessing whether the level of damage, disruption or distress caused is significant “will depend on the individual facts of each case”.<sup>28</sup> In making this assessment, the police are advised to consider:

- **how landowners and users of the land have been affected** including a consideration of the size and scale of the land occupied and the damage or obstruction caused. For example, a small park occupied by several vehicles may be deemed more significant by the police/courts than fewer vehicles on a large park;
- **how frequently the land is used.** For example, an encampment on the corner of a local field or abandoned piece of land might not be causing significant disruption or harm; and
- **how the environment is being damaged.** For example, a small amount of rubbish may not be judged to be significant.<sup>29</sup>

The statutory guidance states that if “police deem the harms to not be significant, then the offence under section 60C would not apply”<sup>30</sup> but it encourages police to consider whether their other powers for directing

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<sup>23</sup> Ramblers, [Trespass: Plans to change trespass rules could erode access to the countryside](#)

<sup>24</sup> UK Parliament, [Don’t criminalise trespass](#)

<sup>25</sup> **Note:** Prior to the new measures, failing to comply with a police direction to leave land if an individual was trespassing and part of an unauthorised encampment was already a criminal offence. This continues to be the case.

<sup>26</sup> [Explanatory Notes: Police, Crime, Sentencing and Courts Act](#) (PDF), p105

<sup>27</sup> As above, p5

<sup>28</sup> Home Office, [Draft Statutory Guidance for Police on Unauthorised Encampments](#) (PDF), October 2021, p6

<sup>29</sup> As above, p7

<sup>30</sup> As above, p7

encampments to move on may still apply. This is reiterated by the NPCC guidance.<sup>31</sup>

## 2.3

# Expanded police powers: directing unauthorised encampments to leave and preventing their return

## Powers to remove trespassers from land

### Causing damage, disruption or distress

[Section 61](#) of the CJPO Act (as amended) provides senior police officers with powers to direct those in an unauthorised encampment to leave and to remove any vehicles or property they have with them from the land.

These powers have been broadened by the PCSC Act. Senior officers can now use them where there are two or more people trespassing on land with the common purpose of residing there and either:

- between them have six or more vehicles on the land; **or**
- any member of the encampment has “caused damage, disruption or distress” or used threatening, abusive or insulting behaviour to the landowner, their family or employees.<sup>32</sup>

Before the police can use these powers, reasonable steps to ask the trespassers to move must first have been taken by, or on behalf of, the occupier of the land.<sup>33</sup>

Under these amended powers, “damage” and “disruption” have the same definition as the new criminal offence of residing on land without consent in or with a vehicle. “Distress” refers to distress caused by threatening, abusive, or insulting words or behaviour, disorderly behaviour, or by something that is visibly threatening, abusive or insulting such as offensive signs.<sup>34</sup>

However, unlike the new criminal offence the damage, disruption or distress caused does not need to be “significant”. The police’s section 61 powers can therefore be triggered at a lower threshold.

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<sup>31</sup> NPCC, [Operational Advice – Trespassing On Land Without Consent / Unauthorised Encampments](#) (PDF), 27 June 2022, p5

<sup>32</sup> [Section 61\(1\)](#), Criminal Justice and Public Order Act 1994

<sup>33</sup> As above. “Occupier” is defined in section 61(9) as “the person entitled to possession of the land by virtue of an estate or interest held by him”.

<sup>34</sup> Section 61(10), Criminal Justice and Public Order Act 1994

## Encampments on highways

The PCSC Act also amended section 61 of the CJPO Act to remove certain exceptions on what constituted relevant land for the police to be able to use their removal powers. Previously their powers did not apply to land on highways. Now, the police are able to use their amended section 61 powers (as above) to direct trespassers to leave if they are on land that forms part of a highway.<sup>35</sup>

## Moving trespassers on where alternative sites are available

[Section 62A](#) of the CJPO Act allows a senior officer to direct those in an unauthorised encampment (consisting of at least two trespassers) to leave land if:

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

## Enforcement, compliance and prohibiting unauthorised encampments from returning

If after having received a direction to leave by the police under section 61 or 62A of the CJPO Act (as amended), a person does not do so “as soon as reasonably practicable” they are committing a criminal offence.<sup>36</sup> This can attract a sentence of up to three months imprisonment, a fine of up to £2,500, or both.

If someone returns to land within 12 months of having been directed to leave by the police, they are also committing a criminal offence and can receive up to three months imprisonment, a fine of up to £2,500, or both.

[Section 62](#) enables the police to remove and seize vehicles from those they have directed to leave land using their section 61 powers. They can do so if that individual has either failed to remove a vehicle belonging to them from the land, re-entered the land as a trespasser with a vehicle within 12 months of being asked to leave.

[Section 62C](#) also allows the police to seize vehicles from those they have directed to leave under section their 62A powers (ie their powers to move trespassers on where alternative sites are available). They can use their powers to seize vehicles in this case if the individual has failed to remove their

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<sup>35</sup> [Explanatory Notes for Part 4: Unauthorised encampments, Police, Crime, Sentencing & Courts Act 2022](#), [accessed 22 August 2022]

<sup>36</sup> Section 62B, Criminal Justice and Public Order Act 1994

vehicle(s) from the relevant land or entered **any** land in the relevant local authority area as a trespasser within the prohibited period of 12 months.

## Guidance on the use of removal powers

The NPCC guidance says that the “mere presence of a group without any aggravating factors should not normally create an expectation that police will use eviction powers.”<sup>37</sup> Forces are encouraged to develop “local communication strategies” with partners to ensure there is clear, shared understanding of the rationale to use – or not use – legislative powers in response to unauthorised encampments.<sup>38</sup>

The guidance advises that the police should “consider becoming involved” by using their section 61 and 62 powers to remove groups trespassing where:

- communities are “deprived” of local amenities, eg use of public parks, village greens or public car parks;
- there is “significant” impact on the environment;
- there is local disruption to the economy, eg an encampment is on a shopping centre car park, industrial estate or agricultural land;
- behaviour is otherwise disruptive to the local community;
- there is a danger to life, eg if a group is gathered close to a motorway and there could be a risk of children or animals straying onto the carriageway; or
- there is a need to take preventative action, eg where a group has persistently displayed anti-social behaviour at previous sites and it is reasonable to believe this will happen at the newly established site.<sup>39</sup>

## Working with local authorities

The NPCC guidance says forces should develop ‘Joint Agency Protocols’ with local authorities for the management of unauthorised encampments.<sup>40</sup> It also recommends that the police visit newly established unauthorised encampments and where possible do so with the landowner, local authority, and other relevant agencies.<sup>41</sup>

The visit should support agencies to assess the impact of the encampment’s location, the behaviour of occupants, and the welfare needs of those in the encampment as well as establishing their views on how long they wish to stay. It advises officers to consider discussing with those present at the

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<sup>37</sup> NPCC, [Operational Advice – Trespassing On Land Without Consent / Unauthorised Encampments](#) (PDF), 27 June 2022, p11

<sup>38</sup> As above

<sup>39</sup> As above, p10-11

<sup>40</sup> As above, p8

<sup>41</sup> As above, p12



unauthorised encampment what “constitutes unacceptable conduct” and provide them with a ‘code of conduct’.<sup>42</sup> A joint decision should then “ideally be reached between the local authority, landowner and the police regarding the most appropriate course of action”.<sup>43</sup>

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<sup>42</sup> As above

<sup>43</sup> As above, p8

## 3 Reaction to the reforms

### 3.1 Why the reform?

In 2018 the Government consulted on the [powers for dealing with unauthorised development and encampments](#). The majority of respondents supported a new criminal offence. The Government said this showed there was a clear “appetite to extend powers available to the police when dealing with unauthorised encampments”, particularly from local authorities.<sup>44</sup>

This prompted the Conservative Party to commit in its 2019 manifesto to “tackle unauthorised traveller camps” by giving the police new “powers to arrest and seize the property and vehicles of trespassers who set up unauthorised encampments” and create a new criminal offence.<sup>45</sup>

Following this, the Government ran a [second consultation](#) between November 2019 and March 2020 with proposals for how it would deliver on this. In its response, the Government said that a total 94% of respondents supported one or more of the proposed amendments to the CJPO Act to extend the powers of the police to direct trespassers to leave land.<sup>46</sup> Responses to proposals for a new criminal offence were more mixed.<sup>47</sup>

The Government has said the purpose of the new measures is to “provide the police with sufficient powers to enforce quickly and effectively against a range of harms resulting from unauthorised encampments”.<sup>48</sup> The new criminal offence is designed to prevent those harms “from occurring in the first instance” by “deter[ing] trespassers from setting up or residing on an unauthorised encampment.”<sup>49</sup>

<sup>44</sup> Home Office, [Government response to the consultation ‘Strengthening police powers to tackle unauthorised encampments’](#) (PDF), 8 March 2021, p23

<sup>45</sup> The Conservative Party, [The Conservative Party 2019 Manifesto: Unleash Britain's Potential](#) (PDF), November 2019, p19

<sup>46</sup> Home Office, [Government response to the consultation ‘Strengthening police powers to tackle unauthorised encampments’](#) (PDF), 8 March 2021, p23

<sup>47</sup> The Government received 26,337 responses to its second consultation. More than 16,000 responses were connected to campaigning by Friends Families and Travellers (FFT), a charity which represents the interests of Gypsy, Roma, and Traveller communities, and Liberty, a human rights advocacy group. In its [response to the outcome of the consultation](#) (PDF), the Government set out the responses it received that were gathered or prompted by FFT separately, see page 25-27.

<sup>48</sup> Home Office, [Government response to the consultation ‘Strengthening police powers to tackle unauthorised encampments’](#) (PDF), 8 March 2021, p23

<sup>49</sup> As above

In draft statutory guidance to support the new measures, the Government has reiterated that:

It remains the case that the response to unauthorised encampments and to individuals who do not leave land when asked to do so, causing harm in the conditions set out, requires a locally driven multi-agency response, led by local authorities and supported by police.<sup>50</sup>

The Local Government Association (LGA) welcomed the strengthening of police powers “in principle” but said this must be matched by a “willingness to use them”.<sup>51</sup> They also said that, to support the effective use of these powers, the police and local authorities need to be better supported, both financially and with good practice guidance, to deal with unauthorised encampments quickly and efficiently. LGA also noted the need for improvements to the court process, stating that that the effectiveness of enforcement powers can be weakened by slow court processes and delays in decision-making.<sup>52</sup>

The measures were also welcomed by the National Farmers Union (the representation body for agriculture and horticulture in England and Wales) who said there has been an increase in reports of “illegal encampments on farmland involved in anti-social behaviour, such as criminal damage, fly-tipping and intimidation.”<sup>53</sup> The National Farmers Union have been working to raise awareness of the impact of unauthorised encampments on farmland and farm businesses and felt the new measures would help “target encampments that threaten the local community or are causing significant disruption and distress.”<sup>54</sup>

However, the reforms were also highly controversial and received significant backlash during the PCSC Bill’s passage from several stakeholders. Those representing Gypsy, Roma and Traveller communities and human rights advocates, strongly opposed the criminalisation of unauthorised encampments and the strengthening of police powers to respond to those occupying them.<sup>55</sup> Their concerns centre around three core issues. These are, that the new legislative framework for responding to unauthorised encampments:

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<sup>50</sup> Home Office, [Draft Statutory Guidance for Police on Unauthorised Encampments](#) (PDF), October 2021, p2

<sup>51</sup> Local Government Association, [LGA response to Government consultation on strengthening police powers to tackle unauthorised encampments](#), 4 March 2020, p1

<sup>52</sup> LGA, [LGA response to Government consultation on strengthening police powers to tackle unauthorised encampments](#) 4 March 2020

<sup>53</sup> NFU, [The NFU welcomes new police powers to tackle unauthorised encampments](#), 22 August 2022

<sup>54</sup> As above

<sup>55</sup> An in-depth discussion of the reactions and debates surrounding these provisions is available in the Library briefing, [Police, Crime, Sentencing and Courts Bill 2019-21: Part 3 and 4- Public order and unauthorised encampments](#). Section 2.5 of the Library’s [progress briefing on the PCSC Bill](#) also provides an overview of the debates that took place during the Bill’s committee stage regarding these reforms.

- discriminates against Gypsy, Roma, and Traveller communities and disproportionately interferes with their human rights;
- will negatively impact the health and wellbeing of those in Gypsy, Roma, and Traveller communities and put them at greater risk of homelessness; and
- fails to address the lack of authorised site availability and will therefore be ineffective at addressing problems linked to unauthorised encampments.

## 3.2 Discrimination and human rights

### Protection from discrimination

Gypsy, Roma, and Traveller communities are protected under the [Equality Act 2010](#) as a recognised ethnic group.<sup>56</sup> [Article 14](#) of the European Convention of Human Rights (ECHR) also provides for protection from discrimination. Under Article 14, enjoyment of the rights and freedoms set out in ECHR must be secured “without discrimination on any ground” such as – but not limited to – race, religion, national or social origin, association with a national minority, property, birth or other status. The UK is a signatory of the ECHR and therefore obliged to ensure that ECHR rights are protected. The [Human Rights Act 1998](#) gives domestic effect to the ECHR.

During the PCSC Bill’s committee stage, Bambos Charalambous (then Shadow Minister for Immigration) said on behalf of the Opposition that the measures were “clearly targeted at Gypsy, Roma and Traveller communities, and the criminalisation would potentially breach the Human Rights Act 1998 and the Equality Act 2010.”<sup>57</sup>

Friends, Families and Travellers (FFT), the Traveller’s rights organisation, and Liberty argued that the new strengthened legal framework for unauthorised encampments would put Gypsy, Roma and Traveller people at risk of further discrimination than they already face. In response to the Government’s 2019 pre-legislative consultation that outlined a version of the Government’s proposals,<sup>58</sup> over 70% of the responses expressed the view that the polices would have a negative impact on Gypsy, Roma, and Traveller people.<sup>59</sup>

The Equality and Human Rights Commission has expressed similar concerns about the expanded provisions for dealing with unauthorised encampments.

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<sup>56</sup> Equality Act 2010, s.9. See also *Moore & Anor v Secretary of State for Communities and Local Government* [2015] EWHC 44, para 58

<sup>57</sup> PBC Deb, [Police, Crime, Sentencing and Courts Bill \(Tenth sitting\)](#), 8 June 2021, c408

<sup>58</sup> These proposals went on to form the basis of Part 4 of the PCSC Act on unauthorised encampments.

<sup>59</sup> Home Office, [Government response to the consultation ‘Strengthening police powers to tackle unauthorised encampments’: A Summary of Consultation Responses and the Way Forward](#) (PDF), March 2021, p21

At the time of the PCSC Bill's passage, it called on the Government to "reconsider" the measures, stating that they were likely to "exacerbate" the disadvantages Gypsy, Roma and Traveller communities face across multiple areas of life.<sup>60</sup>

## The right to a family and private life

Everyone has the right to respect for their family and private life under [Article 8](#) of the ECHR. In 2001, the courts recognised and protected the right of Gypsy, Roma and Traveller communities to maintain a nomadic lifestyle.<sup>61</sup> The Equality and Human Rights Commission has raised concerns that the expanded measures will increase the likelihood that people from Gypsy, Roma and Traveller communities will face criminal sanctions for establishing unauthorised encampments and that there is risk of "disproportionate interference" with their Article 8 rights.<sup>62</sup>

In *Bromley LBC v Persons Unknown*, a Court of Appeal judgment that examined how local authorities should deal with unauthorised encampments, Lord Justice Coulson noted the incompatibility between an enforcement approach and the Article 8 rights of traveller communities:

I consider that there is an inescapable tension between the article 8 rights of the Gypsy and Traveller community and the common law of trespass ... The reality is that, without [more designated transit] sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Convention.<sup>63</sup>

In response to concerns, the Government said it has been "mindful of its duty" to comply with the ECHR<sup>64</sup> and that the legislation was carefully drafted not to target all Gypsy, Traveller and Roma sites but to address the "criminal, damaging, disrupting or distressing behaviour that arises from some unauthorised encampments".<sup>65</sup> The then Minister of State at the Ministry of Justice, Victoria Atkins, argued however that a "proportionate balance" needed to be struck "between landowners' and communities' rights to the peaceful enjoyment of and access to property and land, and Travellers' rights to lead a nomadic way of life".<sup>66</sup>

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<sup>60</sup> Equality and Human Rights Commission, [Police, Crime, Sentencing and Courts Bill](#) (PDF), May 2021, p6-7

<sup>61</sup> *Chapman v UK* [2001] 33 EHRR 399; *Bromley LBC v Persons Unknown* [2020] EWCA Civ 12.

<sup>62</sup> Equality and Human Rights Commission, [Police, Crime, Sentencing and Courts Bill](#) (PDF), May 2021, p7

<sup>63</sup> *Bromley LBC v Persons Unknown* [2020] EWCA Civ 12, para 100

<sup>64</sup> Home Office, [Government response to the consultation 'Strengthening police powers to tackle unauthorised encampments': A Summary of Consultation Responses and the Way Forward](#) (PDF), March 2021, p26

<sup>65</sup> PBC Deb, [Police, Crime, Sentencing and Courts Bill \(Tenth sitting\)](#), 8 June 2021, c414

<sup>66</sup> As above, c415

## 3.3

## Health and Wellbeing

The Equality and Human Rights Commission says that the policing of unauthorised encampments must include “a full awareness of the occupiers’ welfare needs.”<sup>67</sup> FFT has noted that Gypsy, Roma, and Traveller communities have been found to have “life expectancies between 10 and 25 years shorter than the general population.”<sup>68</sup> They argued that the expanded measures take an enforcement approach which contravenes the advice from the Equality and Human Rights Commission and will exacerbate the health issues faced by traveller communities. They say that there should instead be a welfare-based approach and support for communities.<sup>69</sup>

Concerns have been particularly raised about police powers to seize vehicles used in unauthorised encampments, leaving people from Gypsy, Roma, and Traveller communities facing “the very real threat of having their homes removed and finding themselves homeless.”<sup>70</sup>

The LGA has reiterated its desire to see a multi-agency response to unauthorised encampments. It believes the focus should be “on developing a collaborative approach involving members of the Gypsy, Roma and Traveller community to resolve some unauthorised encampment issues” before resorting to police powers.<sup>71</sup>

The Government has acknowledged that the new measures “could have an adverse impact on some members” of Gypsy, Roma, and Traveller communities. However, it also says that it “recognise(s) the distress that local communities and businesses face as a result of unauthorised encampments”, which it argues must be taken into account.<sup>72</sup>

The Government has defended the need for police to have powers to seize vehicles of those in unauthorised encampments. It argues that without this ability “police would be less able to effectively and quickly tackle the problems that are caused by unauthorised encampment.”<sup>73</sup> It says the new measures are predicated on enforcement action being ...

... exercised where it is proportionate and necessary to do so and should be taken in conjunction with the local authority, who would need to offer

<sup>67</sup> ECHR, [Response of the Equality and Human Rights Commission to the Consultation: “Powers for dealing with unauthorised development and encampments”](#) (PDF), June 2018, p10

<sup>68</sup> Friends, Families and Travellers, [Briefing on new police powers for encampments in Police, Crime, Sentencing and Courts Bill: Part 4](#) (PDF), March 2021, p3

<sup>69</sup> As above

<sup>70</sup> Liberty, [Liberty’s Briefing on the Police Crime Sentencing and Courts Bill](#) (PDF), March 2021, p8

<sup>71</sup> Local Government Association, [Police, Crime, Sentencing and Courts Bill House of Commons, Second Reading](#), March 2021, part 4

<sup>72</sup> Home Office, [Government consultation: Strengthening police powers to tackle unauthorised encampments](#) (PDF), November 2019, p21

<sup>73</sup> As above

assurance that they have relevant measures in place to meet the welfare and safeguarding needs of those affected by the loss of their accommodation.<sup>74</sup>

The NPCC guidance states that local authorities should be “the lead agency” in assessing the welfare of trespassers.<sup>75</sup> However, the guidance advises that the police should also have a role in ensuring “proper welfare enquiries are carried out to determine whether there are pressing needs” amongst those occupying unauthorised encampments and ensuring that, if necessary, appropriate agencies are involved.<sup>76</sup>

It reminds police that if vehicles are seized:

officers must be aware that these are, in effect, people’s homes, and links to relevant local authorities should be established to ensure subsequent appropriate accommodation is provided<sup>77</sup>

The draft statutory guidance provides that “if necessary” enforcement action “could be delayed while urgent welfare needs are addressed.”<sup>78</sup>

## 3.4 Site availability and effectiveness of new powers

FFT say that the problems caused by unauthorised encampments would be more effectively tackled by providing more authorised space for nomadic Travellers.<sup>79</sup> Critics of the PCSC Act therefore argue that the reforms will not be effective at addressing issues and conflict arising from unauthorised encampments because they do not address this root problem.

During the PCSC Bill’s passage, the FFT obtained submissions to the Government’s pre-legislative consultation through a Freedom of Information request (FOI). The FFT said that the responses showed many senior police officers were not in favour of criminalising unauthorised encampments and agreed that lack of site provision was the real problem.<sup>80</sup>

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<sup>74</sup> Home Office, [Government response to the consultation ‘Strengthening police powers to tackle unauthorised encampments’: A Summary of Consultation Responses and the Way Forward](#) (PDF), March 2021, p23

<sup>75</sup> NPCC, [Operational Advice – Trespassing On Land Without Consent / Unauthorised Encampments](#) (PDF), 27 June 2022, p8

<sup>76</sup> NPCC, [Operational Advice – Trespassing On Land Without Consent / Unauthorised Encampments](#) (PDF), 27 June 2022, p15

<sup>77</sup> As above

<sup>78</sup> Home Office, [Draft Statutory Guidance for Police on Unauthorised Encampments](#) (PDF), October 2021, p14

<sup>79</sup> Friends, Families & Travellers, [Police repeat calls for more sites, rejecting Home Office proposals to criminalise trespass - Friends, Families and Travellers](#), 9 September 2020

<sup>80</sup> The Guardian, [Revealed: police oppose Traveller and Gypsy camp crackdown](#), 14 November 2019; and Friends, Families & Travellers, [Police repeat calls for more sites, rejecting Home Office proposals to criminalise trespass - Friends, Families and Travellers](#), 9 September 2020

The NPCC have supported this position. They state in their guidance that “the key issue to address on a national level” is the lack of appropriate and lawful sites for Gypsy, Roma and Traveller families to live on and access as they move around the country. NPCC argue this lack of accommodation is the main cause of issues and conflict between members of the settled community and travelling communities.<sup>81</sup>

Lord Justice Coulson also highlighted the issue in the Court of Appeal’s judgment in *Bromley LBC v Persons Unknown*:

The obvious solution is the provision of more designated transit sites for the Gypsy and Traveller community. It is a striking feature of many of the documents that the court was shown that the absence of sufficient transit sites has repeatedly stymied any coherent attempt to deal with this issue.<sup>82</sup>

The National Farmers’ Union also agrees that it is “vital” for there to be sufficient authorised sites so that “the issue of illegal encampments is not simply pushed onto another patch of public or private land.”<sup>83</sup>

The Government has said it recognises “the need for transit sites to be available” in order for local authorities and the police to be able to fully utilise their powers in responding to unauthorised encampments.<sup>84</sup> During the passage of the PCSC Bill, Victoria Atkins (the then Parliamentary Under Secretary of State for Crime, Safeguarding and Vulnerability at the Home Office), said there are “incentives in place” for local authorities to encourage the provision of authorised pitches for traveller communities. However, she said it is ultimately “a matter for local authorities” to identify land for sites and decide how many additional sites are created over the next few years.<sup>85</sup>

The LGA have argued that “strengthened police powers offer the potential to help tackle unauthorised encampments” but “in isolation they are unlikely to solve the problems caused by them”. They argue local authorities and the police need to be better supported to deal with unauthorised encampments, including more support financially.<sup>86</sup> The Government has said the number of transit pitches has “increased by 41% (356 pitches) across England and Wales over the last 10 years”<sup>87</sup>.

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<sup>81</sup> NPCC, [Operational Advice – Trespassing On Land Without Consent / Unauthorised Encampments](#) (PDF), 27 June 2022, p3

<sup>82</sup> [Bromley LBC v Persons Unknown](#) [2020] EWCA Civ 12, para 100,

<sup>83</sup> NFU, [The NFU welcomes new police powers to tackle unauthorised encampments](#), 15 March 2021

<sup>84</sup> HM Government, [Government response to the consultation on powers for dealing with unauthorised development and encampments](#) (PDF), February 2019, p36

<sup>85</sup> PBC Deb, [Police, Crime, Sentencing and Courts Bill \(Tenth sitting\)](#), 8 June 2021, cc417-418

<sup>86</sup> Local Government Association, [LGA response to Government consultation on strengthening police powers to tackle unauthorised encampments](#), 4 March 2020

<sup>87</sup> Home Office, [Government response to the consultation ‘Strengthening police powers to tackle unauthorised encampments’: A Summary of Consultation Responses and the Way Forward](#) (PDF), March 2021, p24



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