



Home Office

Strengthening police powers to tackle unauthorised encampments

Government consultation

This consultation begins on 05/11/2019

This consultation ends on 05/03/2020

About this consultation

To: This consultation is open to the public.

We will be particularly interested to hear from local authorities, police forces, Gypsy, Roma, and Travelling communities and the general public.

Duration: From 05/11/2019 to 05/03/2020

Enquiries to: Strengthening police powers to tackle unauthorised encampments consultation
Police Powers Unit
Home Office
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London
SW1P 4DF

Email:

UnauthorisedEncampmentsConsultation@homeoffice.gov.uk

How to respond: Please provide your response by 05/03/2020 at:

www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments

If you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email or post it to:

Strengthening police powers to tackle unauthorised encampments consultation
Police Powers Unit
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6th floor, Fry Building
Home Office
2 Marsham Street
London SW1P 4DF

Email:

UnauthorisedEncampmentsConsultation@homeoffice.gov.uk

Please also contact the Police Powers Unit (as above) if you require information in any other format, such as Braille, audio or another language. We cannot analyse responses not submitted in these provided formats.

Response paper: A response to this consultation exercise is due to be published at <https://www.gov.uk/search/policy-papers-and-consultations>

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1. Foreword by the Home Secretary

We are fortunate to live in one of the most tolerant countries in the world, which has a proud tradition of promoting respect for the rule of law, for property, and for one another. This Government is committed to creating a just and fair country, where equality of opportunity flourishes and the life chances of all are enhanced. I am clear that that this must be built on shared rights, responsibilities and opportunities.

In April 2018, the Government published a consultation on the effectiveness of enforcement against unauthorised developments and encampments. It sought views from a number of stakeholders including local authorities, police forces, Gypsy, Roma, and Traveller communities and the general public on the scale of the problem, whether existing powers could be used more effectively and if any additional powers were required.

In response to the consultation my predecessor, the Rt Hon Sajid Javid MP, announced the Government would look to amend sections 61 and 62A of the Criminal Justice and Public Order Act 1994 to lower the criteria that must be met for the police to be able to direct people away from unauthorised sites.

He also confirmed Home Office officials would review how this Government could criminalise the act of trespassing when setting up an unauthorised encampment in England and Wales, learning from the trespass legislation that exists in the Republic of Ireland. This consultation document sets out the information gathered during that consultation, makes proposals for change and seeks views on those proposals.

This document consults on whether criminalising unauthorised encampments would be preferable to the amendments we originally proposed to the Criminal Justice and Public Order Act 1994, and if so, how it should work. It sets out a proposed package of measures in some detail, as well as some more general questions.

The Government recognises that the proposals contained in this consultation are of interest to a significant minority of Gypsies, Roma and Travellers who continue to travel. The Government's overarching aim is to ensure fair and equal treatment for Gypsy, Roma and Traveller communities, in a way that facilitates their traditional and nomadic way of life while also respecting the interests of the wider community. In June this year the Government announced that the Ministry of Housing Communities and Local Government will lead development of a cross-government strategy to improve outcomes for Gypsy, Roma and Traveller communities.



Rt Hon Priti Patel MP

Home Secretary

2. Executive summary

We would like to consult on measures to;

- Criminalise the act of trespassing when setting up an unauthorised encampment in England and Wales.

We would also like to consult on the following alternative approach to this issue:

- Amending section 62A of the Criminal Justice and Public Order Act 1994 to permit the police to direct trespassers to suitable authorised sites located in neighbouring local authority areas.
- Amending sections 61 and 62A of the Criminal Justice and Public Order Act 1994 to increase the period of time in which trespassers directed from land would be unable to return from 3 months to 12 months.
- Amending section 61 of the Criminal Justice and Public Order Act 1994 to lower the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised from six to two or more vehicles.
- Amending section 61 of the Criminal Justice and Public Order Act 1994 to enable the police to remove trespassers from land that forms part of the highway.

This consultation is open until 05/03/2020; details of how to respond are set out towards the front of this document.

3. Introduction

The vast majority of travelling communities reside in caravans on authorised traveller sites. Indeed, out of the 23,726 caravans in England and Wales in July 2018, only 1049 (4.4%) were on unauthorised sites that were not owned by the occupants. However, there have been long-standing concerns about the disproportionate impact of these unauthorised encampments, where significant distress has been caused to local communities and where local authorities have consequently had to deal with a range of issues.

Recognising these concerns, the Government published a consultation in April 2018 on the effectiveness of enforcement against unauthorised developments and encampments. Through that consultation, we sought views from a number of stakeholders including local authorities, police forces, travelling communities and the general public on whether there is anything we can do to ensure that existing powers can be used more effectively and if additional powers are required. It was led by the Ministry for Housing, Communities and Local Government in partnership with the Home Office and Ministry of Justice.

The responses to the consultation were clear¹, suggesting that significant problems are created by many unauthorised encampments. Responses highlighted the sense of unease and intimidation residents feel when an unauthorised encampment occurs, the frustration at not being able to access amenities, public land and business premises, and the waste and cost that is left once the encampment has moved on.

Parliament has already given local authorities and the police significant powers and duties designed to help them manage the impact of unauthorised encampments on local communities, including local authority and police powers in the Criminal Justice and Public Order Act 1994.

However, the Government heard compelling evidence, in response to the consultation, that stronger powers are needed to be able to address the issues and concerns identified.

That is why in February 2019, the previous Home Secretary announced that the Government would publish a further consultation on extending police powers by making a series of amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994. These amendments would permit the police to direct trespassers to suitable alternative sites located in neighbouring local authority areas (as well as the authority which the encampment was currently situated within); to increase the period of time in which trespassers directed from land would be unable to return from three, to twelve months; to lower the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised from six to two vehicles; and to enable the police to remove trespassers from land that forms part of the highway.

The Government also heard arguments that England and Wales should follow the so-called 'Irish model' for dealing with unauthorised encampments. This approach

¹ <https://www.gov.uk/government/consultations/powers-for-dealing-with-unauthorised-development-and-encampments>

criminalises trespass in certain circumstances. The responses to our consultation demonstrated that the majority of respondents believe the Government should consider criminalising unauthorised encampments in England and Wales, by creating an offence of trespassing when setting up an unauthorised encampment.

That is why the previous Home Secretary announced that Home Office officials would undertake a review into how this Government can criminalise the act of trespassing when setting up an unauthorised encampment in England and Wales, learning from the trespass legislation that exists in the Republic of Ireland.

Having considered the findings from that review, we would like to test the appetite to go further and broaden the existing categories of criminal trespass to cover trespassers on land who are there with the purpose of residing in their vehicle for any period, and to give the police the relevant powers to arrest offenders in situ and to seize any vehicles or other property on existing unauthorised encampments (or those in the process of being set up) immediately.

We are therefore consulting on whether and how the setting up of or residing on an unauthorised encampment should be made an offence, as well as seeking views on the previously proposed changes to the Criminal Justice and Public Order Act 1994 to lower the criteria that must be met for the police to be able to direct people away from unauthorised sites, which could be introduced as an alternative to criminalisation.

4. The proposals

This chapter sets out options to extend police powers to tackle unauthorised encampments, including the creation of an offence of trespassing while setting up an unauthorised encampment, as well as other measures to extend police powers to direct trespassers, who have the intention to reside there, to leave land.

4.1 Criminalising Unauthorised Encampments

Through the Government's consultation on the effectiveness of enforcement against unauthorised developments and encampments, the majority of respondents said they believe we should consider criminalising unauthorised encampments, as has been done in the Republic of Ireland. A similar offence also exists in Scotland.

The Republic of Ireland: Criminal trespass and site provision

The Irish Government has criminalised trespass in certain circumstances, in conjunction with a statutory requirement for local authorities to provide traveller sites. In response to concerns about trespassers occupying public spaces and private land, the Irish Republic introduced the Housing (Miscellaneous Provisions) Act 2002² (the Act).

The Act made it an offence for any person to enter and occupy land without the owner's permission - or bring any "object" on to the land - if this is likely to "substantially damage" the land or interfere with it.

The offence contained in Section 24 of the Act has the effect of criminalising trespassers who occupy land without consent. The legislation does not amount to a ban on all unauthorised encampments. It criminalises encampments that 'substantially' damage the land or prevent use of the land by the owner or other lawful users.

The Act gives the Irish police discretion to direct trespassers to leave land if it is suspected that this offence is being committed. Failure to comply with a direction is also punishable by a fine and/or a one-month prison sentence. It is for the police to consider which approach to adopt depending on the individual circumstances of the case and the encampment.

Scotland: Criminal trespass

Under the Trespass (Scotland) Act 1865, it is an offence to occupy private land without the permission of the landowner³

² <http://www.irishstatutebook.ie/eli/2002/act/9/section/24/enacted/en/html#sec24b>

³ <http://www.legislation.gov.uk/ukpga/Vict/28-29/56>

It was generally viewed by respondents to the consultation in 2018 that criminalisation of unauthorised encampments would act as a deterrent to future encampments and allow the police to enforce removal of trespassers in a timelier fashion. Advantages were seen in financial terms in both the cost of evicting trespassers and clean-up costs.

We would like to gather views on broadening the existing categories of criminal trespass.

The Government could make it an offence to enter or occupy land subject to certain conditions being met. We would welcome your views on what the conditions and threshold for this offence should be. For example, in the Republic of Ireland it is a criminal offence to enter or occupy land without the landowner's consent or bring any "object" on to the land - if this is likely to cause "substantial damage". Imposing conditions such as a need to require proof that damage or harm has been caused will help limit prosecutions to cases where there is an element of public disorder for which there is an interest to protect against and explicitly reflect the balance between land owners' rights to peaceful enjoyment of their property and travellers' rights to privacy and family life.

Question

Q1: To what extent do you agree or disagree that knowingly entering land without the landowner's permission should only be made a criminal offence if it is for the purpose of residing on it?

Neither Agree nor Disagree – diverse range of views from PCCs

As the Association of Police and Crime Commissioners lead on Equality, Diversity and Human Rights, I have surveyed my fellow PCCs with regard to their views in response to this question. I encouraged colleagues to both contribute to this APCC submission, and also consider submitting their own responses in their capacity as the individual PCC for their areas.

PCCs have a number of different views on whether trespass with the intention to reside should be a criminal offence. I believe that this diversity of views reflects the range of areas we represent across England and Wales.

Eight PCCs responded in detail, whilst my views are included in the below as the APCC EDHR Lead.

Within that total, three Police and Crime Commissioners (PCCs) are supportive of the proposed criminalisation of trespass with the intention to reside, and are of the view that this proposed change in the law:

- Could help to meet the demands of communities across the country who are concerned - and in many cases adversely impacted by - unauthorised encampments and the antisocial behaviour often associated with them.
- Could enable forces to take swift action against unauthorised encampments and prevent problems such as antisocial behaviour before they occur.
- That such legislation could act as an effective deterrent for the small minority of

Travellers who establish and reside in unauthorised encampments.

- Such legislation could provide greater consistency with laws that already exist to prevent trespassing in residential buildings with the intention to reside (commonly referred to as 'squatting').

However, PCCs supportive of this proposed law additionally caution that the legislation must be accompanied by detailed protocols and guidance produced by the College of Policing and the NPCC that enables forces to use any new powers proportionately, transparently, and in accordance with their duties under equality and human rights legislation. Additionally, the legislation should be drafted carefully in order to not interfere with Right to Roam legislation.

Furthermore, supportive PCCs also caution that the use of any powers under this proposed legislation must be submitted to effective scrutiny by Police and Crime Commissioners (PCCs), force Independent Advisory Groups (IAGs) and other bodies. Forces and bodies providing scrutiny must ensure that they engage with Gypsy, Roma Traveller groups in their communities in order to understand their perspectives.

On the other hand, five of my PCC colleagues are opposed to the proposal to criminalise trespass and have raised the following concerns:

- Criminalisation of trespass with intent to reside could adversely impact policing, criminal justice and other public service resources, and could take vital resources away from tackling crimes such as serious violence.
- There is currently a lack of clarity surrounding who criminal charges would be brought against under the proposed approach, and what would happen to the children of individuals handed custodial sentences following prosecution.
- Criminalisation could be at odds with equality and human rights legislation, particularly the Public Sector Equality Duty which requires public bodies to facilitate positive relations between people who share a protected characteristic and those who do not. Legislation could therefore result in legal challenge.
- Criminalisation could impact negatively on the relationship between the settled and travelling communities.
- The proposal would also appear to apply to people who are sleeping rough, and could impact adversely on wider policy to reduce homelessness.

There is however a strong consensus amongst PCCs that action should be taken to address the problems which cause unauthorised encampments to be established in the first place. We believe that the best way to do this would be through a significant investment in the cross-government strategy launched in June 2019 to improve the lives of Gypsy and Traveller communities. This must include a commitment to work with local authorities to increase the provision of authorised encampment and transit sites. Local authorities need to make sure that authorised encampment and transit sites are available to GRT communities in their areas; inequality of provision by local authorities should not impact either on the settled or travelling communities.

To increase the number of authorised sites successfully, facilitating collaboration between local authorities will be crucial. Lessons should be learnt from Wales following the passing of the Housing Act (2014) there, which introduced a statutory obligation for local authorities to provide sites for GRT communities. Once a strategy to provide a sufficient number of stopping places and authorised encampments has been developed, the Home Office could

then begin to consider proposals to criminalise trespass.

Meanwhile, one PCC colleague suggested that repeat trespass on private (business) premises **only** could be criminalised, where civil court evictions have recently been achieved.

Question

Q2: To what extent do you agree or disagree that the act of knowingly entering land without the landowner's permission should only be made a criminal offence if it is for the purpose of residing on it with vehicles?

Neither disagree nor agree – diverse views from PCCs

If the government were to pursue criminalising trespass as proposed above, we believe that stipulating the involvement of a vehicle in the offence could be an effective way to prevent the legislation from having unintended consequences such as the criminalisation of homeless people residing on land temporarily, or interference with Right to Roam legislation.

However, we believe that those with greater involvement in operational policing will be better placed to provide insight here.

The Government could stipulate that the landowner or representatives of the landowner must take reasonable steps to ask trespassers to leave. This would help the police to demonstrate where a trespasser is **knowingly** trespassing. However, in some instances, landowners may feel afraid to approach trespassers.

Question

Q3: To what extent do you agree or disagree that the landowner or representatives of the landowner should take reasonable steps to ask persons occupying their land to remove themselves and their possessions before occupation of the land can be considered a criminal offence?

Neither agree nor disagree – diverse views from PCCs

If the government pursued the criminalisation of trespass with the intention to reside, we believe that including such a stipulation could provide greater clarity in terms of the law, as those committing the offence would be unable to argue that they were unaware that they did not have permission to reside on the land from the landowner, if the landowner had taken reasonable steps to ask them to leave.

On the other hand, we recognise that landowners are in effect victims of the offence of trespassing and should not be expected to confront what are effectively perpetrators. In many circumstances, landowners may not feel comfortable in approaching encampments directly to ask them to leave, and it may not be possible for them to use the services of a representative. One colleague of mine suggested that asking trespassers to leave should be actioned by local authorities or police on a behalf of victims.

Additionally, the requirement for the landowner to take reasonable steps to ask persons occupying their land to leave could potentially weaken any potential law and render it ineffective.

Question

Q4: To what extent do you agree or disagree that a criminal offence can only be committed when the following conditions have been met?

a) the encampment prevents people entitled to use the land from making use of it;

Disagree

b) the encampment is causing or is likely to cause damage to the land or amenities;

Disagree

c) those on the encampment have demanded money from the landowner to vacate the land; and/or

Disagree

d) those on the encampment are involved or are likely to be involved in anti-social behaviour.

Disagree

If the government pursued the criminalisation of trespass with the intention to reside - whilst we understand the reasoning behind these proposed conditions - we feel further discussion and consideration is needed in terms of how these would be specified in law.

Colleagues of mine have expressed concern that adding such conditions could cause confusion, and difficulties could arise in particular with regard to proving the 'likelihood' of involvement in anti-social behaviour.

Question

Q5: What other conditions not covered in the above should we consider?

See above.

4.2 Criminal Justice and Public Order Act 1994

Under Section 61 of the Criminal Justice and Public Order Act 1994, the police have powers that allow them to direct trespassers to leave land. The requirements of these powers are currently:

- I. that the trespassers have an intention to reside on the land for any period;
- II. that the occupier or someone on the occupier's behalf has taken reasonable steps to ask the trespassers to leave;
- III. that: either (a)
 - any of the trespassers have caused damage to land or property; or
 - that any of the trespassers have used threatening, abusive or insulting words or behaviour towards the occupier, a member of the occupier's family or an employee or agent of the occupier;or (b) that the trespassers have between them six or more vehicles on the land.

Section 62A of the Criminal Justice and Public Order Act 1994 allows the police to direct trespassers to remove themselves and their vehicles and property from land on which they have the intention to reside where a suitable pitch is available within the same local authority area. The police must consult every local authority within whose area the land is situated to confirm if a suitable pitch is available on a relevant site.

Responses to the consultation from the police and some local authorities highlighted how a lack of availability of transit sites means that they are unable to exercise some of their existing powers such as section 62A of the Criminal Justice and Public Order Act 1994 which provides a power to remove trespassers to alternative available sites.

We would welcome views on whether to amend section 62A of the Criminal Justice and Public Order Act 1994 to permit the police to direct trespassers to suitable authorised sites located in neighbouring local authority areas.

Extending this power would make it more likely that the police could act where there is a shortage of site capacity in one particular area. However, we believe that such changes may need to be subject to conditions around:

- Agreements being in place between local authorities. Local authorities have advised us that the use of such a power without agreements in place would deter them from creating more authorised sites. This would be counterproductive.
- A maximum distance that trespassers should be directed across. In some rural areas, a site in a neighbouring local authority area could be several hours drive away. It could be considered unreasonable to relocate someone that far.

Question

Q6: To what extent do you agree or disagree that police should be given the power to direct trespassers to suitable authorised sites in a neighbouring local authority area?

Neither agree nor disagree- diverse views amongst PCCs

There is broader agreement amongst my colleagues that increasing existing police powers under the Criminal Justice and Public Order act could be beneficial in meeting the challenges presented by unauthorised encampments and the issues that they cause to the broader community.

However, with regard to directing trespassers to suitable authorised sites in a neighbouring local authority area specifically, there was a diversity of views.

Some PCCs felt that we would support the police having this power, providing certain criteria were met with regards to the distance of the current site and the site in the neighbouring area (see Q9 below) (to note, we believe these criteria should be defined in guidance rather than in primary legislation).

Three colleagues specifically emphasised that before this power could be introduced, there needs to be a commitment from each local authority that they provide authorised encampment and transit sites, otherwise there could potentially be an overwhelming influx to areas with a greater number of approved sites.

Q7: Should this be subject to conditions around agreements being in place between local authorities?

Yes –if the government were to give the police this power, the government must lead on encouraging local authorities to work together as much as possible to ensure the adequate provision of authorised encampments, and that space within these encampments is used in an efficient way. Facilitating this kind of collaboration between local authorities could be a key objective of the government’s Strategy on improving outcomes for Gypsy, Roma, Travellers.

Q8: Should there be a maximum distance that a trespasser can be directed across?

No – If the government were to pursue this change in the law, we believe that rather than a specific distance, that certain factors should be taken into account (see Q9).

Q9: Should there be any other conditions that should be considered when directing a trespasser across neighbouring authorities.

Yes

If the government were to pursue this change in the law, the factors that should be considered would include:

a. If any of the people residing on the camp are in employment, whether their removal to a

site in a neighbouring authority would prevent them from reaching their place of employment.

- b. If any children or young people on the camp are attending school or other educational facilities, whether their removal to a site in a neighbouring authority would prevent them from reaching their place of learning.
- c. If any people residing on the camp are receiving on-going medical care, whether their removal to a site in a neighbouring authority would prevent them from receiving treatment.

In all three instances outlined above, we would recommend that letters or references would be required from the employer, school or medical facility to prove that the individual would be unable to access their work/school/medical treatment if they were removed to a site in a neighbouring authority.

Meanwhile, one colleague suggested that these factors should be built into guidance rather than legislation, in order to enable forces to intervene promptly when land is occupied at speed.

Failure to comply with a police direction under Section 61 or 62A of the Criminal Justice and Public Order Act 1994 is a criminal offence punishable by a fine and/or a custodial sentence of up to three months' imprisonment, as is re-entry onto the land by persons subject to the direction within three months.

Respondents to the consultation suggested that the current three-month period during which a trespasser is prohibited from returning to a location once directed from the site by the police should be increased.

We would welcome views on whether to amend sections 61 and 62A to increase the period of time in which trespassers directed from land would be unable to return from three months to twelve months. This would provide greater protection to land targeted by the same group of trespassers on a regular basis.

Question

Q10: To what extent do you agree or disagree that the period of time in which trespassers directed from land would be unable to return should be increased from three months to twelve months?

Agree

We understand from talking with local communities that they feel that three months is not sufficient to prevent repeat offending. Indeed, increasing the period of time in which trespassers directed from land would be unable to return to 12 months could provide greater protection to land targeted by the same group of trespassers on a regular basis.

Section 61 of the Criminal Justice and Public Order Act 1994 grants police the power to direct trespassers to leave if there are six or more vehicles present on the land they are trespassing on. However, if there are fewer than six vehicles present, police do not obtain the power to direct trespassers to leave.

We would welcome views on whether to amend section 61 of the Criminal Justice and Public Order Act 1994 to lower the number of vehicles needing to be involved in an unauthorised encampment from six to two, before police powers can be exercised. This will increase the opportunity for police intervention where smaller encampments are present.

Question

Q11: To what extent do you agree or disagree that the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised should be lowered from six to two vehicles?

Agree

If the government were to pursue amending the Criminal Justice and Public Order Act 1994, we think that reducing the number of vehicles involved in an unauthorised encampment could potentially yield practical benefits in terms of enabling forces to exercise their powers more easily.

Although, “two vehicles” could constitute a car and a caravan, so in order to not criminalise individuals who may be residing on land on a very short-term basis, it would be necessary to prove that the vehicles were intended to be parked on the land for a sufficient duration of time.

We would welcome views on whether to amend section 61 of the Criminal Justice and Public Order Act 1994 to enable the police to remove trespassers from land that forms part of the highway. The police are currently restricted in dealing with these encampments

unless there is a suitable pitch in the same local authority area. This could make it easier for the police to tackle problematic encampments.

Question

Q12: To what extent do you agree or disagree that the police should be granted the power to remove trespassers from land that forms part of the highway?

Agree

By statute, highway authorities must ensure that public rights of way are in a fit state for public use, that obstructions are removed and that the public's right to use a public right of way is protected.

Therefore, in the event that an encampment is causing damage to or obstructing the highway and/or inhibiting the public's right of way, then the police should be able to remove trespassers from land that forms part of the highway.

We believe giving the police powers to seize property, including vehicles, could enable the police to remove unauthorised encampments more quickly and act as deterrent to setting up an unauthorised encampment. We would welcome views on whether to grant police powers to seize property from trespassers and in what circumstances they should have these powers.

Question

Q13: To what extent do you agree or disagree that the police should be granted the power to seize property, including vehicles, from trespassers who are on land with the purpose of residing on it?

Neither agree nor disagree – diverse views from PCCs

If this power were to be introduced, we believe that it should be used with caution and only in extreme circumstances.

A number of colleagues outlined their concerns to me that that the seizure of property such as vehicles could be counterproductive, and result in individuals who may reside in these vehicles (e.g. caravans) being rendered effectively homeless. Not only would this impact adversely on the individuals concerned but would also create a greater burden for the police in terms of storing the seized property, and also local authorities in terms of rehousing people whose property has been seized. Indeed, prevention of homelessness is a local authority responsibility: the removal of a residence would appear to be in contravention of this duty, and potentially human rights legislation.

If this power were to be introduced, we would like to see clear formal guidance on when and how it can be used before supporting its introduction.

Q14: Should the police be able to seize the property of:

- i) Anyone whom they suspect to be trespassing on land with the purpose of residing on it;
- ii) Anyone they arrest for trespassing on land with the purpose of residing on it; or
- iii) Anyone convicted of trespassing on land with the purpose of residing on it?

Please explain your answer

See Q13

As stated earlier, we would envisage that the above amendments to the Criminal Justice and Public Order Act 1994 would be as an alternative to criminalising unauthorised encampments, rather than in addition to.

Question

Q15: To what extent do you agree or disagree that the proposed amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994 contained in this consultation are sufficient measures to tackle the public disorder issues that are associated with unauthorised encampments without the requirement for introducing specific powers that criminalise unauthorised encampments?

Disagree

We believe that an approach focusing on enforcement only would not address the wider problems that cause the public disorder issues are associated with unauthorised encampments; any enforcement would need to be carried out in tandem with preventative work, strategies to create positive community relations in line with the Public Sector Equality Duty, and an increase across local authority areas in the number of authorised and transit sites available.

One of my colleagues stated that rather than shifting the responsibility to the police, that a fundamental review is needed of the options to assist landowners reclaiming their land, and that courts need to be educated about the processes which are required, their impact and the community impact of their decision making.

4.3 Impacts on the Gypsy, Roma and Traveller communities

While there are clear challenges presented to settled communities by unauthorised encampments, it is also highly likely that such unlawful encampments can lead to significant hardships for Gypsy, Roma and Traveller communities themselves.

The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. Therefore, we would welcome views on any adverse impacts that these proposals could have on the Gypsy, Roma and Traveller communities.

Question

Q16: Do you expect that the proposed amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994 contained in this consultation would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities?

Neither positive nor negative impact

If the government pursues amendments to the Criminal Justice and Public Order Act – rather than criminalising trespass with the intention to reside – we hope that these amendments would not be made in isolation, and that this would form part of sufficiently-resourced cross-government Strategy on improving outcomes and tackling inequalities for the Gypsy, Roma, Traveller community, which will include the increase across local authority areas of authorised encampment and transit sites.

We also hope that the College of Policing would lead on updating existing operational advice on unauthorised encampments for forces, and that this guidance will continue to explain how forces can use their powers whilst meeting their obligations under relevant equality and human rights legislation.

Ultimately, we believe that Gypsy, Roma and Traveller people themselves would be best placed to describe the impact that proposed amendments to the Criminal Justice and Public Order Act 1994 would have with regard to their health or educational outcomes.

Additionally, one of my colleagues pointed out that a distinction needs to be made between Gypsy, Roma and Traveller communities - as they are not a homogenous community - and those that claim to be part of this group to seek an advantage in unauthorised encampments; also that many Traveller groups are peaceful and in a number of cases keen to integrate.

If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?

n/a

Question

Q17: Do you expect that criminalising unauthorised encampments would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities?

Negative impact

Two of my colleagues highlighted their concerns that the criminalisation of unauthorised encampments would be in contravention of the Equality Act and the Public Sector Equality Duty.

If the government were to pursue the criminalisation of unauthorised encampments, passing this legislation alone must not be seen by government, local government, or the public as a panacea to solve unauthorised encampments and the problems they sometimes cause: if it is passed in isolation, we will fail to address the underlying issues that often lead to unauthorised encampments being established in the first place. We will succeed only in trapping Gypsy and Traveller people in the criminal justice system, creating a strain on policing and other public services, and disappointing the expectations of the public.

Therefore, it is crucial that whether or not such legislation is passed, adequate resources are provided by HM Treasury to the cross-government strategy to improve the lives of Gypsy, Roma and Traveller people, launched in June 2019 led by the Ministry of Housing, Communities and Local Government. As stated at numerous points above, there must be an increase in the current provision of authorised encampment and transit sites. This would decrease the likelihood of unauthorised sites being established in the first instance and mean that the any such legislation as discussed above would only need to be used in exceptional circumstances. Any change in the law that is made must be used both as an opportunity to make our communities safer, and tackle inequalities faced by the Gypsy Roma Traveller community.

We note that in this consultation paper, the government references in a positive light the legislative framework in place in Ireland which criminalises trespass. However, we must recognise that in Ireland, legislation exists in the form of the Housing (Miscellaneous Provisions) Act (2002) which requires local authorities to prepare traveller accommodation. As a result of this, very few unauthorised encampments are established in Ireland.

Therefore, potentially any legislation seeking to criminalise trespass with the intention to reside that the government may pass, could also introduce statutory responsibilities for local authorities in terms of ensuring adequate provision of authorised encampment sites. The government's Strategy could additionally include incentives for local authorities to create authorised encampment sites in their areas.

Ultimately, we believe that Gypsy, Roma and Traveller people themselves would be best placed to describe the impact that the proposed criminalisation of trespass have with regard to their health or educational outcomes.

If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?

n/a

4.4 Other Comments

Question

Q18: Do you have any other comments to make on the issue of unauthorised encampments not specifically addressed by any of the questions above?

The government should also provide support for forces to enable them to improve their national intelligence framework, so that forces and local authorities are better informed regarding the movements of encampments, able to proactively prevent unauthorised encampments from being established, and can work with Gypsies and Travellers to direct them to nearby available authorised sites.

Alternatively, one of my colleagues suggested the consideration of alternative provisions which are not covered in this consultation in order to respond to unauthorised encampments:

- Tolerated sites for a fixed- term maximum period – similar to provisions for travelling shows, which are negotiated through the showmen’s guild and allow fairs to travel around the country;
- Consideration could be given to a “lead authority” for areas such as children’s education and healthcare provision, to reduce duplication across local authorities and ensure that one local authority area can have oversight of the specific policy area.
- Funding for local authorities for the mandatory provision of waste, water and other amenities for authorised encampment or transit sites.

5. About you

Please use this section to tell us about yourself

Q19: Full name	David Munro
Q20: Job title or capacity in which you are responding to this consultation exercise (for example, member of the public)	Association of Police and Crime Commissioners Lead on Equality, Diversity and Human Rights (EDHR), Police and Crime Commissioner (PCC) for Surrey
Q21: Date	March 2020
Q22: Company name/organisation (if applicable)	Association of Police and Crime Commissioners (APCC)
Q23: Address	Lower Ground, 5-8 The Sanctuary, Westminster, London
Q24: Postcode	SW1P 3JS
Q25: If you would like us to acknowledge receipt of your response, please tick this box	(please tick box)
Address to which the acknowledgement should be sent, if different from above	

Q26: If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

I represent the Association of Police and Crime Commissioners (APCC) as our Equality, Diversity and Human Rights (EDHR). All 40 PCCs are members of the APCC, alongside the City of London Police Authority, the Mayor's Office for Policing and Crime for the Greater London Authority, the Greater Manchester Combined Authority and the Jersey Police Authority are members of the APCC. Whilst I represent the APCC as its EDHR Lead, any views expressed above should not be interpreted as reflecting the views of all PCCs and other APCC members in their individual capacities, all of whom have been made aware by the APCC of this consultation, and encouraged to submit responses if they wish reflecting their individual views.

6. Contact details and how to respond

Please respond using the online system available at:

www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments

Please submit your response by 05/03/2020

You are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it to:

Strengthening police powers to tackle unauthorised encampments consultation
Police Powers Unit
Home Office
6th Floor NW, Fry Building
Home Office
2 Marsham Street
LONDON
SW1P 4DF

Email: UnauthorisedEncampmentsConsultation@homeoffice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Home Office at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available online at www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments

Alternative format versions of this publication can be requested from:

UnauthorisedEncampmentsConsultation@homeoffice.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published in [insert publication date, which as far as possible should be within three months of the closing date of the consultation] months' time. The response paper will be available online at www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Home Office.

The Home Office will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

7. Impact of Proposals

Impact Assessment

In accordance with the Better Regulation Framework Manual issued by the Department for Business, Energy and Industrial Strategy (BEIS)⁴, an initial assessment of the impact of these proposals has been carried out and no material financial impact on business, charities or voluntary bodies is envisaged. Impact on the public sector, such as the police and the Crown Prosecution Service, is expected to be relatively minor.

Equalities Statement

Section 149 of the Equality Act 2010 places a duty on Ministers and Departments, when exercising their functions, to have 'due regard' to the need to eliminate conduct which is unlawful under the 2010 Act, advance equality of opportunity between different groups and foster good relationships between different groups.

In accordance with these duties, we have considered the impact of the proposed changes on those sharing protected characteristics in order to give due regard to the matters mentioned above.

Eliminating unlawful discrimination

The Traveller community includes Romany Gypsies and English, Scottish, Welsh and Irish Travellers are legally recognised as ethnic groups under the Equality Act 2010.

We recognise that the proposals outlined in this document could have an adverse impact on some members of this minority group. Indeed, in response to the original consultation, some traveller groups, human rights groups and legal organisations told us that criminalising trespass would be a disproportionate response that would impact on their way of life. However, we also recognise the distress that local communities and businesses face as a result of unauthorised encampments. While we recognise that not all unauthorised encampments cause disruption and impact communities, there is evidence that shows where this is the case, the financial costs falling to landowners to evict and to clear sites along with the impact to the community can be significant.

The Home Office will seek views on all proposals and any mitigating actions to limit any disproportionate impact on the Travelling community, as well as any indirect impacts on other protected characteristics, such as disability. The Public Sector Equality Duty is an ongoing duty that will be kept under review as we develop the policy.

⁴ See: <https://www.gov.uk/government/publications/better-regulation-framework-manual>

Advancing equality of opportunity between different groups

We recognise the rights of Romany Gypsies and English, Scottish, Welsh and Irish Travellers to follow a nomadic way of life in line with their cultural heritage.

The vast majority of the Traveller community, estimated to be over 80%, live in caravans staying on permanent public and private sites which have planning permission, or in residences of bricks and mortar. A small minority of Gypsies and Traveller caravans that are classed as unauthorised are those staying in one area and are likely to be on local authority housing waiting lists, those who travel seasonally for work and a very small number who travel across the country.

The Government's overarching aim is to ensure fair and equal treatment for Gypsy, Roma and Traveller communities, in a way that facilitates their traditional and nomadic way of life while also respecting the interests of the wider community. In June this year the Government announced that the Ministry of Housing Communities and Local Government will lead development of a cross-government strategy to improve outcomes in areas including health, education and employment for Gypsy, Roma and Traveller communities.

The Home Office will seek views on all proposals and any mitigating actions to limit any disproportionate impact of the Travelling community.

Fostering good relationships between different groups

It is possible that these new measures could lead to a reduction in unauthorised encampments, which in turn could improve relations. On the other hand, it is also possible that coverage of these measures could reinforce prejudices against Travellers, even those who are compliant with the law.

The Home Office will seek views on all proposals and any mitigating actions to limit any disproportionate impact of the Travelling community.

8. Consultation Questions

Q1. To what extent do you agree or disagree that knowingly entering without the landowner's permission should only be made a criminal offence if it is for the purpose of residing on it?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q2. To what extent do you agree or disagree that the act of knowingly entering land without the landowner's permission should only be made a criminal offence if it is for the purpose of residing on it with vehicles?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q3. To what extent do you agree or disagree that the landowner or representatives of the landowner should take reasonable steps to ask persons occupying their land to remove themselves and their possessions before occupation of the land can be considered a criminal offence?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q4. To what extent do you agree or disagree that a criminal offence can only be committed when the following conditions have been met?

a) the encampment prevents people entitled to use the land from making use of it;

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

b) the encampment is causing or is likely to cause damage to the land or amenities;

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

c) those on the encampment have demanded money from the landowner to vacate the land; and/or

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

d) those on the encampment are involved or are likely to be involved in anti-social behaviour.

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q5. What other conditions not covered in the above should we consider?

Q6. To what extent do you agree or disagree that police should be given the power to direct trespassers to suitable authorised sites in a neighbouring local authority area?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q7: Should this be subject to conditions around agreements being in place between local authorities?

Yes / No

Q8: Should there be a maximum distance that a trespasser can be directed across?

Yes / No

If yes, what distance should that be?

Q9: Should there be any other conditions that should be considered when directing a trespasser across neighbouring authorities. If so, what should these be?

Yes / No

If yes, what should these be?

Q10. To what extent do you agree or disagree that the period of time in which trespassers directed from land would be unable to return should be increased from 3 months to 12 months?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q11. To what extent do you agree or disagree that the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised should be lowered from six to two vehicles?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q12. To what extent do you agree or disagree that the police should be granted the power to remove trespassers from land that forms part of the highway?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q13: To what extent do you agree or disagree that the police should be granted the power to seize property, including vehicles, from trespassers who are on land with the purpose of residing on it?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q14: Should the police be able to seize the property of:

- i) Anyone whom they suspect to be trespassing on land with the purpose of residing on it;
- ii) Anyone they arrest for trespassing on land with the purpose of residing on it; or
- iii) Anyone convicted of trespassing on land with the purpose of residing on it?

Q15. To what extent do you agree or disagree that the proposed amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994 contained in this consultation are sufficient measures to tackle the public disorder issues which are associated with unauthorised encampments without the requirement for introducing specific powers that criminalise unauthorised encampments?

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Q16. Do you expect that the proposed amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994 contained in this consultation would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities? If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?

Highly positive impact / Positive impact / Neither positive nor negative impact / Negative impact / Highly negative impact

Q17. Do you expect that criminalising unauthorised encampments would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities? If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?

Highly positive impact / Positive impact / Neither positive nor negative impact / Negative impact / Highly negative impact

Q18. Do you have any other comments to make on the issue of unauthorised encampments not specifically addressed by any of the questions above?

9. Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>



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