

Briefing on new police powers for encampments in Police, Crime, Sentencing and Courts Bill: Part 4

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Introduction

In November 2019 the Home Office (HO) launched a consultation ‘Strengthening police powers to tackle unauthorised encampments’¹ which proposed to introduce new legislation to change trespass from a civil to a criminal offence and/or strengthen police powers under the Criminal Justice and Public Order Act 1994 (CJPOA). The Government response to the consultation was published 8th March 2021² outlining plans to introduce a new criminal offence of trespass with the intent to reside, and extend existing powers in the CJPOA, which will be introduced by way of the Police, Crime, Sentencing and Courts Bill (PCSCB). The Bill was published on 9th March³.

The proposals are being put forward despite the existence of a range of other eviction powers for encampments, and despite the range of alternative solutions grounded in common sense and with an equality approach, such as the provision of more sites and stopping places. There was a majority opposition to the introduction of more punitive powers in the consultation responses, which have been disregarded, and a glaring absence of any substantive mitigating measures to these harmful proposals.

This briefing outlines proposals in the PCSCB, some context to unauthorised encampments in England and the likely impact of the criminalisation of trespass for Gypsies and Travellers.

Key points

- The measures outlined in the PCSCB will further compound the inequalities experienced by Gypsies and Travellers, needlessly pushing people into the criminal justice system.
- The powers will disproportionately affect specific minority and ethnic communities and is likely to be in conflict with equality and human rights legislation.
- The case for action is flawed. An enforcement approach to addressing the number of unauthorised encampments overlooks the issue of the lack of site provision – there is an absence of places where Gypsies and Travellers are permitted to stop or reside.
- There are other solutions to managing unauthorised encampments, such as negotiated stopping, whereby arrangements are made on agreed permitted times on stopping and to ensure the provision of basic amenities such as water, sanitation and refuse collection⁴.
- The definition of a Gypsy or Traveller in planning terms⁵ requires proof of travelling – without that you are not assessed as needing a pitch or get planning permission, but will essentially be prohibited from travelling by law.
- Police Forces, the bodies responsible for enforcing the legislation, do not support the criminalisation of trespass.
- The majority of respondents to the HO consultation opposed more police powers.

¹ This followed an earlier cross-departmental consultation ‘[powers for dealing with unauthorised development and encampments](#)’ in 2018.

² <https://www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments/outcome/government-response-to-the-consultation-strengthening-police-powers-to-tackle-unauthorised-encampments-accessible-version>

³ <https://publications.parliament.uk/pa/bills/cbill/58-01/0268/200268.pdf>

⁴ <https://www.negotiatedstopping.co.uk/>

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457420/Final_planning_and_travellers_policy.pdf

- There are very little in the way of measures to mitigate harm from the proposals.

Overview of the proposed new police powers

Introduction of a new criminal offence where trespassers have the intent to reside

Part 4 of the PCSCB sets out the details of the new offence, to be inserted into Part 5 of the CJPOA. This will apply when:

- A person aged 18 or over resides or intends to reside on land without consent of the occupier of the land;
- They have, or intend to have, at least one vehicle with them on the land;
- They have caused or are likely to cause significant damage, disruption or distress;
- They, without reasonable excuse:
 - Fail to leave the land and remove their property following a request to do so by an occupier of the land, their representative or a constable; or
 - Enter or, having left, re-enter the land with an intention of residing there without the consent of the occupier of the land, and with an intention to have at least one vehicle with them, within 12 months of a request to leave and remove their property from an occupier of the land, their representative or a constable.

What constitutes ‘significant damage, disruption or distress’ is subjective and could potentially capture all, particularly as there only needs to be one vehicle. This is of real concern for an individual or family who have no alternative place to live in their vehicle/caravan. The ‘intends to’ elements are also concerning.

Powers to seize a vehicle/home, imprisonment and fines

This new offence will be accompanied by powers to seize a vehicle (which in real terms is someone’s home and possessions) as well as imprisonment and fines, as outlined in 60C(5)/(6) and 60D PCSCB and in the Government’s response;

- Where there is reasonable suspicion that a person has committed this offence [*trespass with intent to reside as outlined in Section 60C PCSCB*] confers power on a constable to seize their vehicle/other property for up to three months from the date of seizure or, if criminal proceedings are commenced, until the conclusion of those proceedings.
- The maximum penalty will be three months’ imprisonment or a fine not exceeding level 4 (£2,500) on the standard scale, or both.
- The arrest and vehicle/property seizure powers will be exercised where a constable has reasonable grounds to suspect (for arrest) or reasonably suspects (seizure power) that a person has met the conditions of the offence. The reasonable excuse ‘defence’ enables a person to escape liability where they can show they have a reasonable excuse for failing to comply as soon as reasonably practicable with a request to leave and remove their property or for entering or re-entering within 12 months of the request with an intention to reside without consent.

The ramifications of these measures will be catastrophic for an individual and a family – suddenly without a home or possessions and with the lead family member thrown into the criminal justice system.

Amendments to police powers of eviction in CJPOA

- Amend Section 61 to broaden the types of harm that can be caught by the power to direct trespassers under that provision, to include damage, disruption and distress;

- Amend Sections 61(4)(b), 62B(2) and 62(C) to increase the period in which trespassers directed away from the land under sections 61 and 62A must not return from 3 months to 12 months;
- Amend Section 61(9)(b) to enable police to direct trespassers with a common purpose of residing on land to leave land that forms part of a highway.

Again, the inclusion of the subjective categories ‘damage, disruption and distress’ could trigger use of these powers in instances where an encampment merely exists, not because of any particular behaviour. The exclusion period from an area for 3 months has quadrupled to 12 months, making it nearly impossible for families without a site to live on to, for example, keep their places at school or to attend medical appointments.

Current powers of eviction of unauthorised encampments

There are already a range of eviction powers available for police, local authorities and land owners, including powers in the CJPOA and possession proceedings under Part 55 of the Civil Procedure Rules⁶. Some of the powers, such as Section 61 CJPOA, can be triggered easily and enforce eviction as quickly as in an hour. We believe these powers to already be too strong. Current powers allow for discretionary use and allow for a proportionate response.

Impact of the criminalisation of trespass on Gypsies and Travellers

The harm created by this legislation which criminalises trespass will be felt immediately and for generations to come. It will push Gypsies and Travellers into the criminal justice system, merely for existing nomadically. It will put communities who have been widely recognised as being amongst the most marginalised and disadvantaged groups at further risk and compound the inequalities experienced.

The Equality and Human Rights Commission expressed their concern about more powers to evict or ban encampments, stating in their submission to the 2018 ‘powers for dealing with unauthorised development and encampments’ consultation⁷;

‘We would remind the Government that all powers to remove unauthorised encampments must be exercised with a full awareness of the occupiers’ welfare needs, human rights, and, where applicable, their entitlement to protection under the Equality Act 2010. These cannot be circumvented by new powers.’

There is a direct correlation between accommodation insecurity and health outcomes. With Gypsy and Traveller communities having life expectancies between 10 and 25 years shorter than the general population, more needs to be done to improve these outcomes, not to exacerbate the inequalities. The constant cycle of being moved on, criminalised, and cut off from services also limits the potential of those families wishing to secure education for their children and work for themselves.

The need to address these stark inequalities has been recognised by Government, and in June 2019 announced it would develop a cross-departmental strategy to tackle this⁸. It is hard to see, however, how the introduction of PCSCB Part 4 is compatible with a Strategy and with wider commitments to tackle race disparities.

⁶ <https://www.gov.uk/government/publications/dealing-with-illegal-and-unauthorised-encampments>

⁷ <https://www.equalityhumanrights.com/sites/default/files/consultation-response-powers-for-dealing-with-unauthorised-development-and-encampments-june-2018.pdf>

⁸ <https://www.gov.uk/government/news/new-national-strategy-to-tackle-gypsy-roma-and-traveller-inequalities#:~:text=Communities%20Minister%20Lord%20Bourne%20has,Gypsy%2C%20Roma%20and%20Traveller%20communities.&text=The%20department%20has%20also%20funded,through%20the%20Controlling%20Migration%20Fund.>

Criminalisation of trespass and the conflict with human rights protections

Criminalisation of trespass is in direct conflict with the positive duty imposed on the UK to 'facilitate the Gypsy way of life' (by the European Court of Human Rights ruling: Chapman v UK, 2001). Furthermore, there was a landmark ruling passed down by the Court of Appeal on the 21st of January 2020 in which the London Borough of Bromley were refused an application for an injunction banning Gypsies and Travellers from the borough⁹. The judge points out that in cases where local authorities lack adequate site provision they will inevitably have instances of encampments, and where local authorities attempt to criminalise those encampments, would likely leave local authorities in breach of human rights legislation, stating there is:

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

'Finally, it must be recognised that the cases referred to above make plain that the Gypsy and Traveller community have an enshrined freedom not to stay in one place but to move from one place to another. An injunction which prevents them from stopping at all in a defined part of the UK comprises a potential breach of both the Convention and the Equality Act...'

Police views on criminalisation of trespass

In recognition of the equality and human rights implications of criminalising trespass, the majority of the Police Forces and Police and Crime Commissioners that responded to the Home Office consultation opposed the proposal to criminalise trespass¹⁰. Just 21.7% of police bodies supported criminalisation or trespass, with 93.7% calling for site provision as the solution to unauthorised encampments. The views of the National Police Chiefs Council and the Association of Police and Crime Commissioners were made plain in their joint submission to the 2018 Government consultation submission¹¹:

'Trespass is a civil offence and our view is that it should remain so. The possibility of creating a new criminal offence of "intentional trespass" similar has been raised at various times over the years but the NPCC position has been – and remains – that no new criminal trespass offence is required. The co-ordinated use of the powers already available under the Criminal Justice and Public Order Act 1994 allows for a proportionate response to encampments based on the behaviour of the trespassers. Unauthorised encampments occupied by known individual families where there are small numbers in acceptable locations, not causing anti-social behaviour or crime, can be allowed to remain in that location longer than would otherwise be the case if the law were different. This approach leads to the Gypsies and Travellers having a real incentive to act in a responsible manner.'

Their submission refers to one of the numerous powers already available to the police, local authorities and private land owners wishing to evict an encampment.

⁹ Court of Appeal in the case of The Mayor and Burgesses of the London Borough of Bromley v Persons Unknown and Others [2020] EWCA Civ 12.

¹⁰ <https://www.gypsy-traveller.org/wp-content/uploads/2020/10/Full-Report-Police-repeat-calls-for-more-sites-not-powers-FINAL.pdf>

¹¹ <https://surrey-pcc.gov.uk/wp-content/uploads/2018/06/GRT-submission.pdf>

Wider views submitted to the consultations on encampments

It is important to note that, despite Government pushing forward with introducing a range of new measures, there was a majority opposition to many elements of the proposals in the 2019 consultation. Presentation of the percentage of views in the Government response doesn't make clear the whole picture and total view opposing the proposals. Both Liberty and Friends, Families and Travellers established a simplified form to submit views to the consultation, upon agreement with the Home Office. The combined percentages of expressed views which were in opposition to the proposals in the consultation which are still going ahead include:

- On granting police the power to seize vehicles/homes from trespassers: 82% of respondents to this issue disagreed or strongly disagreed¹².
- On extending the period of time in which trespassers should be unable to return from 3 months to 12 months: 83% of respondents disagreed or strongly disagreed.
- On the question as to whether police should be granted extended powers to remove trespassers from land that forms part of the highway: again, 83% of respondents disagreed or strongly disagreed.

Many of the 26,337 respondents opposed the criminalisation of trespass in any form (a total of 15,351 of responses submitted via Friends, Families and Travellers and Liberty alone). The views on criminalising trespass were only in favour by a narrow margin in the 2018 consultation 'Powers for Dealing with Unauthorised Development and Encampments' - where only 52% of a mere 2,198 respondents were in favour of criminalising unauthorised encampments.

Shortage of Gypsy and Traveller sites

Support for more draconian enforcement powers and opposition to the existence of roadside camps is often coupled with opposition to the provision of permanent and transit sites in local areas. Gypsies and Travellers face hostility to their existence in either circumstance. This presents continual barriers to the provision of sites despite the fact that for many Gypsies and Travellers, living in a caravan as part of a community is an integral part of cultural identity¹³.

The existence of encampments needs to be understood not only in terms of the age-old cultural traditions of Gypsies and Travellers, but in terms of the historic failure of local authorities to properly assess and meet the accommodation needs of Gypsy and Traveller communities. The families that will be adversely affected by this legislation have been failed by the planning system.

Friends, Families and Travellers (FFT) conducted research into compliance with Planning Policy for Traveller Sites¹⁴ and assessed need and supply of Gypsy and Traveller pitches in 2016¹⁵ and then again in 2019¹⁶ by analysing Gypsy and Traveller accommodation assessments and Local Plans from all local planning authorities in the South East of England. The most recent findings revealed shockingly low

¹² This includes views directly to the Home Office and views expressed to the HO via Liberty's template email, this specific proposal was not outlined in the views expressed to the HO via FFT's form.

¹³ The 2011 Census found nearly a quarter of Gypsies and Travellers live in caravans or other mobile accommodation, with the January 2020 Ministry of Housing, Communities & Local Government's (MHCLG) Caravan Count listing 694 caravans on 'unauthorised encampments' (caravans on land not owned by Gypsies/Travellers).

¹⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457420/Final_planning_and_travellers_policy.pdf

¹⁵ <https://www.gypsy-traveller.org/wp-content/uploads/2016/12/Five-Year-Supply-Research-Findings-Statement-FINAL.pdf>

¹⁶ <https://www.gypsy-traveller.org/wp-content/uploads/2020/02/Research-on-the-five-year-supply-of-deliverable-Gypsy-and-Traveller-sites-in-the-South-East-of-England.pdf>

numbers, with only 8 out of 68 local authorities meeting their identified need for Gypsy and Traveller pitches. There is a similar picture across the country¹⁷.

The scarcity of socially rented pitches and high demand for them is evidenced in a report published in January 2021, which provides a snapshot view with 1,696 households on waiting lists for pitches with only 59 vacant pitches on permanent sites and 42 vacant pitches on transit sites across the whole of England, showing demand far outstrips supply¹⁸. Additionally, a report FFT published in 2017¹⁹ showed there had been only a 2% increase in socially rented pitches between 2010 and 2017; this is an insufficient number to address even natural growth through household formation, let alone the historic lack of pitches for Gypsy and Traveller families. Furthermore, the MHCLG's Caravan Count shows a gross under-provision of transit sites across England with just 29 local authorities with transit provision. Only 354 transit pitches exist across the whole of England²⁰.

There is also the problem that to meet the Government's planning definition of a Traveller you need to prove that you travel – without which you won't be assessed as needing a pitch or be able to get planning permission for a site. Yet the PCSCB will make travelling virtually impossible.

The existence of encampments is often referred to as a 'problem', but there are solutions available which have proven benefits for Gypsy and Traveller communities, the settled community and local authorities. In addition to the provision of sites, local authorities and nomadic communities can enter into negotiated stopping arrangements, where agreements are made for stopping periods on suitable land and for provision of basic amenities, such as a water supply, sanitation and refuse collection. This addresses concerns raised over waste management and use of unsuitable land.

Summary of key points

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- The case for action is flawed. An enforcement approach to addressing the number of unauthorised encampments overlooks the issue of the lack of site provision – there is an absence of places where Gypsies and Travellers are permitted to stop or reside.
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- Police bodies do not support the criminalisation of trespass.
- The majority of respondents to the HO consultation opposed more police powers.
- There are very little in the way of measures to mitigate harm from the proposals.

¹⁷ http://www.nationalgypsytravellerfederation.org/uploads/3/7/5/2/37524461/research_into_gypsy_and_traveller_pitch_supply_2016_.pdf

¹⁸ <https://www.gypsy-traveller.org/planning/new-research-shows-huge-unmet-need-for-pitches-on-traveller-sites-in-england/>

¹⁹ <https://www.gypsy-traveller.org/wp-content/uploads/2017/12/Lack-of-Increase-in-Affordable-Pitches-Dec-2017-Report.pdf>

²⁰ <https://www.gov.uk/government/statistics/traveller-caravan-count-january-2020>

²¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457420/Final_planning_and_travellers_policy.pdf



About us

Friends, Families and Travellers is a leading national charity that works on behalf of all Gypsies, Roma and Travellers regardless of ethnicity, culture or background.

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