

Encampment Review Group

Information Pack



Introduction

The council has established Encampment Review Group (ERG) meetings as part of its approach to managing unauthorised encampments. The ERG is a non-standing body that will be convened by the TLS Manager if issues present that are considered a cause for concern e.g. the duration of stay and behaviour of those encamped, in order to advise and decide on the course of action to be taken. Attendance at the meetings will consist of DCC Elected Members and Officers (Travellers' Liaison Service, Neighbourhood Services and Education Minority Traveller Achievement Service) and key agencies e.g. Police and Health. The meetings' work in accordance with the Communities and Local Government (CLG) Guidance on managing anti-social behaviour related to Gypsies and Travellers.

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Gypsies, Roma and Travellers

Frequently asked questions

Q. When these families arrive and set up illegal encampments, why can't you just evict them / move them on immediately?

A. The answer would depend on where the illegal encampment has been set up. Private landowners have different options to move families on than Local Authorities. Local Authorities have a legal duty carry out a number of checks relating to the welfare of the families illegally encamped. These checks look at health, accommodation, education and any other issues relating to the general welfare of the families involved. If these checks are not carried out then Local Authorities cannot legally attempt to take action to move the illegal encampment on. Any decision to move an encampment may be challenged in court. It generally takes two to three weeks to properly assess and meet the welfare needs of an encampment. It may take longer depending on the needs identified. Recent examples of welfare needs have included pregnancy, bereavement and terminal illness.

Q. What powers do local authorities have to move families living on unauthorised encampments?

A. A Local Authority has two main powers to tackle unauthorised encampments. It can obtain a possession order in the civil courts requiring the removal of trespassers from property, including land and this must be issued by the County Court in whose jurisdiction the property or land is situated. Alternatively, the Criminal Justice and Public Order Act 1994 gives Local Authorities powers to make directions to leave land being used by itinerant groups. Use of either of these powers is dependent upon a welfare assessment of the families needs being carried out.

Q. How long does it take to exercise these powers?

A. The welfare checks can take up to two to three weeks to carry out, more depending on the size of the encampment. If the use of the powers available to Local Authorities is challenged in court, the process can take much longer and if Local Authorities have failed to take into account welfare needs then the powers available to them may not be exercised at all. In such circumstances the encampment can remain until such a time as their needs have been met.

Q. Do the police have powers to move families illegally encamped on?

A. The police have discretionary powers (under Section 61 of the Criminal Justice and Public Order Act 1994) to direct trespassers to leave land if reasonable steps have been taken by or on behalf of the occupier to ask them to leave and there are two or more people intending to reside on the land. Additionally, one of three further conditions must be met.

- Any one of those persons has caused damage to the land or to property on the land.
- Use threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his.
- Those persons have between six or more vehicles on the land.

Section 61 cannot be used on land on the highway.

- S62a to S62e (inserted by the Antisocial Behaviour Act 2003) gives the police powers to direct trespassers to leave land and remove vehicles to a suitable pitch on a relevant caravan site in the same local authority area. (This latter power cannot be used within County Durham at the present time, due to a lack of suitable pitches on relevant caravan sites in the same local authority area, as the sites are permanently full).

Q. Why doesn't Durham County Council provide authorised encampments for families?

A. Unfortunately, because of a shortage of pitches nationally, between 2,000 and 2,500 it is estimated, many families have nowhere to camp officially and have to camp where it is safe for them to do so. Legally, these people are officially homeless and it becomes the responsibility of the local housing provider to provide suitable accommodation. Durham County Council provides six authorised permanent sites with a total of 115 pitches. This makes up approximately 38% of provision in the North East. A pitch is rented accommodation with a Pitch Agreement.

Q. What does Durham County Council intend to do prevent such encampments occurring in the future?

A. The Council recognises that unauthorised encampments are bound to occur due to the scale of the lack of authorised sites and pitches at a national level. At present, the Council is looking at what it can do at a local level to deal with this national problem. The Council is trying to balance the needs of the families who camp on unauthorised sites and the needs of those who live in houses. This isn't easy and it requires both communities to understand the each others way of life and until the problem is solved nationally. Until then, the Council will have to try to find solutions that satisfy both communities as far as it possibly can.

Q. It is alleged that some of the families who regularly encamp within the County are not homeless, but homeowners who use their caravans in for weekends or the Appleby Fair period, just as holiday-makers might go away to a camp site for the weekend? For them it cannot be the local housing provider's responsibility to provide suitable accommodation, which is one of the issue that seems to bring into play the necessity of a welfare assessment?

A. It is true that some families who camp in the County may live in housed accommodation most of the time. However, it would be wrong to compare these families to people who go to a campsite for the weekend. Firstly, these families belong to a recognised ethnic minority (Race Relations (Amendment) Act 2002), and it is part of their culture to live a nomadic lifestyle for at least some of the year*. Secondly, although many families live in a house for some of the year for many of them this is because of the lack of suitable accommodation on authorised sites as there is a national shortfall in terms of site provision. Thirdly, the only way to confirm whether these families have housing to go back to is to carry out a welfare assessment. The whole point of a welfare assessment is to find out the welfare needs of the families, and this assessment is not confined to housing matters

Q. Does the perception that the problem is un-resolvable, influence the approach taken by the Police and the Local Authorities? Furthermore, do all the authorities tend to minimise the issue, for fear of being accused of harassing a minority?

A. It is a mistake to view the issue as an un-resolvable problem. The main difficulty experienced by the families who camp in general is the lack of suitable safe accommodation whether it is an official site or some other safe stopping place. Durham County Council is currently looking at how it meets these accommodation needs. In the meantime, Durham County Council, and the Police acknowledge that simply resorting to eviction procedures cannot solve the problem, as effectively it only moves the problem somewhere else. There is no question of any of the authorities minimising the issue for fear of being accused of harassing a minority. These families have to stay somewhere whether they live in houses and only travel some of the time or they live on the road on a permanent basis. Those who believe that the solution is to be found by immediately moving these families are over simplifying a complex problem that has no one answer.

Q. How do you refer to the people encamped without causing offence or using language that may be considered racist?

A. Gypsy Roma and Travellers is the best definition, but it is acceptable to use the generic term Traveller. The most important thing is to avoid inflammatory or disrespectful comments.

Q. Do Travellers pay Taxes?

A. Although it is impossible to make sweeping generalisation, there is no evidence to suggest that people living on the roadside for all or part of the year do not pay taxes. Certainly those living on sites and in housing will pay council tax.

Q. Why does the Council provide facilities such as refuse collection and portaloos?

A. The Council provides facilities as it reduces clear up costs- past experience has shown that encampments where no facilities are provided can mean clear up costs of at least £3,000. It is also in line with government guidance to do so, and it means that children have adequate facilities.

Q. Why are Travellers allowed to ride up and down on their horses and in their traps without having any thought for others?

A. This is not against the law. As long as the rules of the road are being observed there is no problem with them riding their horses or using their traps. It may be inconvenient or frustrating but it is not against the law.

Q. What is a Stopover?

A. A Stopover is an area of land where encampments will be accepted and encouraged in order to ensure that encampment do not take place in less suitable or inappropriate areas.

Q. Do Stopovers work?

A. Stopovers have been used successfully in Teesdale for a number of years. Encampments there are generally peaceful and well managed, and there is a downward trend in respect of public complaints.

Q. What is the legal Definition of a Gypsy and traveller?

A. The legal definition of a Gypsy and Traveller is as follows:

“..... “Gypsies and Travellers” means a person or persons who have a traditional cultural preference for living in caravans and who either pursue a nomadic habit of life or have pursued such a habit but have ceased travelling, whether permanently or temporarily, because of the education needs of their dependant children, or ill-health, old age, or caring responsibilities (whether of themselves, their dependants living with them, or the widows and widowers of such dependants), but does not include members of an organised group of travelling show people or circus people, travelling together as such”.

Local authorities and Gypsies and Travellers: a guide to responsibilities and powers



**Gypsy &
Traveller Unit**



Local authorities and Gypsies and Travellers: a guide to responsibilities and powers

May 2007

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Summary

1. The Government's objective is that Gypsies and Travellers and the settled community should live together peacefully.
2. Creating and sustaining strong communities is at the heart of the Government's policies. Decent homes are important for the health and well-being of the people living in them. Poor housing helps an area to get a bad reputation. That makes it an unpopular place to live, which in turn may lead to the breakdown of communities.
3. Everyone should have the opportunity to have a decent home. Government is aiming to make all council and housing association housing decent by 2010. The Government also wants to improve conditions for vulnerable households in privately owned housing, particularly those with children.
4. Decent homes are a key element of any thriving, sustainable community – this is true for the settled and Gypsy and Traveller communities alike. This means:
 - adequate provision must be made for authorised sites: at the moment there are no authorised pitches available for a quarter of caravans. This means there are unauthorised sites, many of which are a source of friction between the two communities
 - the planning system and property rights must be respected and effective enforcement action must be taken promptly against problem Gypsy and Traveller sites
 - the small minority of people, whether Gypsies or Travellers or members of the local settled community who indulge in anti-social behaviour must be dealt with promptly and effectively before they cause further harm to relationships between the two communities.
5. The overall scale of the need for Gypsy and Traveller accommodation is small in comparison to wider housing needs, but it is one that can no longer be overlooked.
6. The Housing Act 2004 and Planning Circular 01/2006, *Planning for Gypsy and Traveller Caravan Sites*, has put in place a framework which means every local authority has to identify land for the sites that are needed in its area. The Secretary of State has powers that can ensure that those sites are identified, and local authorities should be proactive in doing so. The provision of these sites removes a major cause of friction between the two communities – unauthorised sites and illegal camping.
7. Local authorities and the police already have strong powers to deal with Gypsies and Travellers who camp on other people's land without permission. Some are effective in using these powers; others are not.

The key to effective enforcement is knowing how to use the powers and having plans and liaison arrangements in place which enable decisive action to be taken as soon as a problem arises. A breakdown of the powers available in relation to unauthorised camping is set out later in this booklet.

8. There are also powers to prevent unauthorised development. Temporary Stop Notices now provide the means for local authorities to halt the development of land owned by Gypsies and Travellers if they don't have planning permission. The authority can then consider whether further enforcement action is necessary. We are consulting on further changes which will allow Temporary Stop Notices to stop the use of land as a residential caravan site as long as an alternative authorised site is available. Again, the key is knowing how to use the powers and having the necessary arrangements in place to make them work effectively.
9. There are also broad powers to deal with anti-social behaviour which apply to Gypsies and Travellers and the settled community alike; local authorities should use these effectively whilst also working to tackle the causes of anti-social behaviour.
10. The Government's Gypsy & Traveller Task Group on Site Provision and Enforcement, chaired by Sir Brian Briscoe, draws together central and local government, the police and other agencies to:
 - address the wide variations in the use of enforcement powers
 - investigate the barriers to site provision; and
 - champion best practice.
11. The Task Group act as expert advisers to the Department for Communities and Local Government and the Home Office.
12. This booklet sets out what needs to be done to ensure more effective enforcement, alongside the provision of more authorised sites. It is illustrated with case studies.



History

13. Romany Gypsies have lived in Britain for around 600 years and people have travelled from community to community for even longer. Irish Travellers also have a long tradition of visiting Britain having travelled and lived here for generations. Wherever they have gone, Gypsies and Travellers have fiercely maintained a separate identity – indeed this pride in their difference is an integral part of their culture. More recently, other people known as new travellers have also pursued a nomadic lifestyle.



The facts

14. There are around 16,000 Gypsy and Traveller caravans in England. Around three quarters of these caravans are on authorised sites. Many of these sites are well-managed and are an accepted part of the local community. In 1994 the duty on local authorities to provide sites was removed and since then under-provision of authorised sites has resulted in Gypsies and Travellers camping on land that they do not own (unauthorised encampments) or developing their own land without planning permission (unauthorised developments). While the number of caravans on unauthorised encampments has started to decline, the number of caravans on unauthorised developments has increased. The average size of an unauthorised development is around 4 caravans, and private sites with planning permission have an average of 6 caravans.

Site provision

15. The key to a reduction in unauthorised camping is to increase the supply of authorised sites. The Government is committed to significantly increasing site provision, linked to firm but fair use of enforcement powers against unauthorised sites and anti-social behaviour.
16. The approach provides for:
- local authorities to take the lead in assessing the accommodation needs of Gypsies and Travellers alongside those of their settled population
 - the locally assessed needs of Gypsies and Travellers to be incorporated into the Regional Spatial Strategy
 - each local authority to play its part in meeting that need through the planning system by identifying appropriate sites in local plans.
17. The system will work as follows:
- The Housing Act 2004 requires local authorities to assess the need for Gypsy and Traveller (including travelling showpeople) accommodation in

their areas at the same time as they assess the housing requirements of the rest of the population

- Local authorities must then develop a strategy which addresses the need arising from the accommodation assessment, through public or private provision
- The Regional Planning Body, on the basis of local authority assessed need (where available), will determine how many pitches should be provided across the region. It will then specify in the Regional Spatial Strategy how many pitches need to be provided in each local authority area, ensuring that collectively local authorities make provision in a way which is equitable and meets the assessed pattern of need
- Local planning authorities will be obliged to identify sites in their Development Plan Documents, in line with the requirement identified in the Regional Spatial Strategy. It will no longer be acceptable just to specify planning criteria for sites: local authorities will be expected to identify land
- Where there is a clear need, if local planning authorities fail to identify sites in their Development Plan Documents, the Secretary of State has the power to direct them to do so.

18. In some areas there is an urgent and known demand for authorised site provision. Local authorities do not have to wait until the end of the planning process described above to provide more sites.
19. The Government has produced detailed guidance on how this process will work in practice. Further information can be found at the end of this booklet.

Gypsy and Traveller Accommodation Assessments

20. In February 2005, Communities and Local Government issued interim guidance on how to conduct accommodation needs assessments, which set out some key principles to be followed. The vast majority of local authorities have accommodation assessments completed or underway. The duty to conduct accommodation assessments came into force on 2 January 2007 and those local authorities that have not started to assess the accommodation needs of Gypsies and Travellers must do so now.



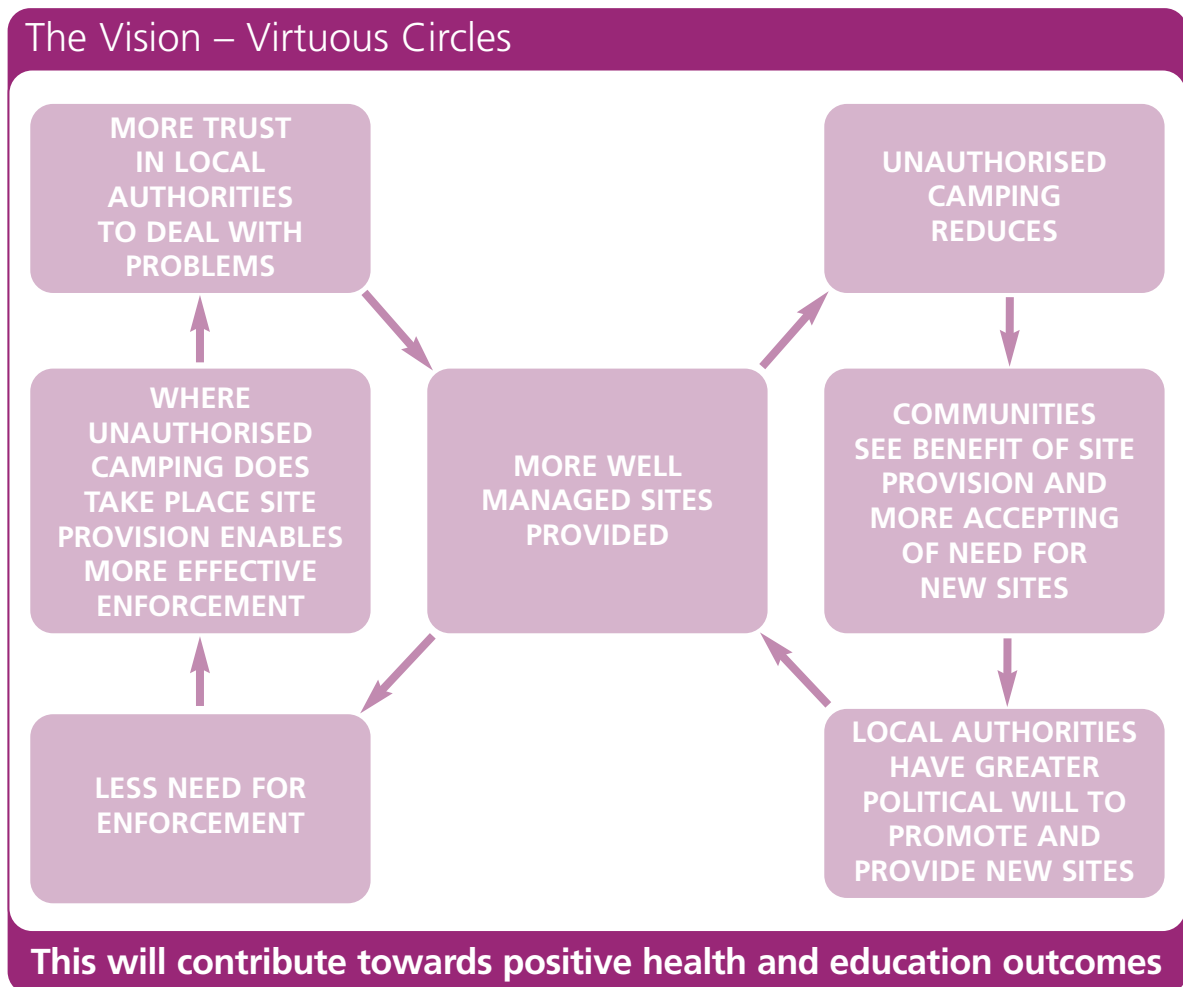
21. A definition of Gypsies and Travellers has also been laid down in regulations and now explicitly includes travelling showpeople. Those authorities that have already undertaken Accommodation Needs Assessments and have not included travelling showpeople in such assessments should consider whether they need to carry out additional work to identify the needs of this group.
22. The final version of the guidance will take into account experience and lessons learnt from those local authorities that have already undertaken accommodation assessments. The key principles needed to underpin any good quality accommodation assessment include:
- the commissioning authority or authorities need to organise to act as client for the work
 - a steering group should be set up which brings together key interests such as housing and planning, practitioners in the field and Gypsies and Travellers themselves
 - the assessment must be founded on a credible evidence base drawn from primary data. There needs to be a survey of a representative and sufficiently large sample of the local Gypsy and Travellers population and they need to be interviewed face to face. Some early studies have been based on relatively small sample sizes which may not give a representative picture
 - accommodation assessments need to look at both the current shortfall in accommodation – most obviously evidenced by the presence of unauthorised camping – as well as projections of future growth. There are real issues about overcrowding and suppressed household formation in the Gypsy and Traveller communities, just as with the settled community. The assessment should capture this
 - estimates of household formation and population growth should be derived from the study group, rather than by applying national multipliers that may not be applicable to the particular local population; and
 - the need to include Gypsies and Travellers themselves in the process, not just as respondents to interviews, but as consultees at every stage. This will improve buy-in.



Why should local authorities make this a priority?

This is an issue that won't go away

23. Unless action is taken, the shortage of sites can only get worse, leading to an ongoing unmet need, more unauthorised sites and more community



tension. Lack of adequate site provision leads to a vicious circle of tension with the settled community. No local authority can afford to ignore this issue; there is a need to address it across local authority boundaries.

24. Any decisions taken by a local authority must follow proper consideration of the needs of Gypsies and Travellers balanced with the needs of the settled community. Local councillors must ensure that they are fully briefed on the issues and be prepared to lead some challenging debates and take difficult decisions. As elected members, local councillors have a duty to represent the interests of resident Gypsies and Travellers as well as the settled community. Working with neighbouring authorities and the Regional Planning Body to develop joint solutions is the only way to solve the problem of unauthorised sites in the long-term.



25. There is evidence that Gypsies and Travellers experience the worst health and education status of any disadvantaged group in England. Research has consistently confirmed the link between the lack of good quality sites for Gypsies and Travellers and poor health and education. The provision of more authorised sites will help contribute to better health and education outcomes in the area, as Gypsies and Travellers will have a stable base from which to access services. At present Gypsies and Travellers living on the roadside are unlikely to benefit from regular access to healthcare and preventative medicine, so are more likely to use acute services such as Accident and Emergency. Living on a settled site will place fewer demands on the NHS and improve access to preventative health advice thus reducing the incidence of chronic illnesses that can be a drain on NHS resources.

The social exclusion experienced by Gypsies and Travellers is highlighted by the following statistics:

- The average life expectancy is 12 years less for women and 10 years less for men than the settled population
- Of Gypsy and Traveller mothers, 17.6 per cent have experienced death of a child, compared to 0.9 per cent in the settled population
- In 2005, only 20.7 per cent of Travellers of Irish Heritage and 9.1 per cent of Gypsy/Roma pupils gained 5+ A*–C including English and Maths compared to an average of 42.5 per cent.

A co-ordinated approach to service provision

Doncaster Council is taking action to improve the way services are provided to Gypsy and Traveller communities across the borough, having looked extensively at the issues affecting these communities. The Council is developing an approach to ensure that all those who provide public services to Gypsies and Travellers work better together and that communication with Gypsies and Travellers is improved. This approach has been endorsed by local councillors and the elected Mayor, demonstrating strong leadership and a willingness to tackle challenging issues.

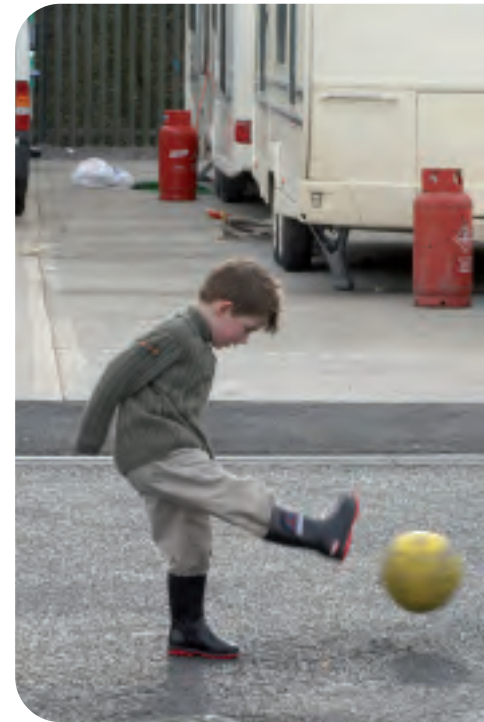
As a result of this new approach, organisations are sharing information and co-operating better, and welfare assessments are being carried out more effectively. Gypsy and Traveller families are getting quicker access to healthcare, education, welfare and advice providers than they were previously, partly because all agencies are now more aware of the roles of other stakeholders and where they fit into the larger picture of managing these concerns.

Funding is available to help

26. Many Gypsies and Travellers will provide their own sites without the need for public subsidy. The costs to the local authority of providing private sites are negligible and may involve officer time in helping to identify sites suitable for development and advising Gypsies and Travellers on making planning applications (in the same way that they assist the settled community). This could well take less officer time than previously spent dealing with enforcement action and planning appeals.
27. However, other Gypsies and Travellers will not be able to provide their own sites. Local authorities and Registered Social Landlords can apply for funding to provide new sites, and refurbish existing sites, through the Communities and Local Government Gypsy and Traveller Sites Grant.
28. Funding for new sites is being routed through the Regional Assemblies as part of their regional housing pots. The Boards are responsible for recommending schemes for funding. The Government has made up to £56 million of funding available for the grant between 2006 and 2008.



29. Bids are subject to a two stage assessment process. They are first assessed by independent consultants against four key criteria: whether it meets an assessed need, the deliverability of the project, the sustainability of the site, and whether the bid represents good value for money overall. Regional Assemblies then consider how bids fit with emerging priorities for Gypsy and Traveller provision in their particular region.
30. Providing sites has been shown to reduce the cost of enforcing against encampments, as those who would previously have been travelling around a particular area will have the opportunity to settle on a local authority/Registered Social Landlord site. In a local authority area where pitches have been provided, the police can also use their extended powers under sections 62(a) to (e) of the Criminal Justice and Public Order Act to move on unauthorised encampments of Gypsies and Travellers, where there are pitches available on a public site in the area.



It could save money – the business case for site provision

- As early as 2001, during an inspection of a Gypsy and Traveller service at a council, the Audit Commission reported that:

“ the Council is involved in a continuous cycle of ‘moving on’ illegal encampments. Past activities have not provided a long-term solution to this wasteful use of resources.”

31. Enforcement against unauthorised camping can be very expensive. Providing more sites should reduce the need for enforcement action and thereby save money. Residents of local authority authorised sites are required to pay rent and council tax, just like the settled population. In this way, such sites should pay for themselves.

A positive approach reduces enforcement costs

Tewkesbury Borough Council currently manages three public sites on behalf of the County Council and a number of private sites are also located within the Borough. The Council has also made provision in its local plan for three additional sites. The Council was awarded Beacon status for community cohesion in 2003/4 for its work to reduce tension between Gypsies and Travellers and the settled community. Funding linked to the Beacon status has been used to produce a DVD which gives an insight into the Travellers' way of life.

The positive approach that Tewkesbury has taken in relation to Gypsy and Traveller issues has also benefited the Council in terms of time and money.

The Council's provision for Gypsy and Traveller sites has provided robust evidence in support of enforcement action against unauthorised development and as a result, the Council has been successful in the court action it has pursued. In addition the Council has led on a County-wide protocol that sets out a consistent and fair approach for local authorities and the police in dealing with unauthorised encampments.

Bristol City Council: Site provision saves taxpayers' money

Bristol City Council was established as a unitary authority in 1996. At that time it had no publicly run Gypsy and Traveller sites, although the City has a long history of Gypsy residents. It experienced massive levels of unauthorised camping (20 or more encampments per year of up to 50 caravans each) resulting in huge spending on enforcement and clean up costs – up to £300,000 per year with an average of around £200,000 per year.

In 1998 the authority resolved to adopt a "spend to save" policy and decided to establish a residential and transit site using its own resources – Government grant was not then available. Later that year having identified some suitable sites it sought planning permission for a residential and transit site. The transit site got planning permission and cost around £425,000 to build. Following the provision of the site the council's enforcement costs reduced to around £5,000 per year. As such, with a saving of over £190,000 per year in eviction costs, the cost of developing the transit site has already paid for itself.

In addition, the Council continued to look for alternative sites to locate their proposed residential site and bought suitable land in 2000. The Council got £1.5 million from Communities and Local Government's Gypsy and Traveller Sites Grant and the South Liberty Lane was opened in 2006.

Local authorities have a duty to promote good race relations

32. Local authorities have a duty to promote good race relations, equality of opportunity and community cohesion in all of their policies and practices. This duty covers all racial groups, including Gypsies and Irish Travellers who are recognised ethnic groups. Planning, site provision and enforcement activity are highly relevant to this duty, because they impact on race relations generally and on the way in which services are delivered to this group. In developing policy and making decisions, local authorities need to ensure that their actions are consistent with this general duty.
33. In June 2006, the Commission for Racial Equality published *Common Ground – Equality, good race relations and sites for Gypsies and Irish Travellers*. The report looked at a number of aspects of Gypsy and Traveller policy and in the research they carried out found that –



“While some authorities had made significant progress in making arrangements (as part of their Race Equality scheme) that benefited all racial groups including Gypsies and Irish Travellers, the overall picture was not positive. Few local authorities could see that the duty to promote race equality and good race relations, and the arrangements required under the Race Equality Scheme, had real implications for the way they provided services.”

Overall the biggest barriers seemed to be:

- first, the failure to understand that the duty is not only about promoting race equality, but also about promoting good race relations; and
- second, the failure to see Gypsies and Irish Travellers as racial groups, with specific needs based on ethnicity rather than land use, which led to their omission from corporate work to promote race equality and good race relations, and the provision of effectively segregated services.

Building understanding with Gypsies and Travellers to reduce tension

Fenland District Council experiences high levels of unauthorised encampments and developments. Many Gypsy and Traveller families wish to settle in the area. The Council has recognised that taking enforcement action alone will not solve the problem of unauthorised camping and development. Gypsies and Travellers who are seeking to settle in the area are invited to discuss their development proposals with the planning authority before submitting an application or buying land. If the site that they have in mind is not suitable, alternatives are discussed. To facilitate this process, the Council makes contact with families when they first arrive in the area to discuss their needs and intentions.

Planning officers work closely with the Council's Traveller and Diversity Officer and the Traveller Services Unit to build understanding with Gypsies and Travellers. The trust that this approach has built up helps ensure that planning applications are made at the proper time and are handled more effectively. Councillors and local residents are reassured that Gypsies and Travellers are abiding by the same planning rules as everyone else, which helps reduce tension between the two communities. Objections to the proposed new sites have been limited. The Council has observed a reduction in the incidence of unauthorised development in the area.

34. Councillors have a role in promoting community cohesion and this may be particularly relevant when a new Gypsy and Traveller site is proposed in the area. For example, a proposed new site often fuels local controversy and fears that crime levels in the area may rise. Local councillors can help dispel these myths. In fact, a study carried out by the Planning Exchange found that of those domestic householders interviewed before and after the creation of a site, most had no specific complaints and many acknowledged that their previous opposition had proved groundless.



Site design and management

Best practice guidance

35. It is essential that both new and existing Gypsy and Traveller sites are designed and managed in such ways as to make them desirable, effective and sustainable, offering a decent and safe environment in which these communities may live. The Gypsy and Traveller Unit is producing two guidance documents, primarily for local authorities and Registered Social Landlords, to help achieve this end.



Site design and location

36. The Gypsy and Traveller Unit is working with the Housing Corporation on a joint project to produce guidance on best practice in site design. This will be primarily for local authority and Registered Social Landlord site accommodation providers, but will also have broader application. The guidance will describe good practice in a range of sites, including permanent sites, transit sites and emergency stopping places, for Gypsies, Irish Travellers, new travellers and travelling showpeople, using case study examples to illustrate different approaches that may be taken to ensure the needs of these communities are best met.
37. In considering the location of sites, local planning authorities need to be aware that Gypsy and Traveller sites are considered as affordable housing where they are owned and managed by a local authority or Registered Social Landlord. Local planning authorities may therefore negotiate s106 agreements with developers to include Gypsy and Traveller sites in new developments, ensuring that mixed communities are created from the outset.

Site management

38. Site provision on its own is unlikely to be effective if not backed by good quality site management. The Gypsy and Traveller Unit is producing guidance to help those in local authorities and Registered Social Landlords with their site management responsibilities. This will help ensure that their arrangements are appropriate and consistent with best practice, and help ensure residents receive the same standards of management and support as are available to tenants in other forms of social accommodation. It will cover all areas of site management best practice, including the admission of new residents to a site, how to maintain a proper and effective landlord-resident relationship, site repair and maintenance arrangements, liaison with essential service providers and more.

Enforcement

39. Many unauthorised sites are not contentious and are trouble-free. In these circumstances, some authorities choose not to take enforcement action. However, a 'toleration' approach does not negate the need for local authorities to allocate land for authorised sites. Some unauthorised sites can be highly damaging to the settled community and Gypsies and Travellers alike. They bring uncertainty and disruption, damage trust in the planning system and strain community relations. The cost of enforcement and repairing damage that may be caused by unauthorised sites is often high and enforcement action can take a long time.

An *unauthorised encampment* is where the Gypsies and Travellers camp on land that they do not own without the owner's permission. An *unauthorised development* is where the Gypsies and Travellers own the land but do not have planning permission or where Gypsies and Travellers have consent from the owner to occupy the land but the development does not have planning permission.

40. A negotiated solution which avoids confrontation is often the best way to manage a situation and works well for many authorities. However, there are strong and wide ranging powers available to deal with unauthorised developments, unauthorised encampments and anti-social behaviour. These powers apply to the whole population: Gypsies and Travellers should be treated the same as everybody else. When enforcement action is used, it works most effectively when the agencies involved have clear responsibilities, share information and co-ordinate action.

Unauthorised encampments – land not owned by Gypsies and Travellers

41. Where Gypsies and Travellers camp on land that they do not own without the owner's permission, they are 'trespassers'. Many encampments can be dealt with through negotiation but where this is not possible action can be taken to remove them from the land. Private landowners, local authorities and the police all have powers to deal with unauthorised encampments.

For example:

- Landowners (including local authorities) can go to court and gain a **possession order** which can be enforced by court bailiffs if necessary



- Local Authorities can use **s77 of the Criminal Justice and Public Order Act 1994** to direct unauthorised campers to leave. If unauthorised campers fail to comply with a s77 direction, local authorities can use **s78 of the Criminal Justice and Public Order Act 1994** to go to court and get an order which allows the removal of campers
- The police have a power to direct trespassers to leave land under **s61 of the Criminal Justice and Public Order Act 1994**; The police have a further power to direct trespassers to leave land under **s62 A–E of the Criminal Justice and Public Order Act 1994** where there is a suitable pitch available.



42. These powers can only be used in certain circumstances which are explained in more detail below.
43. **Police powers to deal with unauthorised encampments may be used as an initial remedy for unauthorised camping, or where the private landowner or local authority has taken action but the trespassers are refusing to move.**

Private landowners

44. The tort of trespass provides that landowners can ask a trespasser to move and, if they refuse, may use reasonable force to remove them. Landowners may, for example, privately employ bailiffs for this purpose.
45. Alternatively, a landowner can regain possession of their land by pursuing a claim for possession through the County Courts under Civil Procedure Rules 55. County Court bailiffs can be used to remove trespassers from the land once a possession order has been granted.

Local authorities

Trespass on **local authority land** (eg public car parks and recreation grounds)

46. In addition to the above powers Local Authorities can also regain possession of land by pursuing a claim for possession through the County Courts. Again, County Court bailiffs can be used to remove trespassers from the land once a possession order has been granted.

Trespass on local authority land (or **privately owned land** where the encampment is without the consent of the owner)

47. The Criminal Justice and Public Order Act s.78 allows a local authority to apply to a magistrate's court for an order (when a direction under s. 77 has not been complied with) requiring the removal of vehicles, property and people from the land. Responsibility for eviction lies with the local authority. The local authority must give the owner and occupier 24 hours notice of their intention to enter any occupied land unless they are unable, following reasonable inquiries, to ascertain the names and addresses of the owner and occupier. Obstruction of the local authority exercising their power under the order is an offence, punishable by a fine of up to £1,000.
48. **Powers to remove unauthorised campers:** the local authority may issue a direction to leave under Criminal Justice and Public Order Act (Criminal Justice and Public Order Act) s.77. Failure to move from the land, or returning to the land within a period of three months are both criminal offences, punishable by a fine of up to £1,000.

Norfolk County Council's multi-agency approach

Norfolk County Council has a joint protocol with all its District Councils and the local police, setting out the roles and responsibilities of each partner in responding to an unauthorised encampment in the county. The County Council regularly holds round-table events to discuss Gypsy and Traveller issues.

For example, following the arrival of a young Gypsy mother and child in South Norfolk last year a case conference was called. Whilst the encampment was small, it was situated in a conservation project car park and its presence prevented work from going ahead. It was further complicated by the fact that an arson attack had recently been made against the caravan, when the mother and child were inside.

The case conference gathered representatives of the parish, district and county council, Police, Traveller Health, Traveller Education and the Traveller herself.

The outcome was that the Traveller made an application to be accepted by the Council as statutorily homeless. The Agencies agreed that the family should remain on the car park while the application was processed.

The Police

49. **Powers to remove trespassers on land** under the Criminal Justice and Public Order Act s.61. The police may direct trespassers to leave any land, if two or more people are trespassing with intent to take up residence and if reasonable steps have been taken by the landowner to ask them to leave. This is a discretionary power and any one of three further conditions must be met:
- any of the persons has caused damage to the land or property on the land

- any of the persons has used threatening, abusive or insulting behaviour towards the occupier, a member of his family or an employee or agent of his
- that those persons have between them six or more vehicles.

50. It is an offence to fail to comply with a direction to leave or to return to the land within three months, punishable by up to three months imprisonment and/or a fine of up to £2,500.
51. The Criminal Justice and Public Order Act s.62 allows the police to seize and remove vehicles if a direction under s.61 has not been complied with or the trespassers have returned to that land with a vehicle within a period of three months from the date of the direction under section 61.
52. **Power to remove trespassers where a suitable pitch is available** under Criminal Justice and Public Order Act ss.62(a)-(e).
- Can be used by the police where all of the following conditions are met:
- at least two persons are trespassing
 - the trespassers have between them at least one vehicle on the land
 - the trespassers are present on the land with the common purpose of residing there for any period
 - the occupier of the land or a person acting on his behalf has asked the police to remove the trespassers from the land.
53. It is a criminal offence for the trespasser to fail to leave the land as soon as reasonably practicable or enter any land in the local authority area in order to reside there as a trespasser within three months of the direction being given. The penalty for this offence is up to three months imprisonment and/or a fine of up to £2,500.



Guidance

54. Guidance on managing unauthorised encampments is found in a joint Home Office/ODPM document, Managing Unauthorised Camping. It was issued in 1998 and updated in February 2004. A supplement to the guidance was issued on 7 March 2005 to provide guidance on the Anti-social Behaviour Act powers. The documents can be accessed at: www.communities.gov.uk/gypsiesites

55. Communities and Local Government has also produced a plain guide to enforcement giving detailed step by step guidance on how to use the powers outlined above. This is also accessible via the web address above.

Unauthorised Developments

– land owned by Gypsies and Travellers or land occupied and developed by Gypsies and Travellers with consent from the owner.

55. Where land is developed without planning permission, the local planning authority has a range of enforcement powers available.

For example, it can:

- Issue a **temporary stop notice** to stop any further development. The authority does not need to go to court: it can issue the notice immediately. The notice stops further development for 28 days
- Issue an **enforcement notice** to both stop the development on a longer term basis and to require the site to be reinstated to its previous condition. Again the authority does not need to go to court. However, enforcement notices can be appealed against and an appeal suspends the effect of the notice. It is therefore wise for an authority to also:
 - issue a **stop notice** at the same time as an enforcement notice to prohibit further development pending the outcome of an appeal against any enforcement notice. Stop notices can be issued without going to court;
 - apply to the court for an **injunction** against someone to prevent them from continuing with or beginning to carry out development. An injunction can be sought at any time but in most cases is likely to be most effective if other planning powers have been used first.

57. More detail on the main powers for use against unauthorised development is set out below.



Temporary Stop Notice

58. Local planning authorities can issue a Temporary Stop Notice where they believe there has been a breach of planning control and it is important that the breach is stopped quickly. The Temporary Stop Notice requires the breach of planning control to stop for 28 days while the local authority decides whether to take further enforcement action.



59. In some cases, Temporary Stop Notices can require the removal of caravans from land, even where they are being used as a main place of residence. Temporary Stop Notices can be used to require caravans to move off land where the risk of harm in allowing them to remain is so serious as to outweigh any benefit. A Temporary Stop Notice can be used to prevent further caravans from moving onto land because this would constitute further development which the Temporary Stop Notice prohibits. Communities and Local Government is also consulting on changes to the Temporary Stop Notice which would allow it to be used to require the removal of residential caravans where there is an alternative site on which the caravans can be stationed.
60. If a Temporary Stop Notice is breached, the maximum penalty in the Magistrates' Court is £20,000 and there is no upper limit on the penalty which the Crown Court may impose on conviction. There are no direct action powers available to local planning authorities to remove caravans from unauthorised developments except at the end of an enforcement appeal. However, they can seek an injunction for this purpose – see below.

Effective use of a Temporary Stop Notice

North West Leicestershire District Council has used Temporary Stop Notices to halt unauthorised development including that on Gypsy and Traveller sites. In one case, additional caravans had moved on to the site in contravention of the terms of the Temporary Stop Notice, but departed once the owner of the site was informed that they would be prosecuted for breaching the Temporary Stop Notice. A planning application was subsequently submitted. In another case a Temporary Stop Notice successfully prevented additional Travellers, caravans and vehicles moving onto the site and further importation of materials and hard surfacing. Once the Temporary Stop Notice had expired, an injunction was issued by the courts to prevent further breaches taking place while a planning application was considered.

Enforcement Notice

61. An authority can issue an enforcement notice when it appears to them that there has been a breach of planning control and it is important to stop the breach quickly. The authority must have evidence available to support the issuing of the notice and copies of the notice have to be served on specified persons who have an interest in the relevant land.
62. The notice must state amongst other things: the matters which appear to breach planning control; the steps which the authority requires to be taken to rectify the breach; or the activities which the authority requires to stop. It must also specify the compliance period within which any required action

should be taken. On conviction of an enforcement notice offence in the Magistrates' Court, the maximum penalty is £20,000. There is no upper limit on the fine that can be imposed in a Crown Court.

63. There is the right of appeal against an enforcement notice and the submission of a valid enforcement appeal suspends the effect of the enforcement notice. It is therefore advisable to issue a stop notice at the same time. At the conclusion of an enforcement appeal and any compliance period, where any steps required by the enforcement notice have not been taken, the local planning authority can enter the land and take the steps itself.

Stop Notice

64. A stop notice prohibits carrying out, on land subject to an enforcement notice, any activity which is included in the scope of the associated enforcement notice. A stop notice can be served on any person who appears to them to have an interest in the land or to be engaged in any activity prohibited by the notice. There is no right of appeal against a stop notice although it can be challenged on the grounds that it was not properly authorised or was unreasonable. A stop notice remains in force until the end of the compliance period specified by the associated enforcement notice, or until that notice has been withdrawn or quashed on appeal. As with Temporary Stop Notices and enforcement notices, the penalties for contravening a stop notice are up to £20,000 in the Magistrates' Court and an unlimited fine in the Crown Court.

Planning Injunction

65. An authority may apply to the court for an injunction to stop any actual or expected breach of planning control, regardless of whether they have used or are proposing to use any of their other powers. Where a breach is expected there must be evidence to support the belief that it is intended e.g. preparations being made to establish a permanent caravan site. Rather

then being directed at a piece of land, injunction proceedings are used to restrain a person or number of people, who must be cited by name, from carrying on the breach. Any person who fails to comply with the terms of an injunction is in contempt of court which could lead to imprisonment. An injunction may, at the court's discretion, include a requirement to remove caravans (including those used as a main residence) from the unauthorised development. However, the court may well be influenced by the availability of alternative sites.



This picture shows the result of an arson attack on travelling families



Guidance

66. Further information on the use of these powers can be found in the Department of Environment, Transport and the Regions document *Enforcing Planning Control: Good Practice Guide for Local Planning Authorities*, 1997.

Anti-Social Behaviour

67. Anti-social behaviour has a wide legal definition. To paraphrase the Crime and Disorder Act 1998, it is a behaviour which causes or is likely to cause harassment, alarm or distress to one or more people who are not in the same household as the perpetrator.
68. There are a number of tools and powers available to the police and local authorities to address the causes of anti-social behaviour, ranging from early intervention to court proceedings. It is for local agencies to decide on the most appropriate intervention based on their knowledge of what works best locally and agencies should be encouraged to adopt a tiered approach to tackling anti-social behaviour.
69. It may be appropriate to address the behaviour with a warning letter or an Acceptable Behaviour Contract or Agreement. If a child is the cause of the anti-social behaviour or if the parents are not ensuring that their children attend school or education, then parenting contracts and orders can be used. Local Authorities, the police and Registered Social Landlords (amongst others) all have the power to apply to a court to grant Anti-Social Behaviour Orders against the perpetrators of anti-social behaviour. Local authorities and the Environment Agency also have powers to deal with specific types of anti-social behaviour such as fly-tipping, noise and health nuisance. Details of some of the measures which can be used are set out below.

Respect

70. One problem that Gypsies and Travellers may face is anti-social behaviour. Government initiatives have provided local authorities with a range of tools to deal with anti-social behaviour when it arises. These can be used to help Gypsies and Travellers who find themselves victims of anti-social behaviour.
71. Gypsies and Travellers are often isolated both geographically, and socially. They traditionally avoid involvement with Police and the Local Authorities, and do not see them as natural allies if they experience anti-social behaviour. Local Authorities and Police Forces should provide the same level of support for Gypsies and Travellers as they would for the settled community, and steps should be taken to promote support services amongst this community, in line with Race Relations Act requirements.

72. Conversely, there is a small minority of Gypsies and Travellers who are involved in serious anti-social behaviour, impacting on the settled community, as well as other Gypsies and Travellers. Serious anti-social behaviour is difficult to tackle in any group. Nevertheless, the Government expects the Police, local authorities, and other partners to take action against perpetrators, regardless of ethnicity or of the difficulties associated with enforcement when the perpetrator has a nomadic life style.
73. The Government has established 40 Respect Areas which have earned the right to be exemplars of the Respect programme by their strong track record in tackling anti-social behaviour, and a willingness and capacity to do more. The Department for Education and Skills has also backed this by investing a further £6 million for parenting classes in the 40 areas in 2007/2008.
74. New statistics show significant increases in the powers being used by local councils and police to clamp down on anti-social behaviour. The Government is also publishing a comprehensive Respect Handbook which reinforces the warning that there are no more excuses for local services not to take action and to send the message that it is time for them to 'face the people' and be held accountable by their public.

Examples of action taken include:

- Family intervention projects to tackle 'neighbours from hell'
- More parenting classes for parents struggling with troublesome children
- Face the People sessions where the police, local authorities and others can be accountable to their local public
- Keep up the relentless action to tackle anti-social behaviour by using the full range of tools and powers available
- Using the Respect Housing Standard to prevent and deal with any problems in social housing.

Some important tools are given below.

Acceptable Behaviour Contracts

75. An Acceptable Behaviour Contract is a written agreement between a person who has been involved in anti-social behaviour, a local authority and others, for example, the police. Acceptable Behaviour Contracts are most commonly used for young people but may also be used for adults.



76. The contract specifies a list of anti-social acts in which the person has been involved and which they agree not to continue. Where possible the individual should be involved in drawing up the contract. This may encourage them to recognise the impact of their behaviour and take responsibility for their actions. Support to address the underlying causes of the behaviour should be offered in parallel to the contract. This may include diversionary activities (such as attendance at a youth project), counselling or support for the family.



Anti-Social Behaviour Orders

77. Although it is a civil order, breach of an Anti-Social Behaviour Order is dealt with as a criminal offence with a maximum five year sentence for an adult. Anti-Social Behaviour Orders can be used against offenders living in any type of accommodation and to tackle anti-social behaviour in a wide range of situations and settings. Local authorities can apply for Anti-Social Behaviour Orders but must provide evidence to the court showing that the person accused has behaved in an anti-social manner. Anti-Social Behaviour Orders are civil orders made by a court which prohibit the perpetrator from committing specific anti-social acts and/or from entering defined areas on a map (exclusion zones). An order lasts for a minimum of two years.
78. Anti-Social Behaviour Orders are particularly useful in the Gypsy and Traveller context because they:
- can be specifically tailored to address the particular problem
 - could apply nationally if justified
 - would be registered on the national police database.

Fly-tipping

79. Fly-tipping is defined as is the illegal deposit of any waste onto land, ie waste dumped or tipped on a site with no licence to accept waste. Section 33 of the Environmental Protection Act 1990 makes fly-tipping a criminal offence where:
- a person has deposited, caused or permitted waste to be deposited on land that does not have a waste management licence; or
 - a person has treated, kept or disposed of waste on land that does not have a waste management licence.
80. Under the provisions of the Anti-Social Behaviour Act 2003 which extended existing provisions, waste collection authorities (local authorities) as well as the Environment Agency have powers to:
- investigate fly-tipping incidents

- stop and search vehicles suspected of being used to deposit unlawful waste if a police constable is present
- seize a vehicle used to deposit unlawful waste after the issue of a warrant.

81. The powers to deal with fly-tipping were further extended by the Clean Neighbourhoods and Environment Act 2005 which mean that:

- fly-tipping is an arrestable offence with the maximum penalty for fly-tipping being £50,000 in the Magistrates' Court or an unlimited fine and/or five years imprisonment on indictment
- landowners and occupiers who have had to clear fly-tipped waste can also recover costs
- local authorities have more effective investigatory powers to catch fly-tippers
- local authorities will have the power to issue fixed penalty notices in certain circumstances.

82. Comprehensive guidance on all the available tools and powers to tackle anti-social behaviour and the support that is available can be found on the Home Office's Respect website:

www.respect.gov.uk

or from the ActionLine on

0870 220 2000

More information on fly-tipping can be found at:

www.defra.gov.uk/environment/localenv/flytipping

83. It is important that local authority officers and councillors fully understand the powers that are available and the circumstances in which they can be most effectively deployed. Local authorities need to establish arrangements to respond promptly to situations as they arise, which may usefully include protocols with other agencies, particularly the police. Such arrangements should make it clear how the responsible agencies will respond to an encampment, who will take the lead and how they will intervene.



The use of an Anti-Social Behaviour Order

Following a prolonged period (more than 10 years) of anti-social behaviour associated with repeated unauthorised encampment by a particular family in the North Yorkshire area, North Yorkshire County Council as Highway Authority, in partnership with Ryedale District Council and North Yorkshire Police, issued an Anti-Social Behaviour Order against the four most senior male members of a 14-strong adult family in August 2005. The Order prohibited the four members in question from the following behaviour:

1. camping on the highway (including verges) so as to cause a danger or obstruction and in any event not for more than 21 days
2. camping on any private land without the landowner's express permission
3. returning to an area (whether highway or private land) within 1500 metres of a site previously occupied within last 12 months
4. allowing any horse to eat/damage the hedgerows or be tethered close to the road, or to be placed in private land without the owners permission
5. leaving any rubbish or litter in any place, either public or private, unless in properly secured bags and in designated refuse skips
6. causing or encouraging any other person to damage property belonging to another person
7. taking fencing and gate posts for firewood.

In addition, the most senior family member was prohibited from doing or saying anything threatening, intimidating or abusive to any person. The Order also excludes the four members (and therefore the whole family, due to their tendency to travel as a complete family unit) from a five-mile area around three villages. The Anti-Social Behaviour Order was issued after the family had persistently breached a high court injunction obtained two years previously for similar behaviour.

Gypsy and Traveller Welfare – How can Supporting People help?

84. Gypsies and Travellers are of course one of the categories of people regarded as “vulnerable” in the context of the Supporting People programme. In general terms, the range of housing-related support traditionally funded by Supporting People for vulnerable people can be equally necessary for site-based Gypsies and Travellers, in particular where problems of illiteracy and a traditional wariness of outsiders is involved, for example in the interface dealings with state, local authority and agency providers. For example:
- helping people with budgeting
 - paying their bills

- completing benefit claim forms
- help in accessing health services
- education and employment opportunities.

85. There is of course no better way to identify what is needed than consulting the Gypsy and Traveller communities themselves, to see what they perceive their problems to be and to examine how current Supporting People projects for other vulnerable members of the community may need to be adapted to meet their needs.

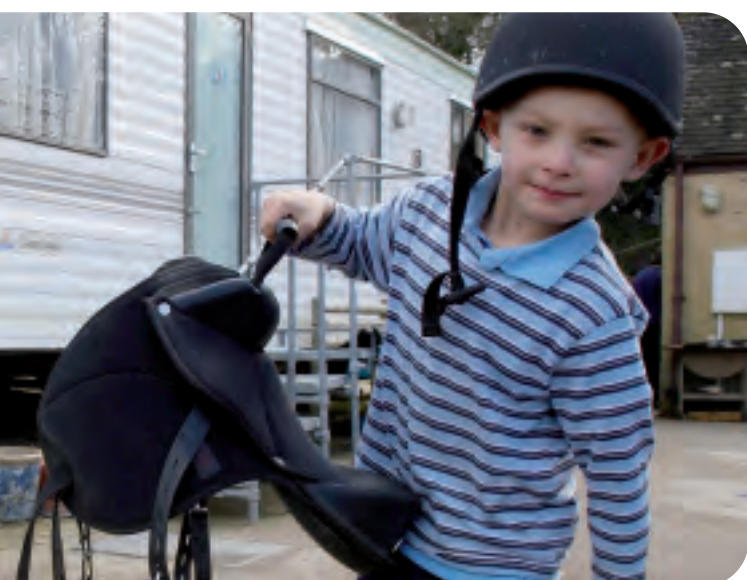
86. The local Gypsy and Traveller communities may have no immediate knowledge of what the Supporting People programme is designed for, and will need this to be explained. In case of difficulty, the Gypsy and Traveller Unit may be able to advise on how to contact the Gypsy and Traveller communities in your area.

What will the Government do?

87. The Government has established a Gypsy and Traveller Unit within Communities and Local Government. The Unit leads on policy development within Whitehall and work with local authorities and other agencies to deliver more accommodation for Gypsies and Travellers and encourage effective enforcement action. Government Offices for the Regions will support the work of the Unit at local and regional level.

88. Key objectives for the immediate future are to:

- increase site provision for Gypsies and Travellers in line with need and ensure that resources allocated by central government are fully taken up by good quality schemes
- ensure effective use of enforcement powers (including anti-social behaviour powers where appropriate) against unauthorised encampments
- minimise unauthorised developments and the problems they cause
- identify key priorities for action with other Government Departments to tackle inequalities in access to service provision experienced by Gypsies and Travellers.



88. To this end, the Government:

- has produced planning and housing guidance advising local authorities on how the system will work which can be found at:
www.communities.gov.uk/gypsiesites
- has set up the Task Group on Site Provision and Enforcement, drawing together central and local Government, the police and other agencies to address the wide variations in the use of enforcement powers and champion best practice
- is consulting on the introduction of a new provision in relation to Temporary Stop Notices enabling local planning authorities to require caravans to leave unauthorised developments
- has produced site management guidance and published site design guidance
- will extend the series of practical step-by-step guides on the use of enforcement powers to include unauthorised development and anti-social behaviour.



Further Information

For further information, please visit the Communities and Local Government website at www.communities.gov.uk, or contact the Gypsy and Traveller Unit at:

Gypsy and Traveller Unit

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1/F8 Eland House
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E-mail: gypsies@communities.gsi.gov.uk **Tel:** 020 7944 4933

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Every successful scheme you can tell us about, no matter how small, is a step in the right direction.



Guide to effective use of enforcement powers

Part 1: Unauthorised encampments

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Introduction

1. Some parts of the country experience regular unauthorised encampments, which can cause disruption and conflict locally, and can be expensive and time-consuming to clear. The Government's policies on Gypsy and Traveller accommodation and enforcement are set within a framework of rights and responsibilities in which everyone's rights must be equally respected but where, at the same time, equal standards of behaviour are expected from all. Creating and sustaining strong communities is at the heart of the Government's Respect agenda and will have benefits for the settled and Gypsy and Traveller communities alike.
2. Unauthorised camping is a problem which requires a range of solutions. The Government has already introduced new housing and planning policies to ensure that in the future the accommodation needs of Gypsies and Travellers will be properly understood and properly addressed, part of which is a new obligation on local authorities to identify suitable locations in their areas that can be used for the establishment of new public and private Gypsy and Traveller sites. In the meantime the Government is working with the Gypsy and Traveller community to find pragmatic local solutions to accommodation shortages while the longer-term policies take effect.
3. But part of the solution also lies in swift and effective enforcement. Where problematic encampments are allowed to remain, or repeatedly return, community hostility and conflict will be inflamed, and a sustainable long-term solution will become much harder to achieve. Effective enforcement will promote confidence in the ability of local agencies to manage Gypsy and Traveller issues properly, and forms an essential backdrop to the provision of more authorised sites. Local people need to know that they and their local environment can be and will be protected.
4. Strong powers are available to the police, local authorities and other landowners to deal with unauthorised encampments. This document provides a detailed step-by-step practical guide to the use of these powers.
5. It also sets out advice on:
 - Choosing the most appropriate power.
 - Speeding up the process.
 - Keeping costs down.
 - The eviction process.
 - Preventing further unauthorised camping.
6. This document is intended for elected officials and others in the community who have an interest in how unauthorised camping by Gypsies and Travellers is managed in their area, and provides information to local authority officers and other landowners on options for dealing with such incidents.
7. This guidance explains the ways in which enforcement action can be made quicker, cheaper and more effective. Local authorities should also be aware that the wider policy they adopt towards Gypsy and Traveller issues will also make a great deal of difference. Enforcement action can be taken more swiftly, and can be more effective, where appropriate authorised provision for Gypsies and Travellers is in place within a local authority's area.

8. The use of joint protocols between the local authority, the police and any other relevant agencies is also highly effective in establishing how individual cases will be dealt with, and making sure that all parties are clear about their responsibilities and how they will work together.
9. Local authorities have an obligation to carry out welfare assessments on unauthorised campers to identify any welfare issues that need to be addressed, before taking enforcement action against them. Where police are taking enforcement action, it is good practice for them to liaise with the local authority over any welfare issues. It is also good practice for local authority officers to be present at any eviction from public land, to ensure that any welfare issues that arise at that time can be dealt with appropriately.
10. The Government is also establishing a new Task Group which draws together central and local Government, the police and other agencies to address the wide variations in the use of enforcement powers and to champion best practice. The group will act as expert advisers to the Office of the Deputy Prime Minister (ODPM) and the Home Office, who are working together to consider potential new measures to further strengthen enforcement, alongside the provision of more authorised sites.
11. Information on the Government's wider policies concerning Gypsies and Travellers, *Local authorities and Gypsies and Travellers – guide to responsibilities and powers*, can be found on the ODPM website at the following address:

www.odpm.gov.uk/gypsysites

12. The information contained in this document should be read in conjunction with the joint ODPM/Home Office document, *Guidance on Managing Unauthorised Camping* and its supplementary document on Section 62A-E police powers. This gives more detailed advice on a range of matters, including toleration, joint working protocols and obligations on local authorities and other public agencies in respect of welfare enquiries.
13. Further documents will follow in this series which will provide guidance on dealing with unauthorised developments of land without planning permission, and anti-social behaviour, including fly-tipping.

Unauthorised Encampment – The Powers in Summary

Common law powers

- can only be used by the landowner;
- are used to regain possession of land;
- does not require the involvement of the courts;
- enforced by the landowner and/or private bailiffs where necessary;
- does not provide any sanctions offence for the return of trespassers onto land.

Part 55 Civil Procedures Rules

- can only be used by the landowner;
- are used to regain possession of land;
- require civil court procedure;
- possession is enforced by county court bailiffs, where necessary;
- do not provide any sanctions for the return of trespassers onto land.

Sections 77-78 Criminal Justice and Public Order Act 1994

- can only be used by a local authority;
- can be used on any land within the local authority's area, irrespective of ownership;
- are used to remove identified individuals from land;
- only require the involvement of the courts when unauthorised campers do not leave when directed to do so;
- possession is enforced by local authority officers or private bailiffs employed by the local authority;
- the return of unauthorised campers and/or their vehicles to the location within three months carries criminal sanctions.

Sections 61-62 Criminal Justice and Public Order Act 1994

- can only be used by the police;
- can be used on any land except the highway;
- are used to remove identified individuals and/or their vehicles from land;
- there must be two or more persons trespassing on the land before the power can be used;
- do not require the involvement of the courts;

- possession is enforced by the police;
- the return of unauthorised campers to the location within three months carries criminal sanctions.

Section 62A-E Criminal Justice and Public Order Act 1994

- can only be used where an alternative site is available;
- can only be used by the police;
- can be used on any land;
- is used to remove identified individuals and/or their vehicles from the land;
- does not require the involvement of the courts;
- possession is enforced by the police;
- the return of unauthorised campers to the local authority area within three months carries criminal sanctions.

Unauthorised Encampment – The Powers in Detail

Common Law Powers

14. All landowners can use their common law rights to recover land (i.e. the tort of trespass against property). This allows the person in possession of land to evict an individual from their land, seek damages for their trespass on their land, and/or seek an injunction to prevent the trespass from occurring again.
15. Case law has established that a trespasser who enters land peaceably is entitled to a request to leave the land before being forcibly removed, while a trespasser who has entered land with force and violence may be removed without a previous request to depart.
16. If the trespasser does not leave the land the possessor of the land may use no more force than is reasonably necessary to evict him or her. Private bailiffs may be used to carry out the eviction. The issue of what is 'reasonable force' is a question of fact to be decided in each individual case, however it must be an honestly held belief that in the particular circumstances the force that is used is reasonable, rather than excessive. Use of excessive force could give rise to a claim against the landowner by the trespassers.
17. Whenever a landowner is considering the use of common law rights he/she should notify the police of his/her intentions so that police officers can be present to prevent any breach of the peace.
18. If the police advise that, in the particular circumstances, it is inappropriate to attempt an eviction, action should always be delayed until such time as the police believe that it is safe to continue.
19. Parliament provides strong statutory powers to local authorities to enable them to deal with incidents of unauthorised camping under Section 77 of the Criminal Justice and Public Order Act 1994. The civil courts also offer an avenue to deal with unauthorised camping under Civil Procedures Rules Part 55.

Part 55 Civil Procedures Rules

20. Part 55 of Civil Procedure Rules allow any landowner to regain possession of his/her land. Where the land is leased, the terms of the lease will determine who has this power – long-lessees and many short-lessees will be responsible for evictions, where they are "person entitled to occupation of the land". Someone with only the right, or permission, to use the land (i.e. who does not have a controlling interest in it, for instance someone with the right to graze livestock) would not generally be able to recover possession of the land in this way if it is trespassed upon.
21. The first step is for the landowner to ask the trespassers to leave the land. If they refuse to do so, or ask to be allowed to remain for what the landowner considers to be an unacceptable time period, the landowner can then begin action against the unauthorised campers through the County Court.

22. If the objective is to achieve eviction as rapidly as possible, the landowner should alert the County Court to the need for expediting the case as soon as they are aware of the encampment's arrival.
23. The landowner completes the relevant documentation, including any evidence in relation to the encampment (photographs, witness statements and so on) and presents this to the court manager in the County Court. A date for a hearing is then agreed.
24. The Court then provides the landowner with the claim form to serve on the defendants (the papers can be issued to "persons unknown" if it is not possible to ascertain the identities of the unauthorised campers). Service of the claim form can then be made by the landowner or his appointed representative (process servers can be employed to carry this out) either by handing the claim to the unauthorised campers directly, or by posting the claim in a prominent position on the land if this is not possible.
25. At the hearing, the facts of the case are set out before the judge. The landowner should provide documentation which satisfies the judge that the landowner has a legitimate interest in the land. The judge will be concerned to establish that the unauthorised campers have been dealt with appropriately before granting an eviction order but, thus satisfied, may grant the order immediately. In some cases, for instance, where the defendants have attended the hearing to defend the claim, the hearing may be adjourned to allow more time for more evidence to be gathered.
26. If the defendant fails to leave the land by the date of the hearing and the judge has agreed to grant possession to the landowner, a warrant will be issued immediately. Bailiffs (who will be court-appointed in most circumstances) will then visit the encampment and notify the defendant(s) of the eviction date and time and provide them with the eviction notice. Once again, this may be handed directly to the unauthorised campers or posted prominently on the land.
27. On the date of the eviction (which must be at least twenty four hours from the time at which the notice of eviction was served) the landowner or his appointed representative will accompany the bailiff to witness the eviction. The police should be alerted so that they can provide appropriate advice and be on hand to ensure that there are no breaches of the peace. After the eviction has taken place the land owner will then sign the warrant of possession to acknowledge that he has regained possession of the land (if court bailiffs are not available to carry out the eviction, private bailiffs may be employed in this capacity).
28. It should be noted that, where the landowner is a local authority or other public body, the necessary welfare assessments should be carried out alongside the court procedures and should be completed before any eviction is carried out.
29. Further details of the court procedures and forms can be found on line at:
http://www.dca.gov.uk/civil/procedures_fin/index.htm

Sections 77-78 Criminal Justice and Public Order Act

30. **Section 77** of the CJPOA gives local authorities the power to direct individuals to remove their vehicles and belongings and to leave highway land, or any land occupied without the consent of the landowner, whether owned by the local authority itself or by any other public or private landowner.

31. Before commencing any action to evict an unauthorised encampment, local authorities have an obligation to carry out welfare assessments of the unauthorised campers. This may necessitate the involvement of local NHS bodies, where health issues are apparent.
32. Local authorities may then draw up a Direction which instructs the unauthorised campers to leave on a particular date and time. This document is approved and signed by an authorised signatory of the local authority (usually a solicitor or legal executive employed by the authority). It also identifies either individuals or vehicles on the unauthorised encampment.
33. The Direction is then served on the unauthorised campers by a local authority officer (the document must be given directly to one of the named unauthorised campers or affixed prominently to one of the vehicles).
34. If the campers have failed to move and/or remove any vehicles and other property by the date specified in the Direction, or return to the same location within three months of the date of the Direction, they are then committing a criminal offence and may be arrested by the police. If a prosecution is successful they may then be given a custodial sentence of up to three months, or be liable to a fine of up to £1,000.
35. In practice however, it can be more effective for local authorities to pursue unauthorised campers who have contravened a direction under Section 77 by using their powers under **Section 78** of the CJPOA. This allows local authorities to advise the Magistrates' Court of the contravention and, if the court is satisfied, then they may grant an Order for Removal of Persons and Vehicles.
36. In the first instance, the Listing Clerk at the Magistrates' Court should be contacted in order to obtain a date for a court hearing, which is required before the Order can be issued. Depending on the location of the encampment, the local authority may ask the court to expedite the process so that the unauthorised campers can be moved quickly.
37. The appropriate local authority officer then attends the Application Court to make an application for a summons, which can be issued immediately. This summons requires the person(s) in charge of the caravan(s) to appear before a court hearing to answer the complaint.
38. The summons is then served on the unauthorised campers by the appropriate local authority officer or by a process server contracted to perform this service for the local authority.
39. A hearing in the Magistrates' Court is set for later in the day on which the summons is served, or on the following working day. A solicitor must appear at the hearing on behalf of the local authority. Good practice indicates that, where possible, the same solicitor should be used in all court proceedings relating to unauthorised camping by Gypsies and Travellers so that they have a good working knowledge of the legislation. The solicitor should be provided with all of the necessary court documents as well as any relevant background information (the findings of welfare enquiries for example). The solicitor will request that the magistrate grants an Order for Removal of Vehicles and Persons.

40. If the unauthorised campers attend the hearing and contest the eviction, the case may be adjourned in order to allow time to hear all the evidence. However, if the magistrate is satisfied that the correct procedures have been followed, the Order will be granted immediately in normal circumstances.
41. Once granted, the Order should be served on the unauthorised campers as soon as possible by a local authority officer or process server, as above.
42. Twenty-four hours must be allowed to elapse between serving the Order and any action to remove the unauthorised campers. At any point thereafter, the local authority (or private bailiffs employed on their behalf) may remove the unauthorised campers and their vehicles from the land. As with any eviction, police should be present to ensure that no breach of the peace takes place.

Sections 61-62 Criminal Justice and Public Order Act

43. If the landowner or his agent has asked the unauthorised campers to leave the land by a particular date and time, and they have failed to do so, and any of the three following conditions have also been met:
 - the unauthorised campers have caused damage to the land or property on the land;
 - they have used threatening, abusive or insulting words or behaviour to the occupier, a member of his family or his employee or agent;
 - there are six or more vehicles on the land.
44. The police can use Section 61 of the CJPOA to direct unauthorised campers to leave the site. They can do this without reference to the courts.
45. The initial step is for the landowner to make a formal request to the police that they use their powers under the CJPOA.
46. A senior police officer then considers whether it is appropriate to use the power, based on various factors:
 - whether there are there other activities on the encampment, such as serious breaches of the peace, disorder, criminal activity or anti-social behaviour which would necessitate police involvement under their wider powers;
 - given the impact of the unauthorised encampment on the environment and the local settled community, is it reasonable and proportionate to use police powers;
 - is action by the police legally sustainable;
 - are sufficient resources available.
47. Although case law (*R v The Commissioner of the Metropolitan Police ex p. Small*) has established that police officers are not under any obligation to undertake welfare enquiries with unauthorised campers, they must be aware of humanitarian considerations when considering action to remove an encampment. The joint ODPM/Home Office document 'Guidance on managing unauthorised camping' recommends that local authorities should be involved in the process.

48. Once a decision to use police powers is made, a uniformed police officer visits the encampment and advises the occupiers that they are required to leave by a certain date and time, and provides them with a copy of the legislation. The police may determine the period of notice to the unauthorised campers to leave, and this may be hours or days. The police may also videotape their visit to the encampment in case of later challenge or dispute.
49. If the unauthorised campers fail to leave by the date and time specified by the police officer, or return to that location within three months of the direction, they are then committing an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £2,500. Further, if a direction issued under Section 61 is contravened, a police officer may then seize and remove the vehicles under **Section 62** of the CJPOA. Vehicles would be impounded in an appropriate police facility with a fee payable for their return.

Section 62A-E Criminal Justice and Public Order Act

50. **Section 62A** of the CJPOA allows the police to direct trespassers to remove themselves and their vehicles and property from land where a suitable pitch on a relevant caravan site is available within the same local authority area (or within the county in two-tier local authority areas).
51. A suitable pitch on a relevant caravan site is one which is situated in the same local authority area as the land on which the trespass has occurred, and which is managed by a local authority, registered social landlord, or other person or body as specified by order by the Secretary of State. In two tier authority areas, where a district council is situated within a wider county council area, the relevant caravan site may be anywhere within the county council area.
52. The power may be used where the following conditions are met:
- at least two persons are trespassing;
 - the trespassers have between them at least one vehicle on the land;
 - the trespassers are present on the land with the common purpose of residing there for any period;
 - it appears to the officer that the person has one or more caravans in his possession or under his control on the land, and that there is a suitable pitch on a relevant caravan site for that caravan or each of those caravans;
 - the occupier of the land (i.e. the freehold owner or lessee), or a person acting on the occupier's behalf has asked the police to remove the trespassers from the land.
53. If the unauthorised campers do not leave when directed to do so under **Section 62A**, or if they return to the district within three months after being directed, they are committing an offence, and the police may then use their powers under **Section 62B** of the CJPOA to arrest and detain them. If the campers are subsequently convicted of an offence under the Act, they may then be subject to a custodial sentence of not more than three months, or a fine not exceeding level 4 on the standard scale (currently, a maximum of £2,500).

54. The police may also use their powers under **Section 62C** of the CJPOA to seize and remove the vehicles and property from the land. Vehicles would be impounded in an appropriate police facility with a fee payable for their return.
55. Local authorities will need to confirm that appropriate alternative pitches are available in the area before the police use their powers (note the duty to consult local authorities within the area under Section 62A (5)) and, as with Section 61 of the CJPOA, it is good practice for local authorities to be involved in the process to ensure that any welfare needs are identified.
56. Specific guidance on the use of ss.62A-E powers was issued in March 2005, and is available on the ODPM website at:

www.odpm.gov.uk/gypsysites

Choosing the Most Appropriate Power

57. The powers set out above all have different characteristics, and accordingly will be appropriate for different circumstances. The questions set out below will help agencies to determine the most appropriate power to use in different circumstances. In addition to the information that is provided here on relevant powers, it is important for the relevant enforcement provisions to be considered carefully in each situation to ensure that all requirements can be met. Local authorities and police forces should also agree protocols so that an overall policy and clear lines of responsibility are in place before the need for action arises.
58. The questions set out below will help agencies to determine the most appropriate power to use in different circumstances.

How important is speed?

59. It is unlawful for Gypsies and Travellers to camp on land they do not own without the landowner's permission. There are locations where immediate action to remove them should be taken because the presence of the encampment is seriously disrupting the ability of the settled community to make use of facilities or to conduct their business, for instance:
- on school grounds during term time;
 - on urban parks;
 - on business or retail parks.
60. Similarly, swift action should be taken where the encampment is located on contaminated land or where the encampment is very close to a busy highway, potentially endangering the health and safety of the campers and others, or on land of a particularly sensitive nature, a Site of Special Scientific Interest (SSSI) for example.
61. In the above circumstances, Section 61 of the CJPOA is likely to be the most appropriate power, provided that the conditions for its use are met. The police can act immediately without reference to the courts, and can direct travellers to leave the site within a matter of hours. Clearly, this course of action will be more effective if there is an alternative site to which Gypsies and Travellers can be directed, either pitches on an authorised transit site, or a location which is deemed to be a more "acceptable" unauthorised site.

Are there problems on the encampment such as anti-social behaviour, public disorder and so on?

62. In these circumstances it will be appropriate for the police to deal with these issues directly using their wider powers, and for them to disperse the encampment using S61 or S62A.

Is it desirable to evict some but not all the trespassers?

63. If the anti-social behaviour is focused amongst particular individuals in the group, or if a member of the group is ill, it may be appropriate to take action to evict some people but not others. In this case it may be most effective to use the powers under ss. 77-78 CJPOA, which focus on named individuals or vehicles, or to use the police powers.

Is the group of unauthorised campers stable, or are different vehicles arriving and departing?

64. Where the occupants of an unauthorised encampment change frequently, it may be more effective to use Civil Procedures Rules Part 55, which relate to the land itself, rather than the powers under the CJPOA, which require the individuals or vehicles on the encampment to be identified. Where these change, a new direction will have to be drawn up.

Do the unauthorised campers present welfare issues?

65. Local authority officers should conduct thorough welfare enquiries when a new encampment of Gypsies and Travellers arrives in the area. Where pressing needs for particular services are identified as part of the local authority's enquiries, relevant departments or external agencies should be contacted in order to meet these needs as appropriate (health services, social services, housing departments and so on).
66. If necessary, removal of the encampment could be delayed while urgent welfare needs are addressed (unless, as above, the site on which the unauthorised campers are using is particularly sensitive or hazardous, in which case the unauthorised campers should be asked to relocate to a more appropriate location in the vicinity). Further, it may be possible to negotiate a date for the encampment to leave if, for instance, the Gypsies and Travellers have camped in the vicinity for a specific purpose; in order to attend an outpatient's appointment at the local hospital for example.

Is enforcement necessary?

67. If the Gypsies and Travellers are cooperative, only wish to stay for a short time and the encampment is not in a sensitive location, it may only be necessary to monitor the situation pending their departure. It may also be appropriate to provide the unauthorised campers with some means of disposing of rubbish and waste in order to minimise clear-up costs when they have left.

Is the decision to evict likely to be challenged?

68. In this case it may be appropriate to use Part 55 Civil Procedures Rules so that a judge can affirm the decision to evict based on the available evidence.

Are there suitable pitches available on relevant sites in the local authority area to which the unauthorised campers might go?

69. If this is the case, s. 62A of the CJPOA can be used.

Do particular groups repeatedly return to the area?

70. In this case it may be appropriate for the police to use their powers under Section 62A, where there are suitable pitches available in the area. Section 62A can prevent campers returning to anywhere in the local authority area for a period of three months.
71. Where groups return to a specific location, ss. 61-62 and 77-78 can be used to prevent them returning to that location for a period of three months. It may also be appropriate to explore further options such as injunctions or Anti-Social Behaviour Orders.

Speeding up the Process

Making authorised provision

72. Enforcement action will be quicker and more effective, and a wider range of powers can be used, where appropriate authorised provision is made for Gypsies and Travellers within the area. The Housing Act 2004 requires local authorities to undertake accommodation needs assessment for Gypsies and Travellers who reside in or resort to their areas, and then to set out a strategy to meet those needs. Adequate provision will have wide benefits in the management of unauthorised camping as:
- there will be less unauthorised camping in the first place;
 - the police will not be restricted in the use of ss. 62A-E CJPOA if suitable pitches are available;
 - legal challenges are less likely to occur or succeed;
 - the courts are more likely to grant possession orders to local authorities who show they are acting responsibly in carrying out their wider duties and who deal with each incident of unauthorised camping on its merits.

Being prepared

73. Arrangements should be reached in advance, both within local authorities and the police themselves, but also between the parties, about how cases of unauthorised camping will be dealt with.
74. Local authorities should ensure that reports of unauthorised camping can be acted upon swiftly. They should nominate a named officer who has the appropriate level of authority to make operational decisions on the ground, and cover arrangements should be put in place for those instances where this officer is unavailable.
75. Procedures should be agreed with each agency that will be involved in the eviction process (including the police and those departments and agencies that may be called upon for assistance as a consequence of welfare enquiries). Good working relations, and clear lines of responsibility, particularly between the local authority and the police, can do a great deal to speed the processes up. Some areas that use police powers effectively have units staffed by both local authority employees and police officers.

Avoiding legal challenge

76. Considerable delays can occur if the unauthorised campers mount a legal challenge to the eviction. In some cases, this may be as part of a court process. However, a challenge can also be mounted to any public body via judicial review on the grounds that its decision-making was flawed. However, this risk can be minimised.
77. Local authorities should ensure that, in accordance with their wider obligations, and to ensure that they comply with Human Rights legislation, proper welfare enquiries are carried out to determine whether there are pressing needs presented by the unauthorised campers and that, where necessary, the appropriate agencies are involved as soon as possible.

78. Local authorities should also ensure that they follow proper procedures in dealing with an unauthorised encampment, and that their actions are fully documented. Comprehensive advice is set out in, *Managing Unauthorised Camping*, jointly issued by ODPM and Home Office, and available on the ODPM website at:

www.odpm.gov.uk/gypsiesites

79. Local authorities should also prepare carefully for court appearances, making sure that evidence/court papers etc are in order, and that all legal requirements (such as serving notices) have been met.

Working with the courts

80. Local authorities should maintain regular contact with their local court service and discuss with them in advance any issues that are expected to arise. It may also be helpful for local authority officers to join the Court User Group, which is a forum for discussing new legislation, and provides opportunities to raise issues such as court practice.
81. When unauthorised camping takes place and it is deemed that court action is appropriate, the court should be advised of any intention to file an application immediately (without waiting until all the paperwork is complete), so that the date for a hearing can be expedited.

Keeping Costs Down

82. Speeding up the enforcement process will in itself help to keep costs down, so the points set out in the previous section will be relevant here as well. In addition, the following points should be considered.

Avoiding unnecessary enforcement action

83. Before taking action, landowners should consider whether enforcement is absolutely necessary. It may be that in certain circumstances, alternatives to eviction action are appropriate, for example:
- where unauthorised campers have chosen an unobtrusive location in which to camp it may be preferable to agree a departure date with them;
 - where unauthorised campers have chosen to stop in an unacceptable location, but where the local authority has also identified a location in the vicinity which would be much less damaging or obtrusive, unauthorised campers could be encouraged to move to this location.
84. If eviction is deemed necessary, in many cases the trespassers will leave after being served with an initial notice under Part 55 or a direction under the CJPOA powers, and no further enforcement action will be needed.

Avoiding unnecessary clean-up costs

85. Waste clearance from sites that have been used as unauthorised encampments should be undertaken rapidly in order to minimise the amount of fly-tipping that may take place after the encampment has gone. Where they can be identified, fly-tippers can also be fined for depositing waste illegally.

Avoiding unnecessary legal costs

86. Expertise and legal advice relating to unauthorised camping may be available from the district or county council, and landowners, parish councils and so on are advised to ensure that they have consulted with these bodies before taking further action. Good practice guidance and general advice on the management of unauthorised camping is also available from the ODPM, although the Department is not able to offer definitive legal advice on specific cases.
87. Local authorities should consider which parts of the enforcement process may be appropriately carried out by their own staff, as this is likely to be cheaper than contracting the work out to others. However, the local authority will wish to satisfy itself that their staff have the necessary expertise, and that their safety can be assured.

The Eviction Process

88. Where an eviction is being carried out by a local authority, its appointed representatives or the police, a local authority officer should always attend, as the local authority may have obligations to offer assistance to those who have been evicted, due to their wider social responsibilities. This may include temporarily caring for children where parents or guardians have been arrested and held in custody, or offering alternative accommodation to those Gypsies and Travellers who are identified as being homeless and in priority need.
89. Local authorities should also ensure that the appropriate departments, such as housing, social services, education and NHS bodies are made aware of the eviction and are in a position to be able to respond swiftly to any requests for assistance. If unauthorised campers have pets or livestock it may also be appropriate to involve the relevant bodies, the RSPCA for instance, in finding appropriate accommodation for them.
90. If an eviction is being carried out by a local authority or bailiffs, the police should be advised at an early stage so that they can advise and assist in relation to the issue of personal safety in order to minimise the possibility of physical harm. Police should also be on hand when an eviction is taking place in order to ensure that breaches of the peace do not occur. If the police recommend that the eviction should not proceed for any reason, action should be delayed until an agreed time.
91. If private bailiffs are to be used to evict unauthorised campers, stringent vetting should take place to ensure that those employed in this capacity are appropriately qualified to do so. The bailiffs should also indemnify the landowner against any potential liability (in terms of further costs incurred due to possible legal action) in respect of their activities to evict the unauthorised campers.
92. Wherever possible, the forthcoming eviction should be discussed with those on the encampment, and they should be notified of the date and time for the eviction. This will give those on the encampment time to prepare to leave, and will help to ensure that the eviction runs as safely and smoothly as possible.
93. However, there may be circumstances in which this is not appropriate – for example where those on the encampment have announced their intention of violently resisting the eviction. In this case it will be essential that the eviction is thoroughly planned, with the full involvement of the police at an early stage, and that every care is taken to ensure the safety of everyone involved.

Preventing Further Unauthorised Camping

Following up on enforcement action

94. Where a particular group of Gypsies and Travellers repeatedly camp in a specific location, and the police or the local authority have used their powers under the CJPOA to remove them, it is important that the criminal sanctions set out in the legislation are pursued if the unauthorised campers return within three months of being directed to leave.

Other legal action

95. Other legal remedies such as injunctions and Anti-Social Behaviour Orders (ASBOs) may be used to prevent Gypsies and Travellers from returning to an area where they have caused problems in the past. Local authorities may be able to obtain these remedies at the same time as taking court action for possession or eviction. Guidance on their use can be found at:

www.together.gov.uk/home.asp

96. If injunctions or ASBOs are obtained to prevent unauthorised camping by particular groups, it is important that breaches are followed up with the appropriate legal sanctions, such as fines or imprisonment.

Provision of appropriate sites

97. The most effective method of combating unauthorised camping is to provide sites in accessible locations for those Gypsies and Travellers who pass through the area. This may not be limited to official residential and transit sites; it might also include particular locations which have been identified in the district where Gypsies and Travellers can stop for limited and agreed short periods of time, without having any adverse impact on the settled community.

Site protection measures

98. Site protection measures could also be considered in locations which are particularly vulnerable to unauthorised camping, for instance by creating earth bunds, or embankments, around the site, or by introducing height restrictions to entrances.

Additional Sources of Information

Part 55 Possession Claims – Department for Constitutional Affairs guidance, available on the internet at: www.dca.gov.uk/civil/procrules_fin/contents/parts/part55.htm#4223902

Guidance on Managing Unauthorised Camping – ODPM/Home Office joint guidance, available on the internet at: www.odpm.gov.uk/stellent/groups/odpm_housing/documents/page/odpm_house_027535.hcsp

Additional Guidance on Sections 62A-E CJPOA:
www.odpm.gov.uk/stellent/groups/odpm_housing/documents/page/odpm_house_035805.hcsp

Information on the Government's Policies relating to Gypsies and Travellers:
www.odpm.gov.uk/gypsysites

Information on HM Courts Service: www.hmcourts-service.gov.uk/cms/aboutus.htm

Information on tackling anti-social behaviour in the community: www.together.gov.uk

Information on fly-tipping: www.defra.gov.uk/environment/localenv/flytipping/index.htm

Glossary of Terms

Breach of the Peace – a disturbance of public peace or order. Traditionally, one of the roles of the police is to “keep the peace”. Breach of the peace is a common law offence.

Common Law – law determined as a result of decisions made by the courts as distinct from law laid down by statute.

Civil Offence – civil law governs the relationships and transactions between citizens set out in statute and common law. The majority of civil actions are heard in the 218 county courts, where cases are presided over by a district judge.

Criminal Offence – criminal law mostly involves the rules laid down by the state concerning the conduct of citizens. Most minor criminal cases, called summary offences, are heard in local Magistrates’ Courts either by a panel of lay magistrates assisted by a legally-trained clerk, or by a legally-trained district judge sitting alone. The most serious offences, called indictable-only offences, are passed on by the Magistrates’ Courts to the Crown Court to be heard, usually by a judge and jury. Only Crown Court judges have the power to pass sentences above a certain level of severity, and so some cases may be transferred from Magistrates’ Courts for sentencing once a verdict has been reached. There are 78 Crown Court centres throughout England and Wales.

County Court – the court which deals with the majority of civil actions. Cases are presided over by a district judge.

County Court bailiff – they are employees of the County Court, and enforce County Court Judgements, such as warrants of execution for debts. They also have a role in evictions of unauthorised campers under Civil Procedures Rules Part 55.

Fly-Tipping – the illegal and unauthorised dumping of waste.

Human Rights Act – an Act passed in 1998, and brought into force in October 2000, which requires all public authorities making decisions that affect individuals to consider whether those decisions are reasonable and proportionate, bearing in mind all the circumstances.

Injunction – an order made by a Civil Court (County or High Court) which usually prohibits a somebody from doing something, based on the fact they have done it before, usually seriously and/or often. If an injunction is breached, the person can be fined or imprisoned for a contempt of the court by not according with the terms of the injunction.

Magistrates’ Court – the lowest kind of criminal court in England and Wales and other common law jurisdictions. A Magistrate’s Court is presided over by two or more Justices of the Peace (magistrates), or by a stipendiary magistrate, and dispenses summary justice, under powers usually limited by statute. The court will also determine committals to the Crown Court.

Private Bailiff (or Enforcement Agent) – someone who is responsible for the enforcement of court orders. Private landowners can also use them where there is no court order. Employed in the private sector. Private bailiffs can also be used to evict unauthorised campers following court proceedings under Civil Procedures Rules Part 55 where court bailiffs are not available.

Process Server – a privately employed individual who personally delivers a process (a writ compelling attendance in court) or court papers to a defendant (process servers are normally employees of private investigation companies).

Protocol – an agreement of an approach, usually between various different public bodies.

Site of Special Scientific Interest – this is a planning policy definition, and it is the name given to specific pieces of land which should not be disturbed or developed. They may be the home of, or an area resorted to by, a rare or protected animal or bird, the site may include a rare type of vegetation, or the land may contain a special geological feature or something else unique. By definition, they must not have houses, caravan sites or other development on them.

Statutory Powers – powers given by an Act of Parliament, as distinct from powers under common law.

Title (to land) – the evidence of someone's ownership of a piece of land, based on tracing the history of it, and showing legal transfer of ownership to them.

Tort – a civil wrong committed by one person against another (e.g. trespassing on their land).

Unauthorised development – development of a site on land owned by Gypsies and Travellers, but for which they do not have planning permission.

Unauthorised encampment – trespassing by Gypsies and Travellers on land which they do not own (e.g. playing fields, farmers' fields or other private land).

Welfare Assessments – action carried out by local authority officers with unauthorised campers to identify and address any issues that require the involvement of other local authority departments and agencies in terms of immediate health, education etc needs.

Appendix – Primary Legislation

Criminal Justice and Public Order Act 1994

Part V

Public Order: Collective Trespass or Nuisance on Land

Powers to remove trespassers on land.

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

(a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or

(b) that those persons have between them six or more vehicles on the land, he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

(2) Where the persons in question are reasonably believed by the senior police officer to be persons who were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after those persons became trespassers before he can exercise the power conferred by that subsection.

(3) A direction under subsection (1) above, if not communicated to the persons referred to in subsection (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.

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

(a) fails to leave the land as soon as reasonably practicable, or

(b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given, he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

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

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

- (a) that he was not trespassing on the land, or
- (b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

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

- (a) references to trespassing or trespassers were references to acts and persons doing acts which constitute either a trespass as against the occupier or an infringement of the commoners' rights; and
- (b) references to "the occupier" included the commoners or any of them or, in the case of common land to which the public has access, the local authority as well as any commoner.

(8) Subsection (7) above does not—

- (a) require action by more than one occupier; or
- (b) constitute persons trespassers as against any commoner or the local authority if they are permitted to be there by the other occupier.

(9) In this section—

- "common land" means common land as defined in section 22 of the [1965 c. 64.] Commons Registration Act 1965;
- "commoner" means a person with rights of common as defined in section 22 of the [1965 c. 64.] Commons Registration Act 1965;
- "land" does not include—
 - (a) buildings other than—
 - (i) agricultural buildings within the meaning of, in England and Wales, paragraphs 3 to 8 of Schedule 5 to the [1988 c. 41.] Local Government Finance Act 1988 or, in Scotland, section 7(2) of the [1956 c. 60.] Valuation and Rating (Scotland) Act 1956, or
 - (ii) scheduled monuments within the meaning of the [1979 c. 46.] Ancient Monuments and Archaeological Areas Act 1979;
 - (b) land forming part of—
 - (i) a highway unless it falls within the classifications in section 54 of the [1981 c. 69.] Wildlife and Countryside Act 1981 (footpath, bridleway or byway open to all traffic or road used as a public path) or is a cycle track under the [1980 c. 66.] Highways Act 1980 or the [1984 c. 38.] Cycle Tracks Act 1984; or

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

- “the local authority”, in relation to common land, means any local authority which has powers in relation to the land under section 9 of the Commons Registration Act 1965;
- “occupier” (and in subsection (8) “the other occupier”) means—
 - (a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him; and
 - (b) in Scotland, the person lawfully entitled to natural possession of the land;
- “property”, in relation to damage to property on land, means—
 - (a) in England and Wales, property within the meaning of section 10(1) of the [1971 c. 48.] Criminal Damage Act 1971; and
 - (b) in Scotland, either—
 - (i) heritable property other than land; or
 - (ii) corporeal moveable property,
- and “damage” includes the deposit of any substance capable of polluting the land;
- “trespass” means, in the application of this section—
 - (a) in England and Wales, subject to the extensions effected by subsection (7) above, trespass as against the occupier of the land;
 - (b) in Scotland, entering, or as the case may be remaining on, land without lawful authority and without the occupier’s consent; and
- “trespassing” and “trespasser” shall be construed accordingly;
- “vehicle” includes—
 - (a) any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and
 - (b) a caravan as defined in section 29(1) of the [1960 c. 62.] Caravan Sites and Control of Development Act 1960; and a person may be regarded for the purposes of this section as having a purpose of residing in a place notwithstanding that he has a home elsewhere.

Supplementary
powers of seizure.

62.—(1) If a direction has been given under section 61 and a constable reasonably suspects that any person to whom the direction applies has, without reasonable excuse—

(a) failed to remove any vehicle on the land which appears to the constable to belong to him or to be in his possession or under his control; or

(b) entered the land as a trespasser with a vehicle within the period of three months beginning with the day on which the direction was given, the constable may seize and remove that vehicle.

(2) In this section, “trespasser” and “vehicle” have the same meaning as in section 61.

Powers to remove unauthorised campers

Power of local authority to direct unauthorised campers to leave land.

77.—(1) If it appears to a local authority that persons are for the time being residing in a vehicle or vehicles within that authority’s area—

(a) on any land forming part of a highway;

(b) on any other unoccupied land; or

(c) on any occupied land without the consent of the occupier, the authority may give a direction that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they have with them on the land.

(2) Notice of a direction under subsection (1) must be served on the persons to whom the direction applies, but it shall be sufficient for this purpose for the direction to specify the land and (except where the direction applies to only one person) to be addressed to all occupants of the vehicles on the land, without naming them.

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

(a) fails, as soon as practicable, to leave the land or remove from the land any vehicle or other property which is the subject of the direction, or

(b) having removed any such vehicle or property again enters the land with a vehicle within the period of three months beginning with the day on which the direction was given, he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A direction under subsection (1) operates to require persons who re-enter the land within the said period with vehicles or other property to leave and remove the vehicles or other property as it operates in relation to the persons and vehicles or other property on the land when the direction was given.

(5) In proceedings for an offence under this section it is a defence for the accused to show that his failure to leave or to remove the vehicle or other property as soon as practicable or his re-entry with a vehicle was due to illness, mechanical breakdown or other immediate emergency.

(6) In this section—

“land” means land in the open air;

“local authority” means—

(a) in Greater London, a London borough or the Common Council of the City of London;

(b) in England outside Greater London, a county council, a district council or the Council of the Isles of Scilly;

(c) in Wales, a county council or a county borough council;

“occupier” person entitled to possession of the land by virtue of an estate or interest held by him;

“vehicle” includes—

(a) any vehicle, whether or not it is in a fit state for use on roads, and includes any body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and

(b) a caravan as defined in section 29(1) of the [1960 c. 62.] Caravan Sites and Control of Development Act 1960; and a person may be regarded for the purposes of this section as residing on any land notwithstanding that he has a home elsewhere.

(7) Until 1st April 1996, in this section “local authority” means, in Wales, a county council or a district council.

Orders for removal of persons and their vehicles unlawfully on land.

78.—(1) A magistrates’ court may, on a complaint made by a local authority, if satisfied that persons and vehicles in which they are residing are present on land within that authority’s area in contravention of a direction given under section 77, make an order requiring the removal of any vehicle or other property which is so present on the land and any person residing in it.

(2) An order under this section may authorise the local authority to take such steps as are reasonably necessary to ensure that the order is complied with and, in particular, may authorise the authority, by its officers and servants—

(a) to enter upon the land specified in the order; and

(b) to take, in relation to any vehicle or property to be removed in pursuance of the order, such steps for securing entry and rendering it suitable for removal as may be so specified.

(3) The local authority shall not enter upon any occupied land unless they have given to the owner and occupier at least 24 hours notice of their intention to do so, or unless after reasonable inquiries they are unable to ascertain their names and addresses.

(4) A person who wilfully obstructs any person in the exercise of any power conferred on him by an order under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Where a complaint is made under this section, a summons issued by the court requiring the person or persons to whom it is directed to appear before the court to answer to the complaint may be directed—

(a) to the occupant of a particular vehicle on the land in question; or

(b) to all occupants of vehicles on the land in question, without naming him or them.

(6) Section 55(2) of the [1980 c. 43.] Magistrates' Courts Act 1980 (warrant for arrest of defendant failing to appear) does not apply to proceedings on a complaint made under this section.

(7) Section 77(6) of this Act applies also for the interpretation of this section.

Provisions as to directions under s. 77 and orders under s. 78.

79.—(1) The following provisions apply in relation to the service of notice of a direction under section 77 and of a summons under section 78, referred to in those provisions as a “relevant document”

(2) Where it is impracticable to serve a relevant document on a person named in it, the document shall be treated as duly served on him if a copy of it is fixed in a prominent place to the vehicle concerned; and where a relevant document is directed to the unnamed occupants of vehicles, it shall be treated as duly served on those occupants if a copy of it is fixed in a prominent place to every vehicle on the land in question at the time when service is thus effected.

(3) A local authority shall take such steps as may be reasonably practicable to secure that a copy of any relevant document is displayed on the land in question (otherwise than by being fixed to a vehicle) in a manner designed to ensure that it is likely to be seen by any person camping on the land.

(4) Notice of any relevant document shall be given by the local authority to the owner of the land in question and to any occupier of that land unless, after reasonable inquiries, the authority is unable to ascertain the name

and address of the owner or occupier; and the owner of any such land and any occupier of such land shall be entitled to appear and to be heard in the proceedings.

(5) Section 77(6) applies also for the interpretation of this section.

Anti-Social Behaviour Act 2003

60. Power to remove trespassers: alternative site available

After section 62 of the Criminal Justice and Public Order Act 1994 (c. 33) insert – **“62A Power to remove trespassers: alternative site available.**

(1) If the senior police officer present at a scene reasonably believes that the conditions in subsection (2) are satisfied in relation to a person and land, he may direct the person-

- (a) to leave the land;
- (b) to remove any vehicle and other property he has with him on the land.

(2) The conditions are-

- (a) that the person and one or more others (“the trespassers”) are trespassing on the land;
- (b) that the trespassers have between them at least one vehicle on the land;
- (c) that the trespassers are present on the land with the common purpose of residing there for any period;
- (d) if it appears to the officer that the person has one or more caravans in his possession or under his control on the land, that there is a suitable pitch on a relevant caravan site for that caravan or each of those caravans;
- (e) that the occupier of the land or a person acting on his behalf has asked the police to remove the trespassers from the land.

(3) A direction under subsection (1) may be communicated to the person to whom it applies by any constable at the scene.

(4) Subsection (5) applies if-

- (a) a police officer proposes to give a direction under subsection (1) in relation to a person and land, and
- (b) it appears to him that the person has one or more caravans in his possession or under his control on the land.

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

(6) In this section-“caravan” and “caravan site” have the same meanings as in Part 1 of the Caravan Sites and Control of Development Act 1960;

“relevant caravan site” means a caravan site which is –

- (a) situated in the area of a local authority within whose area the land is situated, and
- (b) managed by a relevant site manager;

“relevant site manager” means –

- (a) a local authority within whose area the land is situated;
- (b) a registered social landlord;

“registered social landlord” means a body registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996.

(7) The Secretary of State may by order amend the definition of “relevant site manager” in subsection (6) by adding a person or description of person.

(8) An order under subsection (7) must be made by statutory instrument and is subject to annulment in pursuance of a resolution of either House of Parliament.”

61. Failure to comply with direction: offences

After section 62A of the Criminal Justice and Public Order Act 1994 (c. 33) (inserted by section 60) insert – **“62B Failure to comply with direction under section 62A: offences**

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

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

(2) The relevant period is the period of 3 months starting with the day on which the direction is given.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

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

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

- (a) that he was not trespassing on the land in respect of which he is alleged to have committed the offence, or
- (b) that he had a reasonable excuse-
 - (i) for failing to leave the relevant land as soon as reasonably practicable, or
 - (ii) for entering land in the area of the relevant local authority as a trespasser with the intention of residing there, or
- (c) that, at the time the direction was given, he was under the age of 18 years and was residing with his parent or guardian.”

62. Failure to comply with direction: seizure

(1) After section 62B of the Criminal Justice and Public Order Act 1994 (inserted by section 61) insert – “**62C Failure to comply with direction under section 62A: seizure**

(1) This section applies if a direction has been given under section 62A(1) and a constable reasonably suspects that a person to whom the direction applies has, without reasonable excuse-

- (a) failed to remove any vehicle on the relevant land which appears to the constable to belong to him or to be in his possession or under his control; or
- (b) entered any land in the area of the relevant local authority as a trespasser with a vehicle before the end of the relevant period with the intention of residing there.

(2) The relevant period is the period of 3 months starting with the day on which the direction is given.

(3) The constable may seize and remove the vehicle.”

(2) In section 67(1) (retention and charges for seized vehicles) after “section 62(1)” insert “, 62C(3)”.

63. Common land: modifications

After section 62C of the Criminal Justice and Public Order Act 1994 (c. 33) (inserted by section 62) insert – “**62D Common land: modifications**

(1) In their application to common land sections 62A to 62C have effect with these modifications.

- (2) References to trespassing and trespassers have effect as if they were references to acts, and persons doing acts, which constitute-
 - (a) a trespass as against the occupier, or
 - (b) an infringement of the commoners' rights.
- (3) References to the occupier-
 - (a) in the case of land to which the public has access, include the local authority and any commoner;
 - (b) in any other case, include the commoners or any of them.
- (4) Subsection (1) does not-
 - (a) require action by more than one occupier, or
 - (b) constitute persons trespassers as against any commoner or the local authority if they are permitted to be there by the other occupier.
- (5) In this section "common land", "commoner" and "the local authority" have the meanings given by section 61."

64. Interpretation

After section 62D of the Criminal Justice and Public Order Act 1994 (inserted by section 63) insert – **"62E Sections 62A to 62D: interpretation**

- (1) Subsections (2) to (8) apply for the interpretation of sections 62A to 62D and this section.
- (2) "Land" does not include buildings other than-
 - (a) agricultural buildings within the meaning of paragraphs 3 to 8 of Schedule 5 to the Local Government Finance Act 1988, or
 - (b) scheduled monuments within the meaning of the Ancient Monuments and Archaeological Areas Act 1979.
- (3) "Local authority" means-
 - (a) in Greater London, a London borough or the Common Council of the City of London;
 - (b) in England outside Greater London, a county council, a district council or the Council of the Isles of Scilly;
 - (c) in Wales, a county council or a county borough council.
- (4) "Occupier", "trespass", "trespassing" and "trespasser" have the meanings given by section 61 in relation to England and Wales.
- (5) "The relevant land" means the land in respect of which a direction under section 62A(1) is given.

(6) “The relevant local authority” means-

(a) if the relevant land is situated in the area of more than one local authority (but is not in the Isles of Scilly), the district council or county borough council within whose area the relevant land is situated;

(b) if the relevant land is situated in the Isles of Scilly, the Council of the Isles of Scilly;

(c) in any other case, the local authority within whose area the relevant land is situated.

(7) “Vehicle” has the meaning given by section 61.

(8) A person may be regarded as having a purpose of residing in a place even if he has a home elsewhere.”



Office of the
Deputy Prime Minister

Creating sustainable communities

Definition of the term 'gypsies and travellers' for the purposes of the Housing Act 2004

Consultation

February 2006



Definition of the term 'gypsies and travellers' for the purposes of the Housing Act 2004

Consultation

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The Consultation Criteria

The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

- 1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.**
- 2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.**
- 3. Ensure that your consultation is clear, concise and widely accessible.**
- 4. Give feedback regarding the responses received and how the consultation process influenced the policy.**
- 5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.**
- 6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.**

The full consultation code may be viewed at
www.cabinet-office.gov.uk/regulation/Consultation/Introduction.htm

Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact

Adam Bond, ODPM Consultation Co-ordinator
Room 2.19, 26 Whitehall
London, SW1A 2WH;
or by e-mail to:
adam.bond@odpm.gsi.gov.uk

Executive Summary

This consultation paper invites views on a proposed definition of 'gypsies and travellers' to apply in the context of regulations issued by ODPM under sections 225 and 226 of the Housing Act 2004.

The proposed definition builds on the 'planning definition' as set out in the Planning Circular 'Planning for Gypsy and Traveller Caravan Sites' (ODPM 01/2006) and extends this to capture a wider group whose accommodation needs have often been overlooked.

The key features of the two definitions are summarised below.

The planning definition:

- Has been confirmed through consultation.
- Has been broadened to include gypsies and travellers that have ceased travelling for health, educational or caring responsibilities.
- Is not based on ethnicity.
- Will be used to determine gypsy and traveller status for planning applications.

The proposed housing definition:

- Would be used to assess the level and nature of accommodation need in an area.
- Would cover all gypsies and travellers whether travelling or settled.
- Would cover ethnic gypsies and travellers.
- Would apply to gypsies and travellers generally, rather than individuals.

This consultation paper is being published on the ODPM website and sent to local housing authorities and related groups and organisations, and bodies representing gypsy and traveller communities for comment.

Consultation Questions

The proposed definition of 'gypsies and travellers' for the purposes of sections 225 and 226 of the Housing Act 2004 purposes is:

Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism and/or caravan dwelling.

- Does the proposed definition capture the right groups of people?
- Are there any unjustifiable disproportionate impacts on any ethnic minorities?

Responses

Please send your response, no later than 28 April 2006 to:

Katie Jones
Office of the Deputy Prime Minister
1/E8 Eland House
Bressenden Place
London
SW1E 5DU

Email to: katie.jones@odpm.gsi.gov.uk

If you have any queries regarding the consultation please email the above address or contact Katie Jones on 0207 944 3565.

Representative groups are asked to include a summary of the people and organisations they represent in their reply.

A summary of responses to this consultation will be published on the ODPM website:

www.odpm.gov.uk/housing/consult

Paper copies will be available on request.

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 ODPM.

The ODPM 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.

Introduction

1. Section 225 of the Housing Act 2004 contains provisions designed to address the accommodation needs of 'gypsies and travellers' alongside those of the rest of the community, and to ensure that local authorities take a strategic approach to assessing and meeting the accommodation needs of 'gypsies and travellers'.
2. Specifically, the Housing Act 2004 requires local authorities to undertake regular assessments of the needs of 'gypsies and travellers' either living in, or resorting to, their area, under the Local Housing Needs Assessment process as set out in section 8 of the Housing Act 1985. The Act also requires local authorities to include the needs of 'gypsies and travellers' in any housing strategy they produce in line with section 87 of the Local Government Act 2003, and to take any such strategy into account when they are exercising their other functions, such as planning, education and social care. Sections 225 and 226 are set out in Annex A.
3. Sub-section (5)(a) of section 225 provides that the term 'gypsies and travellers' has the meaning given by regulations made by the appropriate national authority. The Government is therefore consulting on a new definition of 'gypsies and travellers' which will apply when local authorities are carrying out accommodation assessments and preparing accommodation strategies in respect of this group.
4. Legislation requires the use of lower case (gypsies and travellers): for consistency and to avoid any presupposition as to the ethnicity of those who may be covered by the definition, that formulation is used throughout this document. It is recognised that the formulation Gypsies and Travellers is usually used, including in Government documents, which recognises the ethnic status of many members of this group.
5. **The purpose of this document is therefore to seek views on the definition of the term 'gypsies and travellers' for the purposes of sections 225 and 226 of the Housing Act 2004.**

Previous definitions

6. 'Gipsies' were first defined in legislation in Part II of the 1968 Caravan Sites Act. After the repeal of Part II of the 1968 Act by the Criminal Justice and Public Order Act (CJPOA) in 1994, the definition of 'gipsies' and the power for local authorities to provide facilities for them was inserted into the Caravan Sites and Control of Development Act (CSCDA) 1960. Under the CSCDA as amended by the CJPOA, local authorities have the power to provide caravan sites for anyone, but can provide additional working space and facilities for those people that fall under the definition of 'gipsy'.
7. This definition specifies that 'gipsies' are persons of nomadic habit of life, whatever their race or origin, although not including travelling showmen or circus people. This definition was further modified by case law (*R v South Hams District Council, ex p. Gibb* [1994] 4AER 1012) to specify that nomadism must be for the purposes of work. This definition has traditionally been referred to as the 'planning definition' to reflect its common use in planning cases to determine whether an individual can claim 'gipsy' status and have this status taken into account as a material consideration in the case.

The planning definition

8. The CSCDA definition has now effectively been superseded for planning purposes by a new definition set out in the Planning Circular 'Planning for Gypsy and Traveller Caravan Sites', ODPM 01/2006. The definition was amended following consultation in December 2004, and in recognition of the fact that many gypsies and travellers stop travelling permanently or temporarily because of health reasons or caring responsibilities, but still want to maintain their traditional caravan dwelling lifestyle.

9. The planning definition now covers:

Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.

10. The planning definition seeks to capture those with specific land use requirements arising from their current or past nomadic way of life. It is not based on ethnicity or cultural tradition, as many ethnic gypsies and travellers will not have an individual history of nomadism, and hence will have no associated land use requirements for a site. On the other hand, groups such as 'new travellers' who have a nomadic way of life may have such a requirement. To fall within the planning definition a person must either have or at some time have had a nomadic habit of life. Organised groups of travelling show people, or circus people, travelling together as such, fall under a separate Planning Circular (22/91 Travelling Showpeople) and as such are specifically excluded from this definition.

Why have different definitions?

11. Careful consideration has been given to whether it is possible to create a single definition. However, the function of the planning definition is very different from the function of the housing definition which is proposed here, and it is not possible to align the two completely.
12. The purpose of the planning system is to regulate the use and development of land in the public interest. It is, therefore, appropriate that the planning definition should be limited to those who can demonstrate that they have specific land use requirements arising from their nomadic way of life. The planning definition is relevant to the application of planning policies and the determination of applications for planning permission. In this context, having 'gypsy status', where it has implications for land use, can be a material consideration in the determination of planning applications.
13. The proposed housing definition is for a very different purpose. It is intended to be a pragmatic and much wider definition which will enable local authorities to understand the possible future accommodation needs of this group and plan strategically to meet those needs. It recognises that there will be movement between sites and bricks and mortar housing, and that an understanding of the full gypsy and traveller community, not just those who are currently travelling, is necessary in order for local authorities to meet their responsibilities and put proper strategic plans in place.

14. Falling within the housing definition does not confer a direct advantage on any individual. It does not in itself imply that that person 'should' live on a site, or has 'gypsy status' for planning purposes. It means that the individual belongs to a group whose accommodation needs must be assessed by the local authority. Once a need has been identified the local authority will then develop a strategy to meet it. However, there are a variety of ways in which gypsy and traveller accommodation needs may be met and the definition does not tie the local authority to specific solutions.
15. Although two separate definitions are necessary, there is a considerable amount of overlap in the groups that they need to capture, and the two definitions can be harmonised to a considerable extent. The proposed housing definition therefore builds on and extends the planning definition.

Proposed housing definition

16. The proposed housing definition is:

Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism and/or caravan dwelling.
17. The intention of this definition is to cover all those whose distinctive ethnicity, cultural background and/or lifestyle may give rise to specific accommodation needs, now or in the future, that need to be assessed and planned for.
18. A broad definition is necessary to achieve a full understanding of the accommodation needs of this community, and to put appropriate strategies in place to meet it. For example, gypsies and travellers in bricks and mortar housing may form part of the source of future site need and it will be essential to understand this. Assessing the needs of housed gypsies and travellers will also help in understanding any particular issues faced by this group. The process will help to identify how any problems can be overcome and the ways in which housing may be made to work better for them. This could reduce the numbers wishing to leave housing for sites, and encourage some of those currently on unauthorised sites to move into housing where that is a suitable option for them.
19. In some parts of the country 'new age travellers' form a substantial minority of the travelling population. Although these people have adopted a nomadic lifestyle relatively recently their needs should be assessed alongside those of the more traditional gypsy and traveller groups. To do otherwise would be to neglect the needs of part of the community, leading to practical problems and potential legal challenge. It should be noted that travelling showmen and circus people travelling together as such are not excluded from this definition and where there is a need for winter quarters for this group, it may make sense for local authorities to assess this need as part of the gypsy and traveller assessment process, as many of the issues will be similar.

20. It may not always be clear-cut whether a particular group falls within this definition. However, local authorities are reminded that the accommodation or housing needs of the whole community must be assessed under section 8 of the Housing Act 1985. Therefore, if the local authority decides that the accommodation needs of a particular group should not be assessed under section 225, they are nonetheless under a duty to assess those needs as part of the wider section 8 requirement. *The Housing Market Assessments – Draft guidance* on carrying out wider HMA's is available on the ODPM website: www.odpm.gov.uk/planning under 'Consultation Papers'.
21. The existence and scope of the housing definition do not imply any changes to the planning definition.

Accommodation Assessments

22. The proposed definition sets out whose accommodation needs should be assessed under section 225. Comprehensive guidance on carrying out gypsy and traveller accommodation assessments is available from ODPM. This guidance sets out:
- Why the assessment needs to be done.
 - What it should produce.
 - Whom it covers.
 - How it will differ from assessment for the settled community.
23. It also provides advice on carrying out the assessment, covering:
- Partnership working.
 - Deciding who should carry out the assessment.
 - The use of existing data sources.
 - The use of specialist surveys.
 - How to identify and access the 'gypsy and traveller' community.
 - What use should be made of the data once gathered.
24. This guidance forms a supplement to, and should be read in conjunction with, guidance on Housing Market Assessments, also available from ODPM.
25. Until regulations are in place setting out the definition of the term 'gypsies and travellers' for section 225 purposes, local authorities should follow the definition set out in this consultation paper and the guidance on 'gypsy and traveller' accommodation assessments. Both the guidance and the regulations will be finalised following this consultation.

Accommodation Strategies

26. Section 225 of the Housing Act 2004 also deals with the requirement on local authorities to include the accommodation needs of 'gypsies and travellers' in any housing strategies they produce in line with section 87 of the Local Government Act 2003. Guidance on producing these strategies will be issued for consultation in due course. Strategies will be based on dealing with the needs identified through accommodation assessments therefore, the same definition will be appropriate for both purposes.

Ethnicity of gypsies and travellers

27. Gypsies and Irish Travellers are recognised ethnic groups for the purposes of the Race Relations Act 1976. The proposed definition in this document has no effect on the ethnic status of Gypsies and Irish Travellers and they remain protected under Race Relations legislation. It also has no implications for the ethnicity of groups not currently covered by Race Relations legislation.

Race Impact Assessment

28. As part of this consultation, ODPM is gathering evidence to inform the completion of a Race Impact Assessment on the proposed definition. A final Race Impact Assessment will be published alongside the summary of responses to this consultation.

Annex A: Sections 225-226 of the Housing Act 2004

225 Duties of local housing authorities: accommodation needs of gypsies and travellers

(1) Every local housing authority must, when undertaking a review of housing needs in their district under section 8 of the Housing Act 1985 (c. 68), carry out an assessment of the accommodation needs of gypsies and travellers residing in or resorting to their district.

(2) Subsection (3) applies where a local housing authority are required under section 87 of the Local Government Act 2003 (c. 26) to prepare a strategy in respect of the meeting of such accommodation needs.

(3) The local authority who are that local housing authority must take the strategy into account in exercising their functions.

“Functions” includes functions exercisable otherwise than as a local housing authority.

(4) A local housing authority must have regard to any guidance issued under section 226 in -

(a) carrying out such an assessment as mentioned in subsection (1), and

(b) preparing any strategy that they are required to prepare as mentioned in subsection (2).

(5) In this section -

(a) “gypsies and travellers” has the meaning given by regulations made by the appropriate national authority;

(b) “accommodation needs” includes needs with respect to the provision of sites on which caravans can be stationed; and

(c) “caravan” has the same meaning as in Part 1 of the Caravan Sites and Control of Development Act 1960.

226 Guidance in relation to section 225

(1) The appropriate national authority may issue guidance to local housing authorities regarding-

(a) the carrying out of assessments under section 225(1), and

(b) the preparation of any strategies that local housing authorities are required to prepare as mentioned in section 225(2).

(2) Before giving guidance under this section, or revising guidance already given, the Secretary of State must lay a draft of the proposed guidance or alterations before each House of Parliament.

(3) The Secretary of State must not give or revise the guidance before the end of the period of 40 days beginning with the day on which the draft is laid before each House of Parliament (or, if copies are laid before each House of Parliament on different days, the later of those days).

(4) The Secretary of State must not proceed with the proposed guidance or alterations if, within the period of 40 days mentioned in subsection (3), either House resolves that the guidance or alterations be withdrawn.

(5) Subsection (4) is without prejudice to the possibility of laying a further draft of the guidance or alterations before each House of Parliament.

(6) In calculating the period of 40 days mentioned in subsection (3), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

Annex B: Partial Regulatory Impact Assessment (RIA)

Title of Proposal

1. The definition of ‘gypsies and travellers’ for the purposes of the Housing Act 2004.

Purpose and Intended Effect of Measure

Objective

2. To define the scope of ‘gypsies and travellers’ so that local authorities understand their responsibilities under sections 225 and 226 of Housing Act 2004 in relation to the completion of accommodation needs assessments and preparing strategies to meet that need.
3. Once the definition of ‘gypsies and travellers’ has been prescribed in regulations, the relevant sections of the Housing Act can be commenced which will require local authorities to complete accommodation needs assessments for ‘gypsies and travellers’. They also apply to the production of strategies showing how that need will be addressed.
4. There is no specific timescale attached to the completion of an accommodation assessment or a strategy. The accommodation assessment process forms part of the evidence base to inform authorities’ Local Development Frameworks, and the timescales for completion of the documents which form this framework vary depending on where authorities are in the cycle. However, we would encourage local authorities to complete accommodation assessments at the earliest opportunity since the needs of gypsies and travellers have so long been overlooked and the high levels of unauthorised camping and development in some areas are unsustainable. In some areas accommodation assessments are already underway.

Background

5. At present, in England, around 25% of caravans are on unauthorised sites.
6. Local authorities have an existing duty under section 8 of the Housing Act 1985 to assess the housing need of all of the population. This assessment of need then informs the local housing strategy, which each local authority completes and which includes priorities for the area and an action plan to address those priorities. Should they fail to do this, the Secretary of State has a power under section 87 of the Local Government Act 2003 to require them to do so.
7. Whilst it has been good practice to include gypsies and travellers in housing needs assessments and housing strategies, in reality this has happened in very few places. The consequences of this have been widely varying levels of understanding and very different approaches to gypsy and traveller accommodation in different areas.

8. The proposed definition of 'gypsies and travellers' which is being consulted upon in the associated document will only apply to English housing authorities. Secondary legislation applying to Wales is the responsibility of the National Assembly for Wales. The proposals should have additional impacts on the wider 'settled' community and businesses, since the wider policy framework, of which this definition is an essential part, should reduce the levels of unauthorised camping and development. The impacts of the proposals on the wider community and small businesses are discussed in this document.
9. Legislation requires the use of lower case (gypsies and travellers): for consistency and to avoid any presupposition as to the ethnicity of those who may be covered by the definition, that formulation is used throughout this document. It is recognised that the formulation Gypsies and Travellers is usually used, including in Government documents, which recognises the ethnic status of many members of this group.

Rationale for government intervention

10. There are over 15,000 gypsy and traveller caravans in England. Around three quarters of these caravans are on authorised sites, many of which are well-managed and are an accepted part of the local community. However, under-provision of authorised sites has resulted in gypsies and travellers camping on unauthorised land or developing their own land without planning permission. The number of caravans on unauthorised encampments and developments increased from 3,782 in July 1994 to 4,067 in July 2005.
11. Further family growth is likely to lead to an increased number of gypsies and travellers on unauthorised sites, although in recent years, the level of increase has been mitigated by funding from central government to refurbish and make full use of existing sites.
12. The continuing increase in unauthorised sites is likely to contribute to increasing community tensions between gypsies and travellers and the settled community. The social exclusion that is experienced by gypsies and travellers is one of the drivers for poor educational¹ outcomes in comparison with the wider settled community and BME groups and poor health outcomes² in comparison with the wider settled community. Those that are living in unauthorised encampments are particularly at risk given the difficulty they often experience in accessing services due to patterns of frequent moving. The Social Exclusion Unit based within ODPM is shortly expected to report on a project regarding service provision for frequent movers which will have relevance to gypsies and travellers.
13. Many authorities have not made adequate site provision for gypsies and travellers and some local authorities have pursued an enforcement only approach. Local authorities can spend a considerable amount on enforcement activity on evicting gypsies and travellers. In contrast, gypsy and traveller sites can be cost neutral i.e. they are financed through rental income.

1 For further information on the educational attainment of gypsies and travellers see, Ethnicity and Education: The Evidence on Minority Ethnic Pupils. DfES January 2005.

2 For further information on health issues relating to gypsies and travellers see Parry, G. Van Cleemput, P. Peters, J. Moore, J. Walters, S. Thomas, K. Cooper, C. (2004) The Health Status of Gypsies and Travellers in England. Sheffield: University of Sheffield School of Health and Related Research.

Consultation

Within government

14. Consultation has taken place across Government on the proposed definition and draft consultation paper.

Public consultation

15. A draft planning circular entitled 'Planning for Gypsy and Traveller Sites' was consulted upon between December 2004 and March 2005. The draft circular contained a new planning definition³ intended to replace the one contained in the Caravan Sites and Control of Development Act 1960 s. 24(8) and modified by case law.
16. The consultation exercise elicited a wide range of responses. Some respondents to the consultation thought that the proposed definition for planning purposes was too wide while others thought it should cover the full range of people who classify themselves as gypsies or travellers. The formulation which is being consulted upon in this document has been drawn up taking account of the range of views expressed in response to the planning circular consultation.
17. The planning circular definition covers those who have a specific land use requirement arising from their nomadic way of life, and thus uses nomadism as a basis for the definition. It was recognised that this group should be an integral part of the 'housing definition' and the proposed formulation therefore builds on the 'planning definition'.

Options

Option 1 – Do nothing

18. If the Government chooses to 'do nothing' then sections 225 and 226 of the Housing Act 2004 cannot be commenced, since their commencement relies on prescribing a definition of 'gypsies and travellers' in regulations. This will mean that local authorities will be under no specific duty to assess the accommodation needs of 'gypsies and travellers' and may not strategically plan to meet that need.
19. The accommodation needs assessment is part of a wider policy framework that will ultimately result in additional authorised provision for gypsies and travellers thus reducing the need for unauthorised sites. One of the outputs of the local and regional accommodation assessment process will be the level of additional pitches that need to be provided within the area. This number will go forward to the Regional Planning Body who will take a strategic overview of numbers and consult on revisions to the Regional Spatial Strategy allocating pitch numbers for each authority to deliver on through the identification of appropriate land.

³ See paragraphs 8-10 of the associated consultation paper for an explanation of the new planning definition.

20. The Government identified the need for a specific duty to assess the accommodation needs of gypsies and travellers because they have been overlooked in the past in many areas. Without this duty it is likely that the distinctive accommodation needs of gypsies and travellers will continue to be overlooked and appropriate provision won't be made.

Option 2 – Use proposed definition

21. As set out above, the formulation which is being consulted upon has been informed by earlier consultation on a proposed 'planning definition'. The proposed housing definition is as follows:

Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism and/or caravan dwelling.

22. The proposed definition is deliberately broad to ensure that local authorities understand the wide range of need that exists amongst the gypsy and traveller community and not just those that have specific land use requirements arising from those needs. Understanding the wide range of need that may exist will help inform the wider policies and responsibilities of local authorities towards the group identified, whilst at the same time ensuring that the authority can strategically plan for current and future needs. For example, the accommodation needs assessment may help local authorities to understand better any particular issues faced by this group. The process will help to identify how any problems can be overcome and the ways in which housing may be made to work better for them. This could reduce the numbers wishing to leave housing for sites, and encourage some of those currently on unauthorised sites to move into housing where that is a suitable option for them.
23. Assessing the needs of a wider group does not imply that a particular course of action should be followed to meet that need. Local authorities must prioritise and balance the needs of 'gypsies and travellers' with those of the wider population, although in many areas addressing the backlog of need may be a priority. It should also be noted that, as for other groups, the accommodation assessment process focuses on need rather than preference or aspiration.

Option 3 – Using the planning definition for the accommodation assessment

24. As set out above, a definition of gypsies and travellers for planning purposes was consulted upon in December 2004. The definition contained in the revised planning circular is as follows:

Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling show people or circus people travelling together as such.

25. The definition will be relevant when people apply for planning permission in those areas of land which have been designated for use by gypsies and travellers.
26. If the planning definition were to be mirrored in housing legislation, local authorities would only be under a duty to assess the accommodation needs of those people who were judged to fall within the above definition. By implication, such assessments would not capture the wider range of need that may exist e.g. amongst ethnic gypsies and travellers who may live in housing, but whose cultural traditions may give rise to forms of need other than land use requirements.
27. The housing definition needs to be a pragmatic strategic one which enables local authorities to fully understand the accommodation needs of a group of people whose needs have frequently been overlooked in the past. The Government believes that taking a narrower view, as would be the case if the planning definition was used, would not give local authorities a full picture of the accommodation needs of the whole gypsy and traveller community. This would mean that those that have a need for sites but that don't fall within the above definition would not have their needs assessed nor planned for, which could result in continued levels of unauthorised camping and development.

Costs and Benefits

28. The proposal which is being consulted upon here impacts on gypsies and travellers themselves, local authorities and in some cases may be relevant for travelling show people, who may have similar accommodation requirements, particularly in Winter.

Race Equality Impact Assessment

29. A Race Equality Impact Assessment will be completed as part of the consultation process and published on the ODPM website and will be informed by a specific consultation question.

Rural Impact Assessment

30. It could be argued that the scope of the definition will have an impact on rural areas. The accommodation assessment process is part of a wider policy framework which will result in additional provision of sites in appropriate locations.
31. If a narrower definition of 'gypsies and travellers' is used, less need for pitches might be identified resulting in less land being allocated in local plans (some of which might be in rural areas). However, if the definition is too narrow it might not identify those people with genuine requirements for caravan pitches. If enough authorised land is not identified and there continues to be high levels of unauthorised camping there is likely to be a negative impact on the countryside. For example, gypsies and travellers may continue to camp on or develop Green Belt land without planning permission. Where gypsies and travellers are camping unlawfully they are much less likely to receive local authority services such as waste collection. This can result in fly-tipping making the environment unattractive and damaging wildlife.
32. It is therefore important that the wider policy framework results in the delivery of adequate areas of land to provide for those people with a need for authorised land on which to station their caravan.

Breakdown of costs and benefits

Option 1 – Do nothing

33. As stated earlier, the outputs from local and regional accommodation assessments feed into the wider planning framework and inform the amount of land which needs to be designated for gypsy and traveller sites. By doing nothing, the section of the Housing Act which makes the accommodation assessment compulsory will not be enacted and therefore local authorities may choose not to conduct assessments. Therefore doing nothing impacts on the ability of the wider planning system to deliver appropriate levels of land. The impacts under each of the headings below are therefore based on the lack of the wider system to deliver appropriate land.

Economic

34. If alternative, appropriate land is not available for those gypsies and travellers who have no authorised place to live, then unauthorised camping and development is likely to continue resulting in local authorities having to incur ongoing costs in support of enforcement activity. Private landowners may also have to use their own money to remove gypsies and travellers from their land.
35. Enforcement does not solve the causes of unauthorised camping, and in many cases merely moves the problem elsewhere. The costs of enforcement are therefore repeat ongoing costs.
36. If the relevant sections of the Housing Act 2004 are not enacted, local authorities will not be specifically required to conduct accommodation assessments of 'gypsies and travellers' or include 'gypsies and travellers' in their housing strategies. This will save some money in terms of staff time working on both the accommodation assessment and housing strategy, although this saving is likely to be far outweighed by the amount of staff time spent on enforcement against unauthorised sites.

Environmental

37. If relevant sections of the Housing Act are not commenced then the ability of the planning system to deliver appropriate land will be compromised and unauthorised camping will continue. Unauthorised camping is sometimes in highly inappropriate locations such as Sites of Special Scientific Interest or Green Belt land. Where this is the case, gypsies and travellers are usually moved on quickly but sometimes individual sites are damaged or spoilt by rubbish. There are often complaints of fly-tipping and rubbish left around unauthorised encampments. In some cases the rubbish may be left by the gypsies and travellers and in others unauthorised encampments tend to attract fly-tipping from the wider community.

Social

38. Unauthorised encampments and developments are often the source of significant community tension between gypsies and travellers and the settled community. Local people can believe that it is one rule for gypsies and travellers and another for the wider community. Continued unauthorised camping is therefore likely to fuel this community

tension. Gypsies and travellers are one of the most socially excluded groups with poor life outcomes in relation to the wider population. Although approaches between local authorities vary, those who camp at the side of the road often have particularly poor access to education and health services.

Option 2 – Using a broad definition

39. The proposed definition is intended to be a pragmatic strategic one that enables local authorities to understand the current and possible future accommodation needs of the group and plan strategically to meet that need.

Economic

40. Using a broad definition of 'gypsies and travellers' to carry out an accommodation assessment and produce a strategy may cost an authority slightly more money than if a narrower definition was used, since the authority might have to use a variety of means to reach those 'gypsies and travellers' that are not immediately identifiable (e.g. those in housing). However, if the council is fully informed about the needs of 'gypsies and travellers' in the area and can plan strategically to meet that need, particularly through the identification of appropriate land for them to live on, then the amount of unauthorised camping and development is likely to decrease. This means that the costs of producing accommodation assessments and strategies are likely to be offset and exceeded by the savings generated through no longer needing to take enforcement action against unauthorised sites.

Environmental

41. The identification of a wide range of need within an area will inform the number of additional pitches that may be required to accommodate gypsies and travellers. It is in the interests of the authority to allocate an appropriate amount of land based on need, to ensure that gypsy and traveller sites are provided in sustainable and appropriate locations. The consequence of 'under provision' (which may occur if a narrower definition is used) is that gypsies and travellers may continue to camp in inappropriate locations e.g. school playing fields, Green Belt land, because there are not enough authorised places to live. When an authority is producing Development Plan Documents (DPDs) it will be required to consult on the locations of any sites, thus ensuring that the environmental and sustainability impact of a site being developed is considered.

Social

42. The presence of gypsies and travellers is most likely to be a source of tension within an area, where gypsies and travellers are on unauthorised sites. The use of a broad definition should result in the provision of enough land to accommodate the wide range of need within an area and is likely to remove the need to camp on unauthorised land – in turn this should improve community relations in an area. Whilst the creation of permanent sites is often contentious and results in strong local opposition, one study⁴

⁴ Neighbours' Views of Official sites for Travelling People. Planning Exchange 1996.

suggested that the fears of people were not realised when a permanent site was established. People's fears were usually based on their experience of unauthorised encampments, not official sites. Those living on well established and managed sites often have good relations with the local community and take part in wider community schemes e.g. neighbourhood watch. The provision of accommodation on a stable long term basis also means that gypsies and travellers living on sites are much more likely to have better access to schools, healthcare and other services.

Option 3 – Using a narrower planning definition for the accommodation assessment

Economic

43. If the planning definition of gypsies and travellers was used then local authorities would be required to assess a narrower range of need than under option 2. Local authorities may make some cost savings in comparison to option 2 since they would be required to reach a smaller target audience when assessing need and producing strategies to meet that need – although it may be difficult and time-consuming to distinguish between those gypsies and travellers who should have their needs assessed and those who shouldn't. However, using a narrow definition may fail to capture some need – for example gypsies and travellers who are currently travelling and have a provable need for pitches on appropriate land but don't fall within the planning definition. As the pitch numbers identified by the accommodation assessment feed into the wider planning process this could result in under provision of appropriate land, and in turn mean that unauthorised camping and development continues. Enforcing against this camping costs money and is a repeat cost which is likely to exceed any saving made by having a narrower definition.

Environmental

44. Although using a planning definition will result in additional sites being provided in appropriate locations, it is not likely to be enough to cater for the range of need for sites that may exist – for example among gypsies and travellers who are currently travelling but do not fall under the planning definition. Under provision could result in continued levels of unauthorised camping and development, which often occurs in inappropriate locations, and therefore has a negative impact on the environment.

Social

45. As highlighted above, additional provision of authorised sites should reduce the levels of unauthorised camping and thus contribute towards better community relations. Although again, using a narrower definition to identify need for sites may result in under provision for the reasons stated above. The continued presence of unauthorised sites is likely to give rise to community tensions. Again as highlighted earlier, those gypsies and travellers that have no authorised place to live are likely to have poorer access to services than those living on authorised sites.

Small Firms' Impact Test (SFIT)

46. At present, unauthorised camping by gypsies and travellers sometimes occurs on business premises e.g. farm land, car parks etc. This can negatively impact on businesses since unauthorised camping may affect the operation of a business and the owners of premises may have to pay legal costs to remove gypsies and travellers from the site and may also have to pay eviction costs, should bailiffs be required. Therefore the greater the reduction in unauthorised camping, the more likely the positive impact on small businesses. The Government believes that the use of the broader definition for the purposes of the Housing Act 2004 is most likely to result in the greatest reduction in unauthorised camping and therefore have the greatest benefit for small firms.
47. Some gypsies and travellers themselves may run small businesses from their place of residence. Therefore in terms of the wider policy framework, a broad definition of 'gypsies and travellers' should result in an appropriate level of new sites being delivered, some of which may have adjoining business premises. The provision of new sites should therefore have a positive impact on the small businesses run by gypsies and travellers in that there will be a continuity of premises.
48. The Small Business Service has been consulted and is content with the above assessment of impact.

Competition assessment

49. This proposal mainly affects public services and therefore has no impact on competition.

Enforcement, sanctions and monitoring

50. The purpose of the new mechanisms that have been put in place is to mainstream the needs of gypsies and travellers into the same systems that are used for the rest of the population.
51. Pitch numbers identified from local accommodation assessments will go forward to the Regional Planning Body for consideration. The Regional Planning Body will then provide a strategic overview of need in the region and the Regional Spatial Strategy will set out pitch numbers for each local authority to deliver. Even if councils fail to complete accommodation assessments and produce pitch numbers, they will still be expected to allocate land within their areas for gypsy and traveller sites, subject to the level of need in the region. It is therefore in the interests of local authorities to accurately identify the level of need within their own area to inform revisions to the Regional Spatial Strategy.
52. Local housing strategies must include information on special needs groups, including, where appropriate, gypsies and travellers. Section 87 of the Local Government Act 2003 provides the Secretary of State not only with the power to compel a local housing authority to produce a housing strategy, but also to impose requirements on the content of that strategy where he sees fit to do so.

53. In the context of the wider policy framework, if local authorities fail to address gypsy and traveller site provision, the Secretary of State has powers under the Planning and Compulsory Purchase Act 2004 to direct councils to address this issue in their Development Plan Documents (DPD). In order to identify an appropriate amount of land that needs to be allocated, the local authority will have to have an understanding of the level of need in the area and therefore would have to carry out an accommodation assessment to inform the production of a DPD.

Monitoring and Review

54. The Gypsy and Traveller Unit has a dedicated resource based in the Government Offices of each of the three regions where there are significant levels of unauthorised camping and development. Members of the Regional Implementation team will be working with local authorities and planning and housing colleagues within the Government Offices to monitor progress on accommodation assessments, strategy preparation and addressing site provision more generally.
55. The Government has produced guidance to assist local authorities when carrying out accommodation assessments and guidance on preparing strategies will be issued in due course.
56. The success of the wider policy framework, of which accommodation assessment is an essential part, will be monitored through a number of means. ODPM will be monitoring the take up and spend of Gypsy and Traveller Sites Grant, which will result in additional socially rented provision. As local authorities begin to allocate appropriate land in their Development Plan Documents and provide new authorised sites we would expect to see the levels of unauthorised camping and development decrease. This will be monitored through the Gypsy and Traveller Caravan Count, conducted by local authorities on behalf of ODPM.

Guidance on managing anti-social behaviour related to Gypsies and Travellers



Guidance on managing anti-social behaviour related to Gypsies and Travellers

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Section 1

Introduction

- 1.1 The Government's policies on Gypsies and Travellers are set within a framework of rights and responsibilities in which everyone's rights must be equally respected and equal standards of behaviour are expected from all. Creating and sustaining strong communities in this way is at the heart of the Government's commitment to social justice and a fairer society.
- 1.2 This Guidance has been produced to support local authorities, the police and other agencies and to encourage consistency amongst agencies in their approach to tackling anti-social behaviour associated with Gypsies and Travellers- whether they are the victims or the perpetrators – and sets out the powers and tools available and how they may be used.
- 1.3 The guidance includes advice on dealing with:
 - various aspects of anti-social behaviour
 - policing and prevention
 - fly tipping and waste management issues
 - noise nuisance
 - straying livestock.
- 1.4 Anti-social behaviour can blight people's lives and damage communities. It must be dealt with wherever it arises. The public – whether part of the settled or travelling community – rightly expects to live free from intimidation and harassment.
- 1.5 Although – as with the settled population – only a small minority of Gypsies and Travellers behave anti-socially, the mobile nature of some in this community can present particular challenges in dealing with problems.
- 1.6 This guidance should be used in conjunction with a number of other guidance documents as detailed below:

**Guide to effective use of enforcement powers Part 1:
Unauthorised encampments**

**Guide to effective use of enforcement powers Part 2:
Unauthorised development of caravan sites**

- 1.7 These provide advice on effective use of enforcement powers that local authorities, the police and private landowners have to deal with unauthorised encampments, where Gypsies and Travellers camp on land which they do not own and with unauthorised developments, where Gypsies and Travellers own the land, but do not have planning permission to develop it as a caravan site.

Designing Gypsy and Traveller Sites – Good Practice Guide

Gypsy and Traveller Site Management – Good Practice Guide

- 1.8 These guides provide advice to local authorities and registered social landlords on the factors that should be considered in the design of new sites, and refurbishment of existing sites; and taking a positive, realistic and practical approach to site management. Where there is a risk of anti-social behaviour arising on site, the advice in the design and management guidance may help in resolving any potential problems before they reach a point at which action becomes necessary.
- 1.9 The Association of Chief Police Officers (ACPO) Guidance on Unauthorised Encampments can also be viewed in conjunction with this guide, particularly where consideration is being given to using police powers to move people on from a particular location. Anti-social behaviour, particularly where a pattern of such behaviour has been established, is one of the factors to be considered in using these powers.

Section 2

Tackling anti-social behaviour

- 2.1 Action against anti-social behaviour may be particularly difficult where problems are being caused by short-term unauthorised encampments. This guidance emphasises the importance of taking effective enforcement action and offers advice on preventative measures so that the risk of anti-social behaviour can be reduced in the first instance. It provides links to sources of further information from across government and other agencies and to sources of information on Gypsy and Traveller culture and practices.
- 2.2 Tackling anti-social behaviour effectively, particularly persistent offenders, depends on strong, local partnerships that have the expertise to address complex problems within their own communities. In order for the powers outlined in this Guide to be used most effectively, they must be supported by a co-ordinated strategy for approaching Gypsy and Traveller issues. In particular:
- Local authorities need to regard issues affecting Gypsies and Travellers as a corporate responsibility and ensure that they have a co-ordinated approach across the different parts of the authority that need to address the issues: including housing, planning, education, health, social services, and environmental health/ protection.
 - There needs to be good co-operation between local authorities and other agencies such as the police, the Environment Agency and others, supported where appropriate by agreed protocols for joint working so that appropriate action can be taken to address or prevent anti-social behaviour and also criminal behaviour when the line between the two is crossed, such as in cases of hate crime, untaxed vehicles, fly tipping and unlicensed waste carriage. Those who tackle the issues at operational level need to have sufficient authority delegated to them to be able to make decisions and to act accordingly. This is especially important where officers operate outside normal office hours.

- There should be a commitment on the part of agencies to apply the same approach to Gypsies and Travellers as they would to the settled population; in terms of evidence gathering, prosecution where appropriate and payment of fines. For example, in addressing vehicle crime such as abandoned and untaxed vehicles, multi-agency approaches – with teams comprising police, local authority wardens, and DVLA wheel clamping and removal contractors have been successful in removing offending vehicles and facilitating prosecutions across the board.
- Gypsies and Travellers should also benefit from measures designed to protect the wider community, such as the use of ASBOs against people behaving anti-socially, or the enforcement of rules concerning residence – particularly on local authority run sites.

- 2.3 Anti-social behaviour can include a variety of behaviours covering a whole range of unacceptable activity that can blight the quality of community life. Anti-social behaviour doesn't just make life unpleasant, it can hold back the regeneration of disadvantaged areas and create an environment where more serious crime can take hold. Tools are available to local authorities, the police and other agencies to address problem behaviour and criminality in various areas and these must be applied fairly to all.
- 2.4 It is clearly in the interests of both the Gypsy and Traveller and settled communities to deal effectively with the small number of instances where anti-social behaviour does take place. Authorities can also take steps to minimise the risk of anti-social behaviour occurring in the first place. An example of this would be in authorities making effective provision for dealing with known seasonal movement of Gypsies and Travellers. During the summer in particular, large groups of travellers will travel to attend horse fairs and other cultural events. Authorities can minimise the risk of unauthorised encampments on the routes of those events and the potential anti-social behaviour associated with this seasonal movement by providing authorised temporary stopping places and by having in place joint agency protocols to ensure that travellers are made aware of the conduct expected of them while they are present and are provided with hire facilities such as portable toilets and waste disposal.
- 2.5 As in any case of unauthorised encampment, local authorities, police and other agencies have the enforcement powers to address the issues associated with large numbers of travellers moving to or gathering in one place and should use those powers promptly and effectively. However, where there is knowledge of seasonal patterns of movement, provision of strategically placed basic facilities is likely to reduce the possibility of anti-social behaviour occurring.

- 2.6 Dealing with anti-social behaviour where it is already entrenched can be expensive and time consuming and, where it is taking place on established sites, can potentially threaten their future viability.
- 2.7 It is also important that Gypsies and Travellers are confident that they can turn to the police to support them where they are victims of anti-social behaviour or crime, including hate crime. Building confidence in the police amongst Gypsy and Traveller communities is a core area of work for the ACPO Gypsy and Traveller Working Group, with its own dedicated programme and owner.
- 2.8 In using formal procedures to tackle incidents of anti-social behaviour, the following tools for addressing such problems may be appropriate.

Acceptable Behaviour Contracts (ABCs)

- ABC's are non-legally binding written contracts between one or more local agency and an individual, outlining what the person responsible for the anti-social behaviour should or should not do.
- The terms of contracts should reflect the behaviour to be addressed and not be too extensive, and there should be a balance between general and specific conditions. The contract will also set out the possible consequences of breaking the agreement, which may include the imposition of an Anti-Social Behaviour Order (ASBO).
- ABCs are usually led by a local authority, the police, registered social landlords and youth offending teams and, although ABCs are often used with children and young people, they can equally be used to address unacceptable behaviour by adults.
- ABCs can be cited in court as evidence in ASBO applications or in eviction or possession proceedings.

On a site these may be used to stop families or individuals from behaving in a way that distresses or endangers other site residents, such as vandalising site facilities.

Injunctions for anti-social behaviour

- Injunctions are civil orders obtained from the county court which can control and remedy anti-social behaviour. An injunction made by the court can compel any adult over the age of 18 to do something or to refrain from engaging in a particular action or behaviour.

- Injunctions could be applied to address unacceptable behaviour by unauthorised campers if they frequent a particular area or to control behaviour by anti-social neighbours on Gypsy and Traveller sites.
- If injunctions are breached they are dealt with by way of civil proceedings and, if proven, the court can impose a fine or commit a defendant to prison.

Anti-Social Behaviour Orders (ASBOs)

- ASBOs are civil orders which protect the public from behaviour that causes, or is likely to cause, harassment, alarm or distress. They can be imposed on anyone that has displayed anti-social behaviour in the last six months.
- ASBOs can be imposed for a fixed period from a minimum of two years to an unlimited maximum, or until a further order is made. They are intended to be used as tools to curb anti-social behaviour, rather than punish the offender.
- An ASBO can be applied to any defined area within England and Wales – this could potentially be the whole of England and Wales if certain conditions are met. The power to make an order over a wide area is for use where there is reason to believe that the person concerned may move or has already moved. An order covering a wider area could address the problem of the minority of Gypsies and Travellers who persistently engage in anti-social behaviour around the country.
- Any evidence of the itinerant nature of the defendant's lifestyle, of the likelihood of the individual moving to another area, or of wide geographical spread of offending behaviour should be submitted with the application file. The applicant does not have to prove that anti-social behaviour will occur elsewhere, only that it is likely to.
- The more serious the behaviour, the greater the likelihood that the court will grant a geographically wide order. Orders that seek to operate in the whole of England and Wales will not be granted without evidence that that is the actual or potential geographical extent of the problem.
- Breach of an ASBO is a criminal offence and on conviction perpetrators can be given a custodial sentence. Interim orders can also be made at initial court hearings which provide immediate protection for the community until a full hearing is held.

- 2.9 Anti-Social Behaviour Orders have been successfully used to curb unacceptable behaviour by groups of unauthorised campers, and are in common use as a way of addressing problems caused by nuisance neighbours and to improve neighbourhoods. An example of how one local authority, in partnership with other agencies, has successfully used an ASBO to deal with persistent problem behaviour by a group of unauthorised campers regularly resorting to their district is below:
- 2.10 After gathering extensive evidence, Ryedale District Council, North Yorkshire County Council and North Yorkshire Police jointly approached the court, requesting that they issue an Anti-Social Behaviour Order against members of family X, a group of nomadic Gypsies and Travellers who, for a considerable period of time, had been acting anti-socially to the detriment of the local community in a rural part of Ryedale District. The ASBO, which was granted by the court, prohibited family X from:
- stopping as they passed through a defined part of the district other than to obtain fuel from a petrol station
 - remaining on any land for a period of more than 21 days without the express permission of the landowner (this applies to the whole of England and Wales)
 - returning to within 1500 metres of anywhere where they have previously stopped within one year
 - allowing animals under their ownership to stray onto private land or the highway
 - destroying fencing, gateposts and so on to use as fuel or damaging them to gain access to private land.
- 2.11 Members of the local community likely to be affected by anti-social behaviour perpetrated by the family were provided with details of the terms of the Order, and were encouraged to report any breaches of the Order that they observed to the district's anti-social behaviour enforcement officer, or the local police, who are also closely monitoring the family's movements and behaviour.
- 2.12 Several minor or unintended breaches of the ASBO did occur. On each occasion, family X were visited and reminded of the terms of the Order. Major breaches of the ASBO were immediately referred to the courts. Although the ASBO has been breached on several occasions, it has led to an overall improvement in the behaviour of family X and therefore in the lives of others in the area. Family X understand that breaches may lead to a custodial sentence being imposed upon them, and have improved their behaviour as a result of this.

2.13 Particular points to note when considering the use of an ASBO are:

- The terms of the ASBO should be clearly explained to the recipients so that they understand what the ASBO prohibits them from doing – the ASBO should target particular problem behaviour or behaviours. The serious consequences of a material breach of the ASBO should be emphasised.
- Where an ASBO is sought against a group or individual where problem behaviour has been taking place for years, the application of the ASBO may not, on its own, curb the behaviour. Therefore close monitoring will be required in order to ensure that those behaviours are modified or minimised.
- It is also essential that a joint agreement is in place between all parties to an ASBO. In particular, where the conduct of those against whom an ASBO has been made is likely to bring them into contact with the police, local officers should be aware of the terms of the ASBO and be clear on what constitutes a material breach. The police service may also be well-placed to monitor compliance with the terms of the Order.
- The local community should also be engaged in the process as soon as possible, so that all those who could potentially be affected by the anti-social behaviour are aware of its existence and its terms. They should also be provided with details of someone who can be contacted when breaches are observed. Where the ASBO concerns unauthorised campers, local residents and businesses should be advised and be invited to keep logs of any behaviour that breaches the terms of the order. Such witness logs will be admissible in court where court action is pursued as a consequence of a serious and material breach of the ASBO.
- When minor, technical or unintended breaches occur, the recipients of the ASBO should be reminded of the terms of the order, and reminded of what action will follow if there is a more serious breach. If minor or inadvertent breaches are pursued through the courts this risks devaluing the ASBO. It is therefore imperative that where clear material breaches of the order take place these are vigorously pursued by strong enforcement action.

2.14 The Government is in the process of strengthening the measures available to tackle the harmful impact of anti-social behaviour. New measures to be introduced will include:

- better support for victims of anti-social behaviour including help from the Victim Support's Witness Service for all victims who take a stand in the magistrates courts
- driving up prosecutions when ASBOs are breached

- all Community Safety Partnership's have been challenged to set and publicise minimum standards for local areas by the end of March 2010 including regular updates for communities on what is being done to tackle anti-social behaviour and ensuring better links between neighbourhood policing and other local partners to deal swiftly with problems.

Community agreements

- 2.15 Community agreements are designed for use where there is conflict or unrest within a community. They are settlements reached between the residents of a community to resolve disputes, which are put in writing and each household or individual has a copy. The agreement, which is aimed at tackling the issues that affect people's quality of life, is based on the wishes of the majority and clearly states how those involved would like life to be within their community.
- 2.16 The process of drawing up the agreement is facilitated by independent and impartial mediators who make private and confidential visits to each person.
- 2.17 The agreement contains only what individuals have asked for; the referring agency has no input. The agreement can serve to build or renew community spirit and a pride in the community, as individuals no longer feel they are alone in their worries or concerns. This might ideally be used on a Gypsy and Traveller site where anti-social behaviour is taking place but where it is considered that procedures which address the concerns of all site residents would be most beneficial.

Guidance on policing

- 2.18 The ACPO guidance on unauthorised encampments contains a number of practical actions that forces should take in dealing with any people who trespass on land owned by another with an intention to reside. – ranging from undertaking an assessment of the impact of the location of the encampment; discussing with those present what constitutes unacceptable behaviour and considering joint working with local authorities to establish joint agency protocols.
- 2.19 The guidance also encourages incorporation of the six recommendations for the police contained in the former Commission for Racial Equality inquiry *Common Ground* stating that police services should:
- include Gypsies and Travellers in mainstream neighbourhood policing strategies, to promote race equality and good race relations

- target individual Gypsies and Travellers suspected of anti-social behaviour and crime on public, private and unauthorised sites, and not whole communities, and work with people from these groups and local authorities to develop preventative measures
- treat Gypsies and Travellers, both when they are victims and suspects, as members of the local community, and in ways that strengthen their trust and confidence in the force
- provide training for all relevant officers on Gypsies' and Travellers' service needs, so that officers are able to do their jobs more effectively, and promote good relations between all groups in the community they serve
- review formal and informal procedures for policing unauthorised encampments, to identify and eliminate potentially discriminatory practices, and to ensure that the procedures promote race equality and good race relations.

2.20 In terms of addressing those groups who behave anti-socially in more than one area, the ACPO Guidance on Unauthorised Encampments sets out how police powers under Section 61 or 62 of the Criminal Justice and Public Order Act 1994 can be used as a preventative measure where a group of trespassers have persistently displayed anti-social behaviour at previous sites and it is reasonably believed that such behaviour will be displayed at this newly established unauthorised site.

2.21 Our guidance on the management of Gypsy and Traveller sites provides advice on the procedures that should be put in place to moderate behaviour on sites. These may prevent situations developing to a point where it becomes necessary to use the measures listed in this section of the Guide. Practical examples from the Gypsy and Traveller Site Management Good Practice Guide include:

- provision of an Agreement to Occupy the pitch clearly stating what forms of behaviour and activity are not permitted on-site
- residents regularly being reminded of conduct expected and ways in which to report anti-social behaviour in confidence
- agreements being in place to record incidents of illegal activities and anti-social behaviour and to liaise with appropriate authority.

Criminal offences

2.22 In addition, some types of anti-social behaviour may also be considered to be a criminal offence. For example, the issue of running untaxed vehicles and vehicle abandonment. Applying a multi-agency approach to enforcement against this activity is referred to earlier.

Further information on the use of anti-social behaviour orders

- 2.23 Several websites are available which offer in-depth advice and guidance on the use of ASBOs and other tools, including information for practitioners on correct legal procedure. These can be found at the following links:

Crime Reduction

www.crimereduction.gov.uk/asbos/asbos9.htm

www.asb.homeoffice.gov.uk

The Home Office

ASB tools and powers guidance:

www.asb.homeoffice.gov.uk/article.aspx?id=10088

Association of Chief Police officers Guidance on Unauthorised Encampments

www.acpo.police.uk

Communities and Local Government

CLG guidance documents on unauthorised development, unauthorised encampments, site design and site management:

www.communities.gov.uk/publications/housing/unauthorisedsites

www.communities.gov.uk/publications/housing/guideeffective

www.communities.gov.uk/publications/housing/sitemanagementguide

www.communities.gov.uk/publications/housing/designinggypsiesites

Legal Services Commission:

www.legalservices.gov.uk/docs/stat_and_guidance/asbo_guidance.pdf

Her Majesty's Court Service:

www.hmcs.gov.uk [and then keying in 'Anti-social behaviour order' in the search box]

Section 3

Fly Tipping

Preventing and minimising fly-tipping

- 3.1 The Government's good practice guidance on site design provides valuable information on factors that should be considered when developing a new Gypsy and Traveller site to ensure that its location and design encourage well-organised and legal waste disposal and discourage fly-tipping in the first instance. It may also be appropriate to consider implementing some of these measures to reduce fly-tipping when refurbishment is being considered.
- 3.2 Local authorities have also reported that robust site management arrangements can help to reduce any fly-tipping. The *Gypsy and Traveller Site Management Good Practice Guide* provides advice for site managers in effectively managing waste collection and recycling. It also provides advice on dealing with scrap and storage.
- 3.3 Some local authorities also provide waste disposal facilities, for a fee, to unauthorised developments and unauthorised encampments to help ensure that problems associated with such encampments are not compounded by incidents of fly-tipping.
- 3.4 Where anyone observes incidents of fly-tipping they should contact either their local authority's environmental health department, or the Environment Agency's hotline on 0800 807060, with details of the date and time that the fly-tipping took place, a description of what was fly-tipped, what happened and also what vehicles were present, and a description of those involved where possible. It is important for incidents of fly-tipping to be reported quickly, to ensure that the local authority or the Environment Agency can take remedial action swiftly. This will reduce the amount of opportunistic fly-tipping in the location by others which sometimes occurs where fly-tipped material is allowed to remain.
- 3.5 Local authorities should also take the opportunity to advise residents in their area of legitimate methods of disposing of their waste, for instance by providing the locations of authorised waste disposal sites and details of registered waste carriers in their area. Guidance should emphasise that householders should check that anybody taking away their waste – apart from their local authority – is registered with the Environment Agency to carry

waste. If they are approached and asked whether they require waste to be disposed of, and they cannot verify that the person is a registered waste carrier, they should refuse that person's services and contact their local authority's environmental health department.

- 3.6 In those areas that are vulnerable to fly-tipping, such as derelict industrial sites and other marginal land, local authorities should consider methods of educating residents and businesses through leaflet drops, newspaper advertisements or similar means. Residents should be alerted to the possibility that if they allow household, garden or trade waste to be removed by an unknown person who is not registered as a waste carrier it is possible that the waste will simply be fly-tipped locally. They should also be reminded that if waste found on a fly-tip is traced back to them, they can be liable for a fine of up to £5000.

Powers for dealing with fly-tipping

- 3.7 The Environmental Protection Act 1990 (as amended by the Anti-Social Behaviour Act 2003 and the Clean Neighbourhoods and Environment Act 2005) provides the main powers to deal with fly-tipping and can be used by local authorities, the Environment Agency and the Police. These powers require the involvement of the Magistrates Court or the Crown Court. The main offence of fly-tipping under Section 33 of the Act carries the power to impose custodial sentences and/or fines, and also allows for the seizure of vehicles and the recovery of costs from fly-tippers
- 3.8 Powers contained in the Town and Country Planning Act 1990 can also be used by local planning authorities, and provide for notices to be given to landowners to remedy land i.e. to restore land to its original condition. These powers also carry the power to impose fines for non-compliance with notices issued under the Act.

Legitimising the carrying and disposal of waste

- 3.9 Gypsies and Travellers are sometimes involved in business activities such as waste collection, building work or hard landscaping that generates waste. As with anyone involved in these business activities, if they are not registered as waste carriers with the Environment Agency, and do not have agreements in place with local waste disposal facilities, there is a risk that waste generated as part of their activities may be fly-tipped. Powers to deal with offences under the Control of Pollution (Amendment) Act allow enforcement authorities to prosecute, issue a fixed penalty notice or seize the vehicle of anyone who carries controlled waste as part of a business or with a view to profit without

registering with the Environment Agency as a waste carrier. Powers are also available to the Environment Agency or a waste collection authority under section 34 of the Environment Protection Act 1990 to take action against those who assist with unlawful waste disposal by giving waste to an unlicensed carrier to dispose of, or allowing their land to be the site of fly tipping.

- 3.10 In order to reduce the potential for fly-tipping, and the cost of legal action associated with pursuing fly-tippers through the courts, local authorities should take positive steps to ensure that Gypsies and Travellers resorting to or residing in their area know how to dispose of waste responsibly. For example, on their first visit to an unauthorised encampment, if the local authority establishes that the Gypsies and Travellers are involved in work that generates waste, they should provide the unauthorised campers with information on the locations of waste disposal facilities in the area. Gypsies and Travellers whose main business activities involve waste carrying, both those on authorised and unauthorised sites, should also be encouraged to apply for a waste carrier's licence. A correspondence address is required to communicate with any individual who is applying for a waste carriers licence; however this does not necessarily have to be the person's fixed abode. If a nomadic Gypsy or Traveller can make arrangements to use a particular address for correspondence, they can apply for a licence.

Legislation for dealing with waste carrying offences

- 3.11 The Control of Pollution (Amendment) Act 1989 sets out the requirement for waste carriers to be registered with the Environment Agency. It supports the powers in the Environmental Protection Act 1990 and can be used by local authorities, the Environment Agency and the Police. The powers in the 1989 Act require the involvement of the Magistrates Court and allow for the search and seizure of vehicles, and give authorities the power to request production of registration documents.
- 3.12 The enforcing authority currently needs to obtain a magistrates warrant to seize a vehicle on suspicion of involvement in waste offences. This requirement is scheduled to be removed in new regulations to commence in April 2010 to allow enforcement authorities more freedom to exercise their powers.. The revised regulations will allow a vehicle to be seized without a magistrates warrant By either the Environment Agency or a waste collection authority on suspicion of various waste offences (a breach of the duty of care, carrying controlled waste when not registered as a waste carrier, fly tipping and operating an illegal waste operation).

Further information on the legislation for dealing with fly-tipping

- 3.13 Comprehensive guidance, and detailed information on the available legislation, can be found on the following websites:

The Department for Food and Rural Affairs

www.defra.gov.uk/environment/localenv/flytipping/index.htm

The Environment Agency

www.environment-agency.gov.uk/subjects/waste/?lang=_e

The Environment Agency's waste carrier registration database can also be accessed online at: www2.environment-agency.gov.uk/epr

ENCAMS (Keep Britain Tidy campaign)

www.encams.org/publications/index.asp

- 3.14 Details of registered waste carriers can also be obtained by calling:
08708 506 506

Section 4

Noise and other statutory nuisance

- 4.1 Noise pollution can be a particular issue on Gypsy and Traveller sites because of the low levels of insulation from sound offered by caravans. Excessive noise, particularly at night, can be a considerable nuisance to immediate neighbours on sites. In addition, where excessive noise comes from Gypsy and Traveller sites, it can create or increase tension with the settled community, and fuel bad relations. Excessive noise can be a statutory nuisance, and this guidance sets out the process which local authorities should follow when dealing with complaints about noise nuisance. It also sets out the powers available to individuals to deal with noise from neighbours.
- 4.2 Sources of noise nuisance are numerous within the wider community and most local authorities will have well developed arrangements for dealing with it which can potentially be applied to incidents involving Gypsies and Travellers where necessary.

Powers for dealing with noise nuisance

- 4.3 Powers contained in the Environmental Protection Act 1990 can be used by local authorities to serve an abatement notice where a statutory noise nuisance is identified. Further, with the agreement of a magistrates court, it also allows for the seizure of equipment and the imposition of fines.
- 4.4 The Noise Act 1996 (as amended by the Clean Neighbourhoods and Environment Act 2005) deals with excessive noise taking place at night, and enables local authorities to defer serving a noise abatement notice in order to seek alternative solutions. In addition, with the agreement of the magistrates court, equipment may be seized and fixed penalty notices imposed.

Mediation

- 4.5 In some cases, it may be that a simple request could result in a resolution of noise problems. Where this has failed, it may, in some circumstances be appropriate to use mediation to deal with noise nuisance. Mediation can be quicker, cheaper and more effective than the use of statutory powers. It allows people to be heard and, in some circumstances, it may be the case that a

simple apology by the noise maker to the affected party is all that is required to resolve the issue. Mediation is also less intimidating than legal proceedings, where a witness may be asked to give evidence in court. It can also give the complainant a sense of ownership of an agreement to reduce noise, as all the parties have agreed to it.

- 4.6 Although local authorities have a duty to serve an abatement notice once satisfied that a statutory nuisance exists or is likely to occur or recur, section 80(2A) of the Environmental Protection Act 1990 enables a local authority to defer serving an abatement notice for up to seven days to take such other steps as it thinks appropriate for the purpose of persuading a noise maker to prohibit or restrict the nuisance, which may include mediation. Because mediation can take place quickly, soon after the problem has been identified, it can prevent problems escalating to a point where relationships between neighbours are damaged. Introducing legal proceedings can exacerbate a situation which polarises parties and drives them further apart. Mediation is also useful in tackling problems that are not amenable to legal remedy and where the noise complaint is symptomatic of wider issues between neighbours.
- 4.7 Where noise is a frequent issue in the local community, local authorities should examine opportunities to raise awareness of these issues and the remedies available. This could involve promoting information on the local authority's noise service on their website, producing leaflets and posters, or getting involved in campaigns and other events.
- 4.8 Where noise nuisance is part of wider anti-social behaviour by a group it may be appropriate to consider using an Anti-Social Behaviour Order which includes specific references to the noise issues, in order to moderate the group's behaviour.
- 4.9 It should be noted that in many circumstances where a complaint is made about excessive noise, it may not be difficult for the alleged noisemaker to identify the complainant, and if formal proceedings are pursued it may not be possible for the identity of the complainant to be withheld. Complainants should therefore be advised of this possibility early on in the course of the investigation.
- 4.10 In terms of the planning aspects of Gypsy and Traveller sites, where a site is being established, local planning authorities or planning inspectors considering a planning appeal may note noise issues when considering the proposal. If planning permission for a site is granted, the inspector may consider it appropriate to impose conditions which stipulate appropriate planting or the installation of earth bunds in order to mitigate noise, particularly where sites

are in close proximity to roads or railways, or where noise emanating from the site could potentially constitute a nuisance to surrounding residents.

- 4.11 Other statutory nuisance potentially emanating from Gypsy and Traveller sites might include smoke, fumes or gases emitted from premises and animals kept in a manner that might be prejudicial to health.
- 4.12 Again, where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur, an abatement notice can be served. Where there is a failure to comply with the notice a person may be liable to a fine.

Further Information on dealing with noise nuisance

- 4.13 Comprehensive guidance on dealing with noise nuisance, including best practice, can be found on the following websites:

The Department for Food and Rural Affairs

www.defra.gov.uk/environment/noise/index.htm

Together

www.together.gov.uk/category.asp?c=124

The Chartered Institute of Environmental Health

www.cieh.org/knowledge/environmental_protection/noise

The Noise Abatement Society

www.noiseabatementociety.com/tcms/home

Environmental Protection UK

www.environmental-protection.org.uk/

Section 5

Straying livestock

- 5.1 The settled community can be adversely affected by the way in which livestock, particularly horses, are handled by Gypsies and Travellers on a small number of sites. Legislation is available which provides the police and local authorities with powers to deal with this issue.

Powers to deal with straying livestock

- 5.2 Powers contained in the Animals Act 1971 can be used by any landowner (including local authorities, government agencies and so on) where animals are allowed to stray onto their land. The legislation allows for the recovery of costs associated with damage done to the land and costs incurred in stabling animals and so on to be recovered from the owner of the animals.
- 5.3 Where ownership of straying animals cannot be established after fourteen days, livestock may be sold unless court actions are pending for their return. It is imperative therefore that the police are advised within 48 hours of animals straying to provide them with sufficient time to make enquiries to establish ownership
- 5.4 The Highways Act 1980 provides powers to the police to recover the cost of moving straying animals from the highway and the cost of the subsequent tending of those animals from their owner. Any owner that allows animals to stray onto the highway is guilty of an offence. If the owner subsequently moves the animals from the place where they are being kept pending their return without due process, they are also guilty of an offence.
- 5.5 The Animal Welfare Act 2006 makes it an offence for a person to cause suffering to an animal by an act of his or a failure to act. If the welfare of straying livestock is an issue it may be possible to use this legislation to remove animals in order to alleviate suffering.

- 5.6 Some local authorities that experience straying livestock on a regular basis run “swoop and impound” operations, in order to control the movement of straying livestock, particularly horses that are allowed to run wild. This allows them to identify owners and take appropriate action to remedy problems that stray livestock are causing. This also provides an opportunity for an appointed veterinary surgeon to implant microchips in the animals so that, if their owner retrieves them, they can be readily identified if they are impounded again at a later date. Animals can also be examined at this stage to determine whether they have been mistreated, and where this is the case, whether it would be appropriate to take action against the owners under the Animal Welfare Act 2006.
- 5.7 Where ‘swoop and impound’ operations are in place, in order for these to have an effect on the future behaviour of owners in the long term, the appropriate sanctions as set out in the legislation must be imposed on the person who is allowing their livestock to stray. If owners know that they will be fined and/or made to pay a fee before collecting their animals, or if they know that the animals will be sold or destroyed if they do not collect them, they will be more disposed to keep their animals under control in future. If owners are allowed to retrieve animals without penalty they are unlikely to modify their behaviour.
- 5.8 In areas where straying livestock are an issue, and the local authority is considering the provision of a new Gypsy and Traveller site, they may wish to note the advice given in Section 4 of the “Designing Gypsy and Traveller Sites Good practice Guide” which provides advice on the inclusion of space for livestock on sites. The guidance encourages that where there is demand for space for animals and where the site provider is satisfied that it may be reasonable and practicable to include this, a grazing area for horses and ponies could be provided.

Further information on legislation dealing with straying horses

- 5.9 Further information on the legislation that deals with straying horses, is available from the following.

The Department for Food and Rural Affairs

www.defra.gov.uk/animalh/animindx.htm

- 5.10 Specific guidance on the new horse passport regulations can be found at the following:

www.defra.gov.uk/animalh/tracing/horses/horses_q&a.htm

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