House of Commons
House of Lords

Joint Committee on Human Rights

Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee's Fourth Report

Sixth Special Report of Session 2021–22

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Publication

Committee reports are published on the Committee's website by Order of the two Houses.

Committee staff

The current staff of the Committee are Chloe Cockett (Senior Specialist), Olivia Crabtree (Lords Clerk), Busayo Esan (Inquiry Manager), Liam Evans (Committee Specialist), Thiago Froio Simoes (Committee Specialist), Alexander Gask (Deputy Counsel), Samantha Granger (Deputy Counsel for Human Rights and International Law), Eleanor Hourigan (Counsel), Natalia Janiec-Janicki (Committee Operations Manager), Lucinda Maer (Commons Clerk), George Perry (Media Officer) and Nicholas Taylor (Second Commons Clerk).

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Sixth Special Report

The Joint Committee on Human Rights published its Fourth Report of Session 2021–22, *Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Part 4): The criminalisation of unauthorised encampments* (HC 478 / HL Paper 37) on 2 July 2021. The Government response was received on 5 October 2021 and is appended below.

Appendix: Government Response

The Government thanks the Joint Committee on Human Rights' (JCHR) for its legislative scrutiny of Part 4 (Unauthorised Encampments) of the Police, Crime, Sentencing and Courts (PCSC) Bill.

The Government is grateful for the Committee's report and their recognition of the rights of landowners and the rights of travellers to live a nomadic way of life. We are, however, disappointed that the Committee did not take evidence from local authorities, landowners or residents' groups who have been adversely affected by unauthorised encampments and have had to deal with the consequences of the harm caused. Indeed, it is notable that the Committee's report focused on travellers and landowners, but did not consider the effect of such unauthorised encampments on permanent residents who live in the vicinity: their human rights must also be considered.

Part 4 of the Bill is being introduced following a 2019 Government manifesto commitment to tackle unauthorised encampments.

The responses to our 2018 consultation, 'Powers for Dealing with Unauthorised Developments and Encampments', showed the public and local authorities wanted to see greater protection for local communities and for the police to be given greater powers to prevent or remove these encampments. In 2019, we conducted a public consultation, seeking views on how we should extend police powers to tackle unauthorised encampments. 66% of people responding on behalf of local authorities to the Government's 2019 consultation were in favour of a new criminal offence for intentional trespass. It is only right this Government seeks to protect those citizens who are adversely affected by these harmful unauthorised encampments and to deter these from being set up in the first instance.

Our response to the Committee's conclusions and recommendations is set out below.

JCHR Response

Paragraph 20: *Václav Havel once said that the litmus test of a civil society is the way it treats its Gypsy, Roma and Traveller community. The Government can do better to protect that way of life and do more to tackle the discrimination that Gypsies, Roma and Travellers continue to face. While a small minority of the travelling community pose challenges for local authorities and law enforcement, the vast majority of Gypsies, Roma and Travellers are law-abiding exponents of a centuries-old way of life. The Government must take particular care to ensure that its actions do not exacerbate the discrimination that continues to be faced by the Gypsy, Roma and Traveller Community.*

Government Response

The Government acknowledges that the vast majority of travellers are law-abiding citizens. However, on some occasions, unauthorised encampments (and unauthorised developments) can cause harm. It is only right that this Government seeks to protect the citizens who are adversely affected by the actions of some who reside on unauthorised encampments.

The provisions in Part 4 of the Bill only apply to those who cause harm, and the measures are not predicated on protected characteristics. People on unauthorised encampments who do not cause damage, disruption or distress will not commit the new offence or meet the conditions of the amendments to the 1994 Act.

The Government is committed to delivering a cross-government strategy to improve the life chances for travellers. We are committed to tackling all forms of hate crime and are considering a range of options to tackle hate crime beyond the current Hate Crime Action Plan. We are engaging with civil society organisations to explore possible approaches and ensuring travellers' views are taken into consideration.

The practice of unauthorised encampments by a small minority of travellers damages the reputation of the wider community. Nor is there one single homogenous group – travellers will Romany Gypsies, Welsh Gypsies, Scottish Gypsy Travellers, Irish Travellers, 'New' (Age) travellers, and occupational travellers such as travelling showspeople. It is notable that the Committee's report made no reference at all to that latter group, who can face hostility because of that small minority. Good community relations and community cohesion is more likely to be strengthened by tackling such breaches, and is more likely to increase wider public support for more authorised sites.

JCHR Recommendation

Paragraph 31: *Whilst the Government must protect the rights of all concerned, they should not use the criminal law to address what is essentially a planning issue. Gypsy, Roma and Traveller communities often have little option available to them other than unauthorised encampments, because local authorities are failing to build a sufficient number of authorised sites.*

Paragraph 32: *If the Government nonetheless continues to pursue proposals to criminalise unauthorised encampments, the Government should reintroduce a statutory duty on local authorities to make adequate site provision for traveller communities. This would likely have a much greater effect on reducing the number of unauthorised encampments than the imposition of a new criminal offence.*

Government Response

The new offence will apply only where significant damage, disruption or distress is caused or likely to be caused and in specific conditions. Taking enforcement action against criminal activity which affects the rights of others should not be dependent on the number of sites available.

The Government has made clear that local housing authorities in England are under a duty to assess the housing needs of their area and ensure that appropriate traveller sites are provided for the travelling community. This duty sits alongside the national planning policies contained in the National Planning Policy Framework and the Planning Policy for Traveller Sites.

These planning policies set out a framework in which local planning authorities are to develop fair and effective strategies to meet and address these needs. Local authorities are required to make their own assessment of need for travellers and to set pitch targets for travellers in the development plans. These plans are robustly tested by an appointed Inspector before they can be adopted by the authority. Planning decisions must be made in accordance with such plans unless material considerations indicate otherwise.

Local authorities are best placed to make decisions about the number and location of such sites locally, taking into account a number of factors, in accordance with national policy and local circumstances, including their broader legal obligations.

It is the Government's assessment that the current duties and policies impose sufficient requirements on local authorities in terms of what they must do to provide these sites. Data from the Traveller Caravan Count in England indicates that the number of caravans on authorised sites has increased from 14,498 in July 2010 to 20,043 in July 2019 (an increase of 38%), showing that the locally-led planning system is working in delivering more authorised sites.

Regarding introduction of a statutory duty to require that local authorities provide authorised sites for travellers, as the Committee set out in its report, section 6 of the Caravan Sites Act 1968 originally imposed a duty on local authorities to exercise their powers [under section 24 of the Caravan Sites and Control of Development Act 1960] to provide adequate caravan sites for gypsies residing in or resorting to their area. The duty under the 1968 Act was repealed by the Criminal Justice and Public Order Act 1994. There was a concern that the duty to provide sites at public expense was not sustainable and that the basis on which the duty to provide sites was made, had changed.

The Government looked at delivering the objectives of reducing unauthorised encampments and providing adequate sites for travellers in an alternative way, essentially by encouraging more travellers to provide their own sites through the existing planning system. This was also in recognition of the fact that most travellers would prefer to find

and buy their own sites to develop and manage. Recognising this, planning policy seeks to promote more private site provision whilst also recognising that not all travellers can afford to own their own site.

Local authorities, and social housing providers can bid for funding through the £11.5bn Affordable Homes Programme 2021–26 which includes funding for permanent traveller sites and transit sites. Councils are also rewarded via the New Homes Bonus for providing more authorised traveller pitches (benefiting from the affordable tariff, which pays more).

We consider the proposed new duty on local authorities is unnecessary as there are current policies and programmes in place for the provision of authorised sites. In addition, the offence will apply only where significant harms have taken or are likely to take place—site provision is not therefore a factor.

JCHR Recommendation

Paragraph 35: *Without amendment, the Bill is likely to be in breach of the right to respect for private and family life under Article 8 ECHR. To criminalise unauthorised encampments without providing sufficient authorised sites would be contrary to the Government's obligation to facilitate the Gypsy, Roma and Traveller way of life. We therefore propose that Clause 61 should be removed from the Bill.*

Paragraph 39: *The Government's proposals, as they stand, are likely to be in contravention of the requirement under Article 14 ECHR that human rights and freedoms be secured without discrimination. Clauses 61 to 63 of the Bill have the potential to discriminate against Gypsy, Roma and Traveller people, putting at risk their right to practise their culture without being unfairly criminalised and are likely to be subject to legal challenge, if unaltered.*

Government Response

The new measures, and enforcement of them, are not and will not be based on race or any other protected characteristic. The measures will apply to anyone who causes or is likely to cause harm in the conditions described: those who seek to occupy other people's land and property without permission, and cause harm.

For the new offence to take place, a person must have caused, or be likely to cause, significant damage, disruption, or distress and refuse to leave the land or remove their property when asked to do so, or return to the land with an intention of residing there in or with a vehicle within a prohibition period. The offence cannot be committed owing to a person's mere presence on the land. The threshold of "significant" damage, disruption or distress is a high threshold. Changes to the Criminal Justice and Public Order Act 1994 provide that lower levels of damage, disruption and distress can be met with civil enforcement action by the police. This will allow the police to tackle the wide range of harms suffered by landowners and communities in a proportionate manner.

We recognise that not all unauthorised encampments cause harm or disruption. However, there are communities facing significant damage, disruption and distress caused by some unauthorised encampments. The financial costs to communities, businesses and landowners to clean up sites and repair damage, can also be significant. The measures

being introduced are a proportionate means of protecting the rights of nearby residents and landowners. The power of seizure will bring significant harms or harmful behaviour to an end and ensure the land is vacated by those causing harm at the earliest opportunity.

The police decision to exercise the new powers, as is the case with all existing powers available to the police, is discretionary and is an operational matter for the police. Decisions on enforcement and prosecution will be made on case-by case basis by police and the Crown Prosecution Service. We expect the police to continue to consider their responsibilities under the Public Sector Equality Duty and obligations under the Human Rights Act 1998. This includes considering the potential impact issuing a direction to leave, arresting a person or seizing a vehicle may have on the families involved and on the vulnerable, before taking an enforcement decision.

It is expected that proper welfare enquiries will be carried out and, where necessary, the appropriate agencies are involved as soon as possible.

A person will not be caught by the offence if they can show they have a reasonable excuse for failing to leave the land and removing their property as soon as practicable or for returning within the prohibited period and what may constitute a reasonable excuse will be highlighted in statutory guidance.

Finally, there will be statutory guidance for the police, setting out possible examples of significant harms and the proportionate enforcement powers, how the provisions of the offence might operate together with other provisions.

Due to the threshold of the new offence and the requirement for the police to act in a manner which is compatible with the Human Rights Act and Equality Act, it is our view that this clause is a proportionate means of meeting the legitimate aims outlined above.

As the previous 2015 non-statutory guidance states: "when deciding whether to take action, they [councils and the police] may want to consider for example, (a) the harm that such developments can cause to local amenities and the local environment, (b) the potential interference with the peaceful enjoyment of neighbouring property, (c) the need to maintain public order and safety and protect health—for example, by deterring fly-tipping and criminal damage, (d) any harm to good community relations, (e) that the state may enforce laws to control the use of an individual's property where that is in accordance with the general public interest." (HM Government, Dealing with illegal and unauthorised encampments, March 2015).

Such material considerations reflect both human rights and equality legislation. Article 8 of ECHR allows for intervention by a public authority "in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." Article 1 of Protocol 1 embraces the "peaceful enjoyment of his possessions"—this would apply to local residents as well; and permits the enforcement of laws "to control the use of property in accordance with the general interest."

JCHR Recommendation

Paragraph 36: *We recognise, however, that the Government is likely to retain this Clause. As such, at a minimum, we propose an amendment to the Bill which would only permit criminal sanctions on people living on an unauthorised encampment in circumstances where an adequate authorised site had been made available by the local authority. This is likely to be a more proportionate interference with Article 8 ECHR rights, as well as rights to health and education for the Gypsy, Roma and Traveller community.*

Government Response

As explained above, this clause tackles significant harms that have been or are likely to be caused on the unauthorised encampment. The fact of the unauthorised encampment is not in itself an offence. The ability to tackle harms is not dependent on site provision. If significant harms are being caused, it is only right the police have powers to tackle those harms.

Where the level of harm being committed is not significant, conditions for civil enforcement action in the 1994 Act can be met.

Police have powers under section 62A of the 1994 Act to direct trespassers to leave land and remove any vehicle and property from the land where there is a suitable pitch available on a caravan site elsewhere in the local authority area, providing there is at least one person and one vehicle present on the land without permission, with the purpose of residing. This is a proportionate measure where no harm is caused.

Inserting an amendment whereby an offence is only committed by people living on an unauthorised encampment in circumstances where an adequate authorised site had been made available by the local authority, would replicate an existing power and mean landowners and police would lose the ability to act quickly and effectively when significant harms are caused on their land. The Government seeks to protect those citizens and communities who are adversely affected by harmful unauthorised encampments and to deter these from being set up. The proposed amendment would not meet the policy objectives of protecting communities from harm.

It should also be noted that unauthorised encampments are unlikely to provide decent provision of health and sanitation for its occupiers. The welfare of travellers, from the elderly, to children, is more likely to be safeguarded in the provision of well-run, regulated authorised sites. It is easier to arrange for the provision of schooling at authorised sites. Whilst enjoying a nomadic way of life, travellers must also accept the need for children to be properly educated, and unauthorised encampments do not provide a stable setting for children.

JCHR Recommendation

Paragraph 43: *The wording of Part 4 of the Bill is too vague and offends the principle of legal certainty, which is vital when dealing with criminal law. No person should be punished through laws that lack sufficient legal certainty (Article 7 ECHR) and, moreover, no person's human rights should be interfered with by laws that lack sufficient legal certainty.*

Paragraph 44: *The new offence relates to what someone perceives a person may "intend" to do, or damage they are "likely" to cause, "if" they reside on land. The language of the new offence uses multiple terms that are open to wide and often subjective interpretation and as a consequence will allow for prejudice and discrimination to permeate this new offence. It is clear that any infringement of property rights can cause harm to the landowner. However, we must not criminalise people for doing no harm, particularly when those being targeted by the new offence are a historically persecuted minority group who continue to suffer discrimination and prejudice. We propose that Subsection (4)(b) of new Section 60C, as set out in Clause 61, be left out of the Bill.*

Paragraph 45: *The police appear to be uncertain as to how this proposed legislation will be enforced in practice. The Secretary of State is, however, expected to publish guidance for the Police concerning enforcement. This must be done before the Bill completes all stages in the House of Commons so it can be adequately scrutinised by Members of Parliament. The guidance must ensure that the exercise of these provisions is done in a manner that complies with ECHR rights.*

Government Response

Keeping 'likely to be caused' enables the police to act more proactively so that they can prevent repeated significant harms, rather than waiting until the damage has taken place again. We have referred to the costs to clean up and repair damage caused by some unauthorised encampments which can be substantial. This is particularly difficult where those who cause damage return to the same land or move a short distance away only to re-enter it or enter other land and cause the same type of damage. It is only right the police can act to prevent this.

The factual circumstances of each case will determine whether a 'significant' level of damage, disruption or distress has been caused or is likely to be caused and this will be for the police and courts to assess.

As they do for other criminal offences, the police will need to collect evidence to form reasonable grounds to suspect a person has committed the offence and the offence will apply only where the specific conditions have been met.

Statutory guidance will be issued and will outline examples of what might constitute significant damage, disruption or distress, as well as what may constitute a reasonable excuse for not complying with the request to leave.

JCHR Recommendation

Paragraph 47: *The word "insulting" should be removed from the definition of "offensive conduct" within Subsection (8) of new Section 60C, as set out in Clause 61. Doing so would continue to catch threatening or abusive behaviour, but without risking an unjustified interference with the right to free speech under Article 10 ECHR. This would also ensure that members of the Gypsy, Roma and Traveller community would not be prosecuted for the language they use in heightened emotional situations, based on an interpretation of 'insulting' by other private citizens who may, in some circumstances, be influenced by conscious or unconscious prejudice against them.*

Government Response

We believe landowners should be protected from being insulted on their land and the measures in Clause 62 mirror those of the 1994 Act. It is only right there is consistency within the law. As it will be for the police to determine whether the language used was insulting, rather than just the landowner, we do agree with this recommendation.

JCHR Recommendation

Paragraph 52: *There are far too many risks inherent in a system that effectively criminalises a civil law matter. This is all the more concerning given that some landowners could be motivated by overt, or unconscious, prejudice against Gypsy, Roma and Traveller people. This, combined with a lack of clarity in the language of the Bill, could lead to violations of the principle of no punishment without law (Article 7 ECHR), the right to private and family life (Article 8 ECHR) and freedom from discrimination in the enjoyment of these rights (Article 14 ECHR).*

Paragraph 53: *Clearly landowners have a right to ask people to leave their property. However, we propose an amendment to the Bill so that in order for this criminal offence to be committed, it would be due to a failure to comply with a request from a police officer asking unauthorised occupiers to leave private land.*

Government Response

As the Committee acknowledges, it is only right that landowners as well as the police should be allowed to ask trespassers to vacate their land, especially when significant damage, disruption or distress has taken place. The new provision allows the police to act more quickly where the level of harm is or is likely to be significant and where the conditions are met, including if a landowner has asked the person concerned to leave.

Existing conditions under the 1994 Act mean that police must first direct the person to leave and the person must subsequently fail to leave before police can take action. This amendment would make the new offence very similar to the direction power under section 61, and would likely cause confusion for police when deciding what power to use as there would be two direction powers distinguished predominantly by the different thresholds for the harms caused. The 2018 consultation, 'Powers for Dealing with Unauthorised Developments and Encampments', highlighted the existing powers were insufficient and it is our view, and that suggested by the 2018 consultation responses, that the existing section 61 power does not go far enough to prevent, and alleviate, the harms caused by some unauthorised encampments.

As for the condition of 'likely to be caused', evidence will be considered on a case-by-case basis. The police will need to continue to collect evidence to form reasonable grounds to suspect the offence has been committed and the offence will apply only where the specific conditions have been met. In addition, we expect the police will continue to have regard to their duty to safeguard the vulnerable when taking enforcement decisions.

Inserting an amendment whereby, for the criminal offence to be committed, it would mean a request to leave must be issued from a police officer, would remove the deterrent of a landowner request to leave. The provision for a police request to leave remains for lower level harms under the 1994 Act.

JCHR Recommendation

Paragraph 59: *New powers for the police to seize property, including vehicles, must never be used to make Gypsy, Roma and Traveller people homeless, particularly children and older people. We propose an amendment to the Bill which would ensure that the police could never seize a person's caravan if that is their principal home and they would have nowhere else to live.*

Government Response

The Government seeks to protect those citizens who are adversely affected by harmful unauthorised encampments and the seizure power helps to deter these from being set up in the first instance and to clear the land at the earliest opportunity, therefore, bringing harms to an end.

Seizure powers are already conferred on the police in relation to a person's failure to comply with a police direction to leave land under the 1994 Act. It is right that police should have an equivalent power in the context of the new criminal offence. The Bill requires an even higher threshold of harm to be committed before the police would consider using and are able to use, seizure powers.

If people do not commit significant harms and leave when asked, they will not be caught by the offence and will not risk having their vehicle seized. Without the power to seize vehicles, enforcement action is likely to be hindered as the eviction process will be slower as the harms could continue why people/vehicles remain on the land.

Police decisions to seize vehicles should continue to be taken in consultation with the local authority where appropriate. As is the case for existing provisions, the local authority would need, where possible, to offer assurance that they have relevant measures in place to meet any welfare and safeguarding needs of those affected by the loss of their accommodation, particularly the vulnerable, before police take enforcement action. We expect the police will continue to undertake any enforcement action in compliance with their equality and human rights obligations, which includes the consideration of harm to local amenities and the local environment, and the rights of nearby residents.

Where a decision is made not to charge the person, the police must also return the property as soon as practicable. If at any time a person other than the suspect satisfies the police that property that is retained belongs to the person at that time, and belonged to them at the time of the suspected offence, then the police must return the property to the person. We do not agree with this recommendation because it would prevent effective action against significant harms and safeguards are in place to ensure the clause meets the policy objectives.

We again thank the committee for their scrutiny of the Police, Crime Sentencing and Courts Bill.