



Home Office

Baroness Williams

2 Marsham Street
London SW1P 4DF
www.gov.uk/home-office

BY EMAIL ONLY

Rt Hon Harriet Harman QC MP

Chair

Joint Committee on Human Rights

Houses of Parliament

London

SW1A 0AA

13 January 2022

Dear Harriet Harman MP,

Government response to the Joint Committee on Human Rights letter: Draft Statutory Guidance on Unauthorised Encampments for Police

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

The Government thanks and recognises the work of the Committee in bringing together the thoughts and expertise of a variety of stakeholders on Part 4 of the PCSC Bill. We respect the opinions of the committee and of those who consider themselves to be impacted by the measures in Part 4, which is why we are introducing them with the specified conditions.

The Government carried out an extensive public consultation in 2018, looking at the powers for dealing with unauthorised developments and encampments. The consultation responses signalled clear calls for the Government to take action to improve enforcement against unauthorised encampments, with only 9% of respondents stating that the current set of powers were effective.

In addition, 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. 94% of people who responded on behalf of local authorities to the 2019 consultation, and 86% of those who responded on behalf of police organisations, supported one or more of the Government's proposed amendments to the 1994 Act to extend the powers of the police to direct trespassers to leave land.

The draft statutory guidance has been produced in consultation with the National Police Chiefs' Council, along with relevant Government Departments. The purpose of the guidance

is to set out all the powers available to police and to help them decide on proportionate action.

The National Police Chiefs' Council will also be updating their operational guidance which will provide detail on the operational specifics of tackling unauthorised encampments according to the local operational environment.

Our response to the Committee's comments is set out below.

JCHR Recommendation:

References to human rights within the draft guidance: *[...] the police, alongside other public bodies, should not gold-plate human rights and equalities legislation.*

It would be better if the guidance instead reflected the need to properly consider and give effect to the human rights of all affected parties including those in encampments and those of landowners.

Government Response:

During the House of Lords Bill Committee debate on 3 November, I was asked to clarify what is meant by 'not gold-plating human rights and equalities legislation'. I have subsequently written to Baroness Lister and other members of the House of Lords who were present in Committee and a copy of the letter has been placed in the library of the House. Our response is as follows.

This language has been used in HM Government guidance on unauthorised encampments since March 2015, when issued under the coalition Government. It is not a new position. <https://www.gov.uk/government/publications/dealing-with-illegal-and-unauthorised-encampments>

That guidance made clear that human rights legislation does not prevent action to protect local amenities and the local environment; to maintain public order and safety and to protect public health - for example, by preventing fly-tipping and criminal damage.

The necessary balancing of interests and rights of both travellers and settled residents reflects the position regarding qualified rights in the Human Rights Act 1998/European Convention on Human Rights ("ECHR") and the need to maintain good community relations under the Equality Act 2010. But operationally in the past, this may have been misunderstood by some public bodies responding to unauthorised encampments.

JCHR Recommendation:

Protection against indirect discrimination.

The guidance should be amended to reflect that the GRT community has a unique culture, whose way of life may need to be accommodated differently to other communities or for wider society. The Government has a positive obligation – set out clearly by the European Court of Human Rights – to “facilitate the gypsy way of life” and to ensure this way of life is protected. It would be helpful for the guidance to be explicit that the GRT community is an ethnic group for the purposes of both equalities law and anti-discrimination provisions of the ECHR.

Government Response:

The Government’s overarching aim is to ensure fair and equal treatment for travellers, including the GRT community, in a way that facilitates their traditional and nomadic way of life, while respecting the rights and fair treatment of the settled community.

We accept the Committee’s recommendation that the guidance should state the GRT community is an ethnic group for the purposes of both equalities law and anti-discrimination provisions of the ECHR. We will incorporate this into the final publication of the guidance.

JCHR Recommendation:

Thresholds for “significant damage” and “likely to cause significant damage” are too low.

Further clarification of what constitutes “significant damage” would be helpful and it needs to be set at a higher threshold.

Government Response:

The guidance gives examples of what might be considered by police and by courts to be significant damage, disruption and distress. It is for the police and courts to decide on proportionate enforcement action based on the circumstances and evidence of each individual case. By keeping the examples broad, we have built in flexibility to allow each and every case to be considered on its facts with the aim of ensuring that people are not criminalised in cases where it would be disproportionate to do so.

This type of qualifying term is used for other offences without Government guidance - for example ‘serious disruption to the life of the community’ in the Public Order Act 1986. This is also present in the Public Order Act 1986 where trespassory assemblies may result in ‘significant damage to the land, building or monument’.

JCHR Recommendation:

Offensive conduct: the guidance be revised to reflect the need for the police to be aware of conscious or unconscious prejudice being a factor in how people might perceive conduct, so that they do not allow prejudice to be a key factor in applying the offence

Government Response:

Police are conscious and unconscious bias trained and must have due regard to their Public Sector Equality Duty and comply with their equality and human rights obligations when taking decisions on enforcement action.

Equality and diversity are an essential part of the professional behaviour expected of everyone working in policing as set out in the Code of Ethics published by the College of

Policing. The Code of Ethics supports those working in policing to deliver the highest professional standards in their service to the public.

Police will also continue to take action based on the facts and the evidence of every case, and we expect them to consider whether there is any prejudice present when determining whether an offence has been committed.

Regarding distress, an offence is only committed if significant distress has been caused or is likely to be caused as a result of offensive conduct, which is defined within the offence. It is not, therefore, possible for an offence to be committed by a person simply because another person says they are distressed by the mere presence of an unauthorised encampment on the land.

JCHR Recommendation:

Seizure of property: The guidance needs to be clearer about the importance of proportionality when exercising new powers to seize property, and the need for very careful assessment if there is a risk that police action will make a person homeless.

Government Response:

It is important police take proportionate action based on the facts and evidence of each case and we have set this out in the statutory guidance

The guidance states *“The police have the powers to take action where significant harms have been caused. It is for the police to decide on proportionate enforcement action based on the circumstances and evidence of each case.”*

“Each case should be dealt with on its own merits by police. 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.”

The guidance highlights that police should seek to ensure, in accordance with their equalities and human rights obligations, proper welfare enquiries are carried out to determine whether there are pressing needs presented by those on unauthorised encampments and, where necessary, that the appropriate agencies (including Local Authorities) are involved as soon as possible regarding suitable accommodation.

We again thank the committee for their scrutiny of the Part 4 guidance.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Susan', is centered on the page.

**Baroness Williams of Trafford
Minister of State**