



**FRIENDS,
FAMILIES &
TRAVELLERS**

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**House of Lords second reading
briefing:
Part 4 Police, Crime, Sentencing and
Courts Bill**

**Abbie Kirkby,
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Briefing for House of Lords second reading PCSCB: Part 4

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Introduction

Part 4 of the Police, Crime, Sentencing and Courts Bill (PCSCB) outlines measures to introduce a new criminal offence of trespass with the intent to reside, and extend existing powers in the Criminal Justice and Public Order Act 1994 (CJPOA). The Bill emerges from the House of Commons unchanged, despite a number of amendments being tabled that sought to abolish Part 4 or mitigate the inevitable harm caused by the measures to already marginalised Gypsy and Traveller communities.

The proposals are being put forward despite the existence of a range of other eviction powers for encampments, and despite the range of alternative solutions grounded in a humane and common sense approach, such as the provision of more sites and stopping places. This briefing outlines some context to encampments in England and the likely impact of the criminalisation of trespass for Gypsies and Travellers.

Key points

- There are already a wide range of eviction powers for encampments, which can be exercised as swiftly as in an hour and can be triggered if incidents of anti-social behaviour occur. These enable a response based on conduct.
- The measures outlined in the PCSCB will compound the inequalities experienced by Gypsies and Travellers, and push people into the criminal justice system.
- The powers will disproportionately affect specific minority and ethnic communities and are likely to be in conflict with equality and human rights legislation.
- The subjective nature of the language in Part 4 leaves the powers open to abuse.
- The new role of a private individual in triggering a criminal offence could mean the powers are misused, particularly where prejudicial views exist.
- An enforcement approach to addressing the number of encampments overlooks the issue of the lack of site provision – there is an absence of places where Gypsies and Travellers are permitted to stop or reside.
- There are other solutions to managing encampments, such as negotiated stopping, whereby arrangements are made on agreed times for stopping and to ensure the provision of basic amenities such as water, sanitation and refuse collection¹.
- The definition of a Gypsy or Traveller in planning terms² requires proof of travelling – without that you are not assessed as needing a pitch or get planning permission – but the communities' ability to travel will be severely impeded.
- Police Forces, the bodies responsible for enforcing the legislation, do not support the criminalisation of trespass.

¹ <https://www.negotiatedstopping.co.uk/>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457420/Final_planning_and_travellers_policy.pdf

Overview of the proposed new police powers and specific concerns with the measures

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

This will apply when a person:

- is residing, or intending to reside, on land without consent and has been asked to leave by the occupier, their representative or the police;
- has at least one vehicle with them on the land;
- has caused, or is likely to cause, significant damage, disruption or distress;
- has failed to comply with this request as soon as reasonably practicable and has no reasonable excuse for doing so.

Failure to comply without 'reasonable excuse' can lead to the police exercising powers to seize a vehicle (someone's home and possessions) as well as imprisonment and a fine. These measures are disproportionate, as described throughout this submission, but it is crucial from the outset, to stress the severity of the seizure of a home. The impacts of these measures will be catastrophic for an individual and a family – suddenly without a home or possessions and with potentially any family member over 18 years of age thrown into the criminal justice system. Beyond the immediate impact, this will also affect the long-term prospects and welfare of the family and severely impact children who would lose their home and face Children's Services intervention, possibly breaking up the family.

What constitutes 'significant damage, disruption or distress' is wildly subjective and could potentially capture many encampments, particularly as the threshold for vehicle numbers is reduced to one. The fact remains that there is widespread hostility and prejudice towards Gypsies and Travellers and many people claim to be distressed by a Traveller camp, which can be based only on presence, not any particular behaviour. The terms are open to abuse. The 'intends to' elements are also concerning, based on supposition without any proof or evidence of certain behaviours actually occurring.

The new role of the private individual is also one of real concern. Once the occupier of the land or representative of the occupier has requested those on the land to leave, if they do not comply, they committing an offence. Existing CJPOA powers can only be exercised by the Police, with a person only facing criminalisation once they have not complied with the instruction of a law enforcement official. Under the new offence, a person can be criminalised for disobeying the instruction of a private citizen whose interest could be underpinned by prejudice or a misguided understanding of the legislation.

Amendments to current police powers of eviction in CJPOA

Further measures, as outlined in the PCSCB, are to:

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

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

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

Current enforcement powers for unauthorised encampments

There are already a range of eviction powers available for police, local authorities and landowners, including powers in the CJPOA and possession proceedings under Part 55 of the Civil Procedure Rules. A wide range of powers are summarised in the 14 page MoJ/HO/DCLG document ‘Dealing with illegal and unauthorised encampments: A summary of available powers’³. This document ‘sets out the robust powers councils, the police and landowners now have to clamp down quickly on illegal and unauthorised encampments’ and states ‘Councils and the police have been given strong powers to deal with unauthorised encampments’ (2015). So why, if all of these powers already exist, do we need more?

Some powers, such as Section 61 of the CJPOA, can be triggered easily and enforce eviction as quickly as in an hour:

Section 61: Power to remove trespassers on land.

(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...

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

³ <https://www.gov.uk/government/publications/dealing-with-illegal-and-unauthorised-encampments>

(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.

We believe the powers to already be too strong. However, current powers do allow for discretionary use and a proportionate response.

Debates around the need for measures has focussed on the conduct of a minority of individuals. However specific powers exist relating to waste management and crime, as well as legislation addressing specific forms of anti-social behaviour, should they apply. It is wholly disproportionate to introduce new legislation based on the actions of a small minority, when the danger is that the measures could capture all, not least through a chilling effect.

Impact of the criminalisation of trespass on Gypsies and Travellers

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

The Equality and Human Rights Commission expressed their concern about more powers to evict or ban encampments, stating in their submission to the 2018 'Powers for dealing with unauthorised development and encampments' consultation⁴:

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

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

⁴ <https://www.equalityhumanrights.com/sites/default/files/consultation-response-powers-for-dealing-with-unauthorised-development-and-encampments-june-2018.pdf>

Criminalisation of trespass and the conflict with human rights protections

Criminalisation of trespass is in direct conflict with the positive duty imposed on the UK to 'facilitate the Gypsy way of life' (by the European Court of Human Rights ruling: *Chapman v UK*, 2001). Furthermore, there was a landmark ruling passed down by the Court of Appeal on the 21st of January 2020 in which the London Borough of Bromley were refused an application for an injunction banning Gypsies and Travellers from the borough⁵. The judge points out that in cases where local authorities lack adequate site provision they will inevitably have instances of encampments, and where local authorities attempt to criminalise those encampments, this would likely leave local authorities in breach of human rights legislation, stating:

'It is a striking feature of many of the documents that the court was shown that the absence of sufficient transit sites has repeatedly stymied any coherent attempt to deal with this issue. The reality is that, without such sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Convention.'

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

The Joint Committee on Human Rights (JCHR), in their legislative scrutiny report on Part 4 of the PCSCB, outlined how it 'gives rise to several human rights concerns'⁶. The report outlined 'concerns that there is a significant risk that the Bill could be found to be in contravention of the requirement that all human rights and freedoms be secured without discrimination under Article 14 ECHR, as read with Article 8 and other relevant human rights.' A number of amendments were tabled by JCHR Chair Harriet Harman during the House of Commons Report Stage (as outlined in the JCHR report).

Police views on criminalisation of trespass

In recognition of the equality and human rights implications of criminalising trespass, the majority of the Police Forces and Police and Crime Commissioners that responded to the Home Office consultation opposed the proposal to criminalise trespass⁷. Only 21.7% of police bodies supported criminalisation of trespass, with 93.7% calling for site provision as the solution to unauthorised encampments. The views of the National Chief Police

⁵ Court of Appeal in the case of *The Mayor and Burgesses of the London Borough of Bromley v Persons Unknown and Others* [2020] EWCA Civ 12.

⁶ <https://committees.parliament.uk/publications/6554/documents/70980/default/>

⁷ <https://www.gypsy-traveller.org/wp-content/uploads/2020/10/Full-Report-Police-repeat-calls-for-more-sites-not-powers-FINAL.pdf>

Council and the Association of Police and Crime Commissioners were made plain in their joint submission to the 2018 Government consultation⁸:

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

Their submission refers to one of the numerous powers already available to the police, local authorities and private landowners wishing to evict an encampment. The NPCC’s position was again made clear in the House of Commons Bill Committee evidence session with NPCC Chair Martin Hewitt, and by NPCC Gypsy and Traveller Lead Janette McCormick during the Joint Committee on Human Rights evidence gathering sessions – they do not seek or desire these new powers in the PCSCB Part 4.

Shortage of Gypsy and Traveller sites

Support for more draconian enforcement powers and opposition to the existence of roadside camps is often coupled with opposition to the provision of permanent and transit sites in local areas. Gypsies and Travellers face hostility to their existence in either circumstance. This presents continual barriers to the provision of sites despite the fact that, for many Gypsies and Travellers, living in a caravan as part of a community is an integral part of cultural identity⁹.

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

Friends, Families and Travellers conducted research into compliance with Planning Policy for Traveller Sites¹⁰ and assessed need and supply of Gypsy and Traveller pitches

⁸ <https://surrey-pcc.gov.uk/wp-content/uploads/2018/06/GRT-submission.pdf>

⁹ The 2011 Census found nearly a quarter of Gypsies and Travellers live in caravans or other mobile accommodation, with the January 2020 Ministry of Housing, Communities & Local Government’s (MHCLG) Caravan Count listing 694 caravans on ‘unauthorised encampments’ (caravans on land not owned by Gypsies/Travellers).

¹⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457420/Final_planning_and_travellers_policy.pdf

in 2016¹¹ and again in 2019¹², analysing Gypsy and Traveller accommodation assessments and Local Plans from all local planning authorities in the South East of England. The most recent findings revealed shockingly low numbers, with only 8 out of 68 local authorities meeting their identified need for Gypsy and Traveller pitches. There is a similar picture across the country¹³.

There has been an overall 8.4% decrease of pitches on local authority Traveller sites 2010-2020, as highlighted here using the Ministry of Housing Communities and Local Government figures:

Local authority/Registered Social Landlord Gypsy and Traveler pitches:

	January 2010 ¹⁴	January 2020 ¹⁵	% difference
Transit pitches	253	354	+ 39.9%
Permanent pitches	4665	4149	- 11.1%
Total pitches	4918	4503	- 8.4%

Whilst there has been a 39.9% increase in transit pitches alone, this only amounts to an increase of 101 pitches, the equivalent to 10 per year over 10 years, with an overall decrease of 11.1% of permanent pitches on local authority/Registered Social Landlord sites.

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

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

¹¹ <https://www.gypsy-traveller.org/wp-content/uploads/2016/12/Five-Year-Supply-Research-Findings-Statement-FINAL.pdf>

¹² <https://www.gypsy-traveller.org/wp-content/uploads/2020/02/Research-on-the-five-year-supply-of-deliverable-Gypsy-and-Traveller-sites-in-the-South-East-of-England.pdf>

¹³ http://www.nationalgypsytravellerfederation.org/uploads/3/7/5/2/37524461/research_into_gypsy_and_traveller_pitch_supply_2016_.pdf

¹⁴ <https://www.gov.uk/government/statistics/gypsy-and-traveller-caravan-count-january-2010>, See Table 2 / 'England' tab

¹⁵ <https://www.gov.uk/government/statistics/traveller-caravan-count-january-2020>, Count of Traveller Caravans: Live tables / 'Live Table 2' tab

concerns raised over waste management and use of unsuitable land. Negotiated stopping models are also proven to save local authorities money¹⁶.

Summary of key points

- There are a wide range of eviction powers for encampments, which can be exercised as swiftly as in an hour and can be triggered if incidents of anti-social behaviour occur, including already existing legislation to deal with waste management issues.
- The measures outlined in the PCSCB will further compound the inequalities experienced by Gypsies and Travellers, pushing people into the criminal justice system.
- The powers will disproportionately affect specific minority and ethnic communities and are likely to be in conflict with equality and human rights legislation.
- The subjective nature of the language in Part 4 leaves the powers open to abuse.
- The new role of a private individual in triggering a criminal offence could mean the powers are misused, particularly where prejudicial views exist.
- An enforcement approach to addressing the number of encampments overlooks the issue of the lack of site provision – there is an absence of places where Gypsies and Travellers are permitted to stop or reside.
- There are other solutions to managing encampments, such as negotiated stopping, whereby arrangements are made on agreed permitted times for stopping and to ensure the provision of basic amenities such as water, sanitation and refuse collection¹⁷.
- The definition of a Gypsy or Traveller in planning terms¹⁸ requires proof of travelling – without which you are not assessed as needing a pitch or able to get planning permission, but the communities' ability to travel will be severely impeded.
- Police Forces, the bodies responsible for enforcing the legislation, do not support the criminalisation of trespass.

¹⁶ [De Montfort University Faculty of Business and Law, Negotiated Stopping & ABCD, Excerpt from the final evaluation report, Leeds GATE Asset Based Community Development \(ABCD\) Project](#)

¹⁷ <https://www.negotiatedstopping.co.uk/>

¹⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/457420/Final_planning_and_travellers_policy.pdf

About us

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

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