



Home Office

Direct Communications Unit
2 Marsham Street
London
SW1P 4DF

Tel: 020 7035 4848
www.homeoffice.gov.uk

Dr Ruth Allen and co-signatories
The British Association of Social Workers, Wellesley House, 37
Waterloo Street
Birmingham
Birmingham
B2 5PP
amanda.govani@basw.co.uk

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Dear Dr Ruth Allen and co-signatories,

Thank you for your letter of 01 December 2021 about measures to tackle unauthorised encampments in the Police, Crime, Sentencing and Courts Bill.

Guidance and welfare issues

The Government is giving the police the powers to take action where significant harms have been caused. We expect police to continue to give full consideration to their responsibilities under their Public Sector Equality Duty and the potential impact issuing a direction to leave may have on the families involved, before they reach a decision on taking enforcement action. We also expect police to decide enforcement action based on the circumstances and the evidence of each case. This is set out in the draft statutory guidance. The guidance goes onto state:

“Police should ensure that, in accordance with their wider 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 that, where necessary, the appropriate agencies (including Local Authorities) are involved as soon as possible.”

With the term ‘likely to cause’, as is the case 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 have been committed only where the specific conditions have been met.

The Government believes that the measures are compliant with the ECHR and Equality

Act 2010. We respect the rights of the Traveller community to follow a nomadic way of life, in line with their cultural heritage.

Regarding the term 'gold-plating', 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.

Key terms

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 described within the offence. It is not, therefore, possible for an offence to be committed by a person if another person is distressed by the mere presence of an unauthorised encampment on the land. The term 'distress' is not new for an offence, it is used in Section 4A and Section 5 of the Public Order Act 1986.

Site provision

The Government expects local planning authorities to assess the need for traveller sites in their area and plan accordingly, as currently set out in national planning policy. The Government have reminded local authorities of their duties to assess the need for transit sites, in addition to permanent sites, through a Written Ministerial Statement in 2019.

There is wider Government support for the provision of traveller sites via the New Homes Bonus in England which provides an incentive for local authorities to encourage housing growth in their areas, and rewards net increases in effective housing stock, including the provision of authorised traveller pitches.

Engaging with Gypsy, Roma, Travellers

The Government conducted two consultations – the first in 2018 on whether more powers were needed to tackle unauthorised encampments; the second, in 2019, asked how we might do that. Home Office officials also hosted a roundtable in May 2019, attended by eight different Traveller organisations. Following concerns raised that some members of GRT communities would encounter obstacles accessing the 2019 consultation, officials worked with the organisation Friends, Family and Travellers on developing targeted engagement with the GRT community. Home Office officials also attended MHCLG GRT Liaison Group meetings. All responses and views were considered before decisions were taken to introduce the measures.

Police Powers Unit

Email: Public.Enquiries@homeoffice.gov.uk