



**Protocol for Dealing with
Unauthorised Encampments
by Gypsy/Travellers in Moray**

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1. Purpose of the Protocol

- 1.1 This protocol provides a framework to ensure a structured and consistent response by those agencies dealing with unauthorised encampments in Moray.
- 1.2 This protocol has been drafted to provide a co-ordinated and coherent approach to unauthorised sites in line with legislation, Scottish Government guidance¹ and good practice.
- 1.3 The implementation of the Protocol is the responsibility of Moray Council in partnership with other key stakeholders including Police Scotland and NHS Grampian.
- 1.4 Moray Council will be the lead agency in management of unauthorised sites within the Moray area. This protocol provides an overview of the process to be followed by Moray Council staff when responding to reports of sites. In addition, Moray Council has developed operational procedures to support this Protocol and ensure that consistency, transparency and accountability are maintained.

2. Terminology

- 2.1 This protocol uses the terminology advocated by the Scottish Government guidance:
 - Gypsy/Traveller refers to people from Travelling communities;
 - Unauthorised site describes a site which has been established by Gypsy/Travellers without planning permission. Such sites will normally be in place for several days, but can sometimes be in place for longer;
 - Those outwith the Gypsy/Traveller community are referred to as the “settled community”. However, it should be noted that some Gypsy/Travellers live permanently in one place (for example on a private site) and maybe housed within the settled community.

3. Legislative context

- 3.1 The legal framework consists of:
 - Trespass (Scotland) Act 1865;
 - Roads (Scotland) Act 1984;
 - Antisocial Behaviour etc (Scotland) Act 2004;
 - Section 61 & 62 of the Criminal Justice and Public Order Act 1994;
 - Environment Protection Act 1990;

¹ [Guidance for Local Authorities on Managing Unauthorised Camping by Gypsy Travellers in Scotland](#): Scottish Government; April 2017

- British Transport Commission Act 1949;
- The Equality Act 2010;
- The Human Rights Act 1998;
- Children (Scotland) Act 1995; and
- Homelessness etc (Scotland) Act 2003.

A summary of the legislative requirements is provided in **Appendix I**.

4. National approach

- 4.1 The Scottish Government recognises the right of Gypsy/Travellers to practise a nomadic lifestyle, including travelling and camping across Scotland. Local authorities have to balance this right with the needs of the settled community in their area. While the large majority of unauthorised sites do not cause any difficulties, some sites can give rise to friction, for example if they are in inappropriate locations, those living on a site are not behaving in a responsible manner, or because of tension with local settled communities. In response to this Scottish Government guidance sets out a general approach which it considers is appropriate for a local authority in managing unauthorised sites.

Unsuitable locations

- 4.2 There are some locations where an unauthorised site will not be acceptable under any circumstances (because of traffic hazards, environmental damage, etc.). These locations could include:
- a site of scientific or environmental interest;
 - parks, public open spaces in regular use, sports and recreation grounds;
 - a site where pollution could damage water courses/water supply;
 - an area with toxic waste, serious ground pollution or other environmental hazard;
 - on a public road;
 - on the verge of a road (from a road safety perspective), including lay-bys;
 - in proximity to a railway line where there may be a danger to individuals.

The above list is not exhaustive. In line with the Scottish Government guidance, the Council will maintain and continually update a list of locations in the local area which are unsuitable for an unauthorised site.

Behaviour on a site

- 4.3 There are some behaviours that the Government and local authorities expects those living on an unauthorised site to demonstrate. These include:
- looking after the land the site is on;
 - showing respect to nearby residents;
 - keeping animals under control at all times. This includes acting to minimise the noise from dog barking;
 - disposing of litter and other rubbish in an appropriate manner (e.g. no fly-tipping);

- getting rid of animal and human waste hygienically;
- not starting fires without prior written permission from the local authority or landowner;
- minimising the noise from generators to prevent nuisance;
- keeping groups small and the number of caravans appropriate to the location.

Behaviour around a site

- 4.4 While there are standards of behaviour expected of those living on unauthorised sites, there are also clear expectations for the behaviour from members of the settled community around sites. Any incidents of antisocial behaviour directed at Gypsy/Travellers living on unauthorised sites should be reported to the police.

Welfare, education and welfare needs

- 4.5 The Gypsy/Traveller community experiences poor outcomes in relation to health, education, and in other areas. Several agencies will potentially have an interest in the wellbeing of Gypsy/Travellers on an unauthorised site, including those dealing with housing, education, health, and social work. Local authorities should have arrangements in place to ensure that all the relevant services within the authority work effectively together, and are clear on their respective roles, in relation to meeting the needs of Gypsy/Travellers living on an unauthorised site. Local authorities should also have in place arrangements with relevant external bodies (such as the NHS) as necessary to ensure the welfare needs of those living on an unauthorised site are being met.

Communication

- 4.6 The Council will ensure there is regular and clear communication with Gypsy/Travellers living on the site. It is worth noting that literacy levels vary in Gypsy/Traveller communities, so verbal communication will be an important part of any communication plan.

Types of encampments

- 4.7 There are two broad types of site:

- smaller family groups, and
- larger gatherings.

Where possible the Council will consider in advance how they will respond and manage these two different types of sites. This may involve having similar, but different, procedures for each type of site.

- 4.8 Large gatherings of Gypsy/Travellers can also occur, and take place for many different reasons. Sometimes these events are on land that is a temporary authorised site, and take place in the same location each year. Such large gatherings will be for a particular purpose, and for a specific period of time (such as 3 days). The Scottish Government recommends that the local authority makes arrangements with the Gypsy/Traveller organising the gathering in advance to plan the event, and discuss any requirements and issues that may arise from hosting such an event, as would be expected by any person organising a large event. This advance planning helps to ensure

that facilities can be provided. It will also allow the Council to liaise with local police and to ensure that a suitable traffic management strategy is put in place to accommodate an unusually large volume of traffic.

5. Moray context

- 5.1 In developing this Protocol, there is recognition to the challenges which exist in the context of provision for Gypsies/Travellers in Moray. Namely that Moray has no authorised halting site for Gypsies/Travellers. Therefore, unless they are on private land with the consent of the landowner, all camps will be deemed to be unauthorised.
- 5.2 Moray Council is a major landowner in the Moray area. The Council will not evict Gypsy/Travellers without due process from the land that it owns or manages. Any eviction action will be pursued in accordance with these guidelines and will consider the desire and rights of Gypsy/Travellers and the rights of the settled community.
- 5.3 Communication is a key issue when dealing with unauthorised encampments. In order to facilitate communication and promote consistency each agency will have named contacts for dealing with unauthorised encampments.
- 5.4 The Unauthorised Encampments Officer (UEO) will be the named point of contact within Moray Council who Gypsy/Travellers can contact with any enquiries and will be responsible for liaising with other relevant agencies involved with dealing with unauthorised sites. This will include:
- Education;
 - Social Work; and
 - NHS Grampian.
- 5.5 Good working relations between agencies will be essential. Officers must recognise the difficulties that Gypsy/Travellers may experience when residing in unauthorised encampments, which may limit their access to services such as education, health and other services. The UEO will liaise with other agencies to try and minimise the difficulties facing Gypsy/Travellers.

6. Report of an unauthorised encampment

- 6.1 When a report about an unauthorised encampment or a complaint regarding an unauthorised encampment is received, the staff member will email the UEO. Where the matter is urgent, this communication may be preceded by a phone call. An audit trail must be maintained which may be referred to later if required.
- 6.2 If there is any doubt regarding ownership of the land, the UEO will investigate further and where necessary seek guidance from Estates as to who actually owns the land.

7. Initial visit to an unauthorised encampment

- 7.1 The UEO will visit an unauthorised encampment within 1 working day (2 working days if located in a rural area) of being made aware of it and will attempt to establish a working relationship with the Gypsy/Travellers group with a view to successfully managing the unauthorised site. The UEO will collate information and identify:
- the site's location and condition;
 - the nature and size of the Gypsy/Traveller group, including:
 - is the camp made from smaller working groups or larger working parties;
 - the number of caravans and other vehicles;
 - reason for stay;
 - their needs, including any health, education or welfare needs;
 - their future intentions - plans that those on the site have for their future movement, including how long they plan to stay on the site;
 - impact of the camp on the normal operational use of the land; and
 - any facilities that need to be provided to the site. For example, the provision of providing bags and bins for recycling and disposal of waste, and assessment of the need for portable toilet facilities. (Facilities can only be provided if permission is given by the owning service/private land owner. Landowners will be responsible for the clearing of any rubbish/debris left behind).

The UEO will ensure that an audit trail is maintained.

- 7.2 During the visit the UEO will:
- provide and discuss the Code of Conduct to those living on the site, explaining that a breach of the Code may result in action being taken to remove them. Where Gypsy/Travellers are moved on for a breach, they are not allowed to return to the same encampment within 4 weeks' of their removal.
 - provide his/her contact details and advise those on the site that Gypsy/Travellers should contact him/her with any queries.

- 7.3 Following the visit the UEO will contact the appropriate services (such as education and environmental health) to inform them of the site and provide any relevant information. The UEO will ascertain if the encampment is considered to be on a site which is unsuitable because of its location. This may include:
- a site of scientific or environmental interest;
 - parks, public open spaces in regular use, sports and recreation grounds;
 - a site where pollution could damage water courses/water supply;
 - an area with toxic waste, serious ground pollution or other environmental hazard;
 - on a public road;
 - on the verge of a road (from a road safety perspective), including lay-bys;
 - in proximity to a railway line where there may be a danger to individuals.
- The above list is not exhaustive and each case will be assessed on its own merits.

8. Decision on response to an unauthorised encampment

- 8.1 The Council will ensure that an audit trail is maintained and that all decisions are accountable and transparent.
- 8.2 When considering if any enforcement action should be taken about the encampment, the fact that there is no permanent site provision in Moray, combined with the limited number of tolerated sites which may lead to unauthorised camping in more sensitive locations must be taken into account. Therefore, each case will be assessed on its own merits and decisions will be based on the evidence available and in light of the specific circumstances of each site. The Council will ensure that decisions about managing an unauthorised site are proportionate.
- 8.3 Evidence of any nuisance or damage being caused by the unauthorised site should be weighed against the needs of the Gypsy/Travellers on the site, particularly any health and welfare needs that have been identified.
- 8.4 The Code of Conduct is intended to reflect the duty of respect for others found in the Scottish Secure tenancy agreement. In light of this, if the Code of Conduct is being adhered to and the encampment is not deemed to be in an unsuitable location Moray Council will not usually immediately seek an order to evict Gypsies/Travellers from a site within Moray. The Council will not needlessly seek to evict Gypsies/Travellers from land which it owns.
- 8.5 In the event that the encampment is in an unsuitable location, the Gypsies/Travellers will be requested to move promptly or immediately.
- 8.6 In deciding whether to allow the encampment to remain, the following will be taken into account:

9. Management of unauthorised encampments

- 9.1 If the Council decides to manage an unauthorised site for a period of time that decision should be kept under review.
- 9.2 The UEO will undertake regular visits to ensure the welfare needs of the families are being met, and to assess whether those on the site are behaving in line with the code of conduct.
- 9.3 The UEO will also contact the appropriate services (such as education and environmental health) to inform them of the site and provide any relevant information.

Removal of waste

- 9.4 If the local authority decides to manage the site it should consider providing bags and bins for recycling and disposal of waste, and assess the need for portable toilet facilities.

9.5 Fly-tipped materials should not be present on unauthorised sites. Section 33 of the Environmental Protection Act 1990 makes it illegal to keep, treat or deposit waste on land without a waste management licence to do so. Section 89 of the EPA places a duty on local authorities to keep their land and roads clear of litter and refuse. It is up to local authorities to decide how they go about fulfilling their duties and what resources they use, providing that they take account of the guidance within the Code of Practice on Litter and Refuse.

10. Recovery of unauthorised encampments

10.1 The existence of unauthorised encampment has the potential to give rise to significant complaints, not just from the settled community but also from the business community. The Council may want to consider initiating proceedings for eviction of unauthorised sites where:

- the site creates a hazard to road safety;
- the site inhibits the ability of the Scottish Fire and Rescue Service to discharge its responsibilities or otherwise creates a health or safety hazard;
- the site is in an unsuitable location;
- it is too large for its location or is causing unacceptable impact on its environment;
- there is an intolerable or statutory nuisance to the general public by reason of the size, location, nature or duration of a site;
- the site is preventing the use of the location for another purpose;
- it causes or is likely to cause damage to the Council's land or property or prejudice to its employees; or prejudices or is likely to prejudice the use of land for its intended purpose(s) or by legitimate tenants or occupants;
- a suitable alternative stopping place has been identified, but Gypsy/Travellers have refused to relocate.
- a breach of the code of conduct issued to Gypsy/Travellers has occurred and despite warnings continues;
- it would, for some other reason, be detrimental to the interests of the public if allowed to remain for an extended period.

This list is not exhaustive and each case will be assessed on its own merits.

10.2 The Council has the power to remove trespassers on its land using the common law power of ejection of persons occupying land without right to title. The legal requirement is that the person seeking the order of eviction is the owner of the land and the occupier has no right or title to it.

10.3 A case conference involving a range of agencies will be held and will determine the course of appropriate action. This process will provide a robust audit trail.

10.4 Decisions made during the case conference in regard to action that may be taken in connection with an unauthorised encampment must be:

- Proper: In line with legislation and local policy and procedures.
- Reasonable: In the light of the information available.

- **Balanced:** Taking into account the respective needs of the Gypsy/Travellers and the settled community.
- **Proportionate:** Taking into account the nature of the location, any environmental impact should the site remain and the needs/behaviour of the Gypsy/Travellers and the settled community and any other local circumstances.

Communication of decisions

- 10.5 All decision taken at case conference must be recorded together with a summary of the reason for those decisions. Following the case conference, the Chair will circulate a draft Minute of the meeting to all invitees and the UEO will advise the Gypsy/Travellers of the decision and the reasons for it. Where eviction is to be pursued, effective communication must be maintained between the service owning the land, Housing and Property Service, Police Scotland, the Gypsy/Travellers and any other relevant agencies
- 10.6 Prior to the commencement of any formal legal proceedings, all other realistic options should have been considered, but undue delay should be avoided. The full range of possible enforcement action will be considered at the case conference. This may include criminal enforcement action by the Police and civil enforcement action for example, the Environmental Protection Act 1990 the Refuse Disposal Amenity Act 1978 and other legislation referred to in **APPENDIX I.**

Eviction

- 10.7 If eviction action is deemed to be proportionate and reasonable, consideration must be given to whether an alternative site within Moray should first be offered to the Gypsy/Travellers. Although any alternative site would be considered to be an unauthorised site, there are several sites which are considered to be suitable. In the absence of serious/repeated breaches of the Code of Conduct, the Sheriff may take into consideration the availability of suitable alternative sites in deciding whether to grant the eviction. In reaching a decision to pursue eviction, consideration must be given to the fact that eviction can lead to relocation to more sensitive locations. Therefore each encampment must be considered on its individual circumstances.

11. Unauthorised sites on private land

- 11.1 Moray Council will only be responsible for the overseeing the welfare needs of Gypsy/Travellers on the site which is on private land.
- 11.2 The UEO will make an initial visit to the site and will:
- identify any support needs of the Gypsy/Travellers on the site and inform the relevant agencies;
 - advises the Gypsy/Travellers on the site of the frequency of any future visits he/she will make to the site; and
 - provide appropriate advice to the landowner regarding legal options and awareness of Gypsy/Traveller culture;

- 11.3 Private land owners will be responsible for deciding whether or not an encampment can remain on their land. Moray Council will have an advisory role with regard to any enforcement action. The landowner will be responsible for pursuing any legal proceedings for removal of an unauthorised camp.
- 11.4 Private land owners are responsible for the removal of waste from their land. However, Section 179 of the Town and Country Planning (Scotland) Act 1997 enables a local planning authority to require the owner and occupier of land to take specific steps to remedy the land's condition, if they consider that it adversely affects the local area.
- 11.5 Section 59 of the Environmental Protection Act 1990 provides local authorities with powers to require the removal of unlawfully deposited waste.

12. Inspection of a vacated encampment

- 12.1 When an unauthorised encampment is vacated, the site will be inspected by the UEO and termination inspection assessment form completed and circulated to those on the mailing list. Where remedial action is necessary as a result of the camp, photographs will be taken and the cost of remedial work noted in order to consider whether to pursue recharging where the cost is practicable. It is the landowner's responsibility to carry out any remedial works necessary. An audit trail of all information will be maintained by the UEO.

There are various civil and criminal law provisions which have the potential to be relevant to unauthorised sites and issues that may occur around such sites. This Appendix sets out some of the parts of the law that can be relevant to managing unauthorised sites and issues that may occur on or around such sites, arising from the law in Scotland, British and UK-wide legislation and European obligations. This is not intended to be comprehensive, and it also does not cover international obligations that may also be relevant to the management of unauthorised sites and Gypsy/Travellers living on them.

Preventing and detecting criminal offences is a matter for the police. The police can deal with any criminal activity where they have powers to do so.

In Scotland COPFS is the independent prosecution authority. Decisions to prosecute or not prosecute a case reported by the police will be based upon the evidence available and an assessment of the sufficiency of that evidence in law and whether the public interest merits a prosecution.

THE LAW IN SCOTLAND

Trespass (Scotland) Act 1865

Section 3 of the Trespass (Scotland) Act 1865 states:

“Every person who lodges in any premises, or occupies or camps on any land, being private property, without the consent and permission of the owner or legal occupier of such premises or land, and every person who encamps or lights a fire on or near any road or enclosed or cultivated land, or in or near any plantation, without the consent and permission of the owner or legal occupier of such road, land, or plantation shall be guilty of an offence punishable as herein-after provided.”

Roads (Scotland) Act 1984

There are a number of instances when the Council exercises control over land which it does not own. The most important of these is in relation to land not owned by the Council but which forms part of a publicly adopted road (including lay-bys, verges and visibility splays). In these circumstances, the Council, as roads authority under the Roads (Scotland) Act 1984, will exercise its powers under that Act and other legislation in a manner consistent with the terms of this policy. There will be circumstances when unauthorised Gypsies/Travellers encampments will not be permitted on land controlled by the Council, as roads authority, and legal action may be commenced immediately.

Section 100 of the Roads (Scotland) Act 1984 states that:

“A person who, without lawful authority or reasonable excuse, by lighting a fire within, or by permitting a fire for which he is responsible to spread to within, 30 metres of a road, damages the road or endangers traffic on it, commits an offence.”

Section 129 of the same Act states that a “person who, in a road, pitches a tent or camps commits an offence”. Under section 151 a “road” means “subject to subsection (3), any way (other than a waterway) over which there is a public right of passage (by whatever means and whether subject to a toll or not) and includes the

road's verge, and any bridge (whether permanent or temporary) over which, or tunnel through which, the road passes; and any reference to a road includes a part thereof”.

[Antisocial Behaviour etc \(Scotland\) Act 2004](#)

The 2004 Act includes a range of measures to deal with antisocial behaviour such as antisocial behaviour orders. These powers, contained in [Section 21](#), can be used to disperse groups for a range of antisocial and environmental offences. They may be relevant in relation to unauthorised sites as they could be used to protect both Gypsy/Travellers on a site and local settled people.

Antisocial behaviour orders (ASBOs) are preventative orders to protect persons affected by anti-social behaviour from further acts or conduct which causes or is likely to cause alarm or distress. Breach of an ASBO is a criminal offence. The offence for breach of an ASBO is contained in [Section 9](#) of the 2004 Act.

Tools to deal with antisocial behaviour should be considered in the context of local antisocial behaviour strategies. Local authorities and the police, in consultation with others, are required under [Part 1 of the 2004 Act](#) to prepare strategies to deal with antisocial behaviour in the local authority's area. These strategies will set out an assessment of the nature and extent of antisocial behaviour in the area and services to prevent and deal with the problems. [Section 140 of the 2004 Act](#) provides that persons discharging a function by virtue of the 2004 Act must do so in a way that encourages equal opportunities.

UK AND BRITISH WIDE LEGISLATION

[Criminal Justice and Public Order Act 1994](#)

This Act deals with trespass and the removal of vehicles. [Section 61](#) deals with police powers to remove trespassers on land and [Section 62](#) provides supplementary powers of seizure and imposes criminal sanctions.

It is important to note that sections 61 and 62 apply to situations in which two or more “trespassers” are involved. [Section 61](#) allows the police to direct trespassers to leave the land and to remove vehicles or property on the land where the senior police officer present at the scene has a reasonable belief that:

- a) two or more persons are present with the intention of staying there for a period of time, and
- b) reasonable steps have been taken by, or on behalf of, the occupier to ask them to leave.

In addition, the senior police officer must have a reasonable belief that either (a) the group have caused damage to the land or property, or threatened, abused or insulted the occupier or representatives of the occupier or, (b) the group have six or more vehicles between them on the land.

The practical application and meaning of section 61(1) has been tested in the Scottish courts. The court in ***Neizer v Rhodes*** 1995 S.C.C.R 799 said that; “The whole structure of s.61(1) depends upon what the senior police officer present at the scene reasonably believes to be the case. The purpose of the section is to

enable action to be taken on his direction rather than by resorting to the process of ejection under the civil procedure at the instance of the owner or occupier.” As set out above it is a matter of judgement for the senior police officer present at the relevant time.

These provisions could be relevant to the issue of unauthorised sites by Gypsy/Travellers, where there has been disruption and where the criteria set out above have been satisfied. However, it is clear that this legislation will not be suitable to deal with every unauthorised site situation.

In addition, it should be noted that the statutes deal with “trespassers” and do not specifically mention Gypsy/Travellers. Furthermore, it is not confined to the issue of unauthorised sites specifically. It is important to be aware that this legislation could potentially be applied in a wide variety of circumstances.

Equality Act 2010

Under the [Equality Act 2010](#) (the Equality Act) it is unlawful to discriminate against people because of protected characteristics such as age, race, religion or belief, disability, sex, marriage, civil partnership, gender reassignment, or sexual orientation. The Act also imposes a duty on listed public authorities, including local authorities, to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.

The Equality Act makes it unlawful to discriminate against someone because they have a “protected characteristic”. Race is one of the protected characteristics under the Equality Act. Race discrimination occurs when people are treated unfairly because of one or more of the following:

- colour;
- nationality;
- ethnic origin;
- national origin.

It is important to note that Gypsy/Travellers are recognised as an ethnic group under the definition of “race” in the Act.

Gypsy/Travellers continue to be protected against discrimination based on race if they have moved into settled accommodation. It is of course also unlawful to discriminate against Gypsy/Travellers because of any other protected characteristic.

The Equality Act also established the public sector equality duty, which applies to all functions of a listed public authority, and covers local authorities. Scottish Ministers have made regulations which set a framework to enable Scottish public authorities to deliver the public sector equality duty more effectively. This framework includes a duty to undertake an equality impact assessment of new or revised policies or practices.

Gypsy/Travellers have the same rights as other minority ethnic groups. This means that it is unlawful to discriminate against Gypsy/Travellers on the basis of their ethnic origin. It does not mean that unacceptable behaviour by a Gypsy/Traveller on an unauthorised site cannot be tackled, in the same way as it would be for anyone else

The Equality Act makes it unlawful to discriminate against people because of a range of protected characteristics (see paragraphs 16 to 20 in the guidance, above). The Act covers direct discrimination, indirect discrimination, harassment and victimisation. More information about what these terms mean and how the legislation works can be found in the Equality and Human Rights Commission's statutory Codes of Practice.

Section 149 of the 2010 Act sets out the public sector equality duty. This puts a duty on listed public authorities (including local authorities) to have due regard to three specified matters when exercising their functions. The three matters are:

- eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act;
- advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- fostering good relations between persons who share a relevant protected characteristic and persons who do not share it.

Scottish Ministers have made regulations to enable the better performance of the public sector equality duty by Scottish public authorities. These include, amongst others, a requirement to publish a set of equality outcomes; to report on how the duty is being integrated into the authority's functions; to gather, use and publish employee diversity information; and a duty to undertake equality impact assessment of new or revised policies or practices.

Crime and Disorder Legislation

There is also legislation which offers protection from racially motivated crimes. In Scotland protection against racially aggravated harassment is afforded under Section 33 of the Crime and Disorder Act 1998 which introduced the offences under section 50A of the Criminal Law (Consolidation)(Scotland) Act 1995. Section 96 of the 1998 Act also creates an aggravation for any offence which is racially motivated. The Public Order Act 1986, Part 4, also applies to Scotland. It creates a number of offences which involve racial hatred such as use of words or behaviour or display of written materials intended to stir up racial hatred, and possession of inflammatory material.

Environment Protection Act 1990

Flytipping is the illegal dumping of waste – from a bin bag of household waste to large quantities of domestic, commercial or construction waste - onto land which is not covered by a licence to accept waste.

Such unauthorised depositing of waste is an offence under Section 33 of the Environment Protection Act 1990 (EPA). Section 59 of the EPA provides powers to SEPA and local authorities to require the removal of the waste or to remove it themselves and recover the costs. Litter is waste in the wrong place and Section 87 of the EPA makes it an offence to throw down, drop or otherwise deposit litter and leave it. This largely applies to publicly-owned land which is open to the air and accessible to the public.

British Transport Commission Act 1949

Section 55(1) of the British Transport Commission Act 1949 makes it an offence to trespass upon any railway line, sidings, tunnel, embankment or cutting, or on lands in dangerous proximity to lines or electrical apparatus associated with the operation of the railway. It states:

“55(1) any person, who shall trespass upon any of the lines of railway or sidings or in any tunnel or upon any railway embankment cutting or similar work now or hereafter belonging or leased to or worked by any of the Boards or who shall trespass upon any other lands of any of the Boards in dangerous proximity to any such lines of railway or other works or to any electrical apparatus used for or in connection with the working of the railway shall be guilty of an offence.”

EUROPEAN OBLIGATIONS

European Convention on Human Rights

The rights and protections afforded by the articles of the European Convention on Human Rights (ECHR) (and latterly the Human Rights Act 1998) should be enjoyed by all, without discrimination on the grounds of “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” In particular, Article 8 states that “everyone has the right to respect for his private and family life, his home and his correspondence.” ECHR issues in relation to the existing legislation have been considered in a number of cases.⁵

The Human Rights Act 1998 created a statutory requirement to read all legislation (past and present) in accordance with the provisions of the European Convention. In relation to public bodies, Section 6(1) states that “it is unlawful for a public authority to act in a way which is incompatible with a Convention right.”

Council Directive 2000/43/EC (the Race Directive)

Council Directive 2000/43/EC (the Race Directive) is due to be implemented in member states by 19th July 2003⁶. The Directive has regard to the Treaty establishing the European Community, in particular Article 13 (as amended by the Treaty of Nice), which states that:

“Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

Human Rights Framework

The Human Rights Act (HRA), together with the Scotland Act, protect the rights that are contained in the European Convention on Human Rights in Scotland’s own laws. The HRA means that people can raise human rights issues in Scottish courts. Section 6 of the Act makes it unlawful for public bodies to act incompatibly with the rights contained in the European Convention on Human Rights. It also places a duty on public bodies to comply with human rights in everything they do.

Under the Scotland Act 1998, the Scottish Government and Parliament must also observe and implement all of the UK’s international human rights obligations, for

example, the International Covenant on Economic, Social and Cultural Rights (ICESCR), which includes the right to adequate and culturally appropriate housing.

Roles and responsibilities

Crown Office & Procurator Fiscal Service (COPFS)

COPFS are responsible for taking decisions on prosecution, based on the evidence available and the individual circumstances of the case. That includes decisions to prosecute for alleged offences committed on or around an unauthorised site.

The Lord Advocate issued an instruction to Procurators Fiscal in 2004 stating that there is a presumption against prosecution in the public interest where the sole issue in relation to an encampment is the physical occupation of land by Gypsies/Travellers, rather than activities where prosecution is always regarded in the public interest such as breach of the peace, drug dealing or possession of an offensive weapon.

Gypsy/Travellers

When living on an unauthorised site, or choosing the location for one, there are responsibilities that we expect Gypsy/Travellers to meet. These are:

- not setting up an unauthorised site on locations that are unsuitable. This can be because of traffic hazards, public health risks, or environmental damage;
- treating the land that they are occupying with respect;
- co-operating with the local authority when arriving in an area by considering making first contact, thereby helping the local authority to assess and meet their needs.

Local Authority

The management of unauthorised Gypsy/Travellers sites on public land is a matter for the local authority in whose area the unauthorised camp is established. This includes:

- decisions on the management of a site;
- making an initial assessment of needs and informing relevant agencies (e.g. education, health);
- considering the safety and security of those living on an unauthorised site;
- communicating with the Gypsy/Travellers living on the site, and the settled community around a site;
- any consideration of legal action to reclaim the land the unauthorised site is on.

If the unauthorised site is on private land the local authority retains responsibility for monitoring the camp; making agencies aware of any needs; and liaising with the landowner. However, it will be for the landowner to decide what legal action, if any, to take to reclaim the land.

Police Scotland

The role of the Police in or around an unauthorised site is to ensure that public order and wider community safety issues are addressed and, at the same time, to work with local authorities and other agencies to meet the needs of all communities.

The police will investigate any allegations of criminal offences and antisocial behaviour on or around a site in line with their normal procedures. That includes both offences those living on a site are alleged to have committed, and offences committed against Gypsy/Travellers living on a site.

If the police are requested to do so they will support local authority officers, landowners or their representatives by visiting unauthorised sites with them whilst they serve eviction notices, or similar. This is to ensure there are no public order issues. The police will not play any active part in the service of any papers or the eviction process itself unless instructed by the court or where a crime is being committed.

Scottish Government

The Scottish Government's role is to set a general approach to management of unauthorised sites by local authorities, a role which this guidance helps to fulfil. The Scottish Government is not directly involved in the management of unauthorised sites.