

The Highland Council Policy on Managing Unauthorised Camping

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(September 2010)

1. Purpose

Unauthorised camping requires sensitive and proportionate handling by all concerned and can be a difficult issue to resolve. The purpose of this document is:

- 1.1 To set out the policy of the Highland Council for managing unauthorised camping in Highland and arrangements for working with Multi Agency Partners..
- 1.2 To provide a clear set of procedures to be followed when responding to unauthorised camping.
- 1.3 To provide clear guidance to support consistent advice and information about unauthorised camping.
- 1.4 Not to provide guidance on Unauthorised Developments, which is a separate matter managed by The Highland Council's Planning and Development Service.

2. Background

The Council and its partners recognise that unauthorised camping, or camping temporarily on land without seeking permission has been a way of life for centuries.

This policy recognises and accepts that a travelling way of life is legitimate.

This policy uses the generic term Gypsy/Travellers to apply to 5 main groupings of Travellers:

- Gypsies/Travellers whose membership is dictated by birth and occasionally marriage. This ethnic minority group has strong cultural ties, extended families and clans and consists of sub-groups of English, Welsh, Irish and Scottish Travellers.
 - Roma (Gypsies) who originate from Europe.
 - Show and Fairground Travellers sometimes referred to as Occupational Travellers, who consider themselves a business community. Membership of this group can be by birth however it is possible for newcomers to become part of this group. Fairground Travellers consider themselves a commercial/business group rather than an ethnic group.
 - Bargees and other groups living in boats.
 - New Age Travellers who are a diverse grouping with varying beliefs and backgrounds who live a nomadic existence.
- 2.1 Many Gypsy/Travellers will travel for part of the year and are otherwise settled on permanent sites or in houses. There may be a small group of Gypsy/Travellers nationally who travel all year round.
 - 2.2 Unauthorised camping can therefore occur when households have a form of permanent housing provision available to them.

- 2.3 The number and scale of unauthorised camps in Scotland is reported in the Scottish Government's Twice Yearly Count. For example:
- <http://www.scotland.gov.uk/Publications/2010/03/05103811/0> - July 09 - Jan 10
- <http://www.scotland.gov.uk/Publications/2009/09/04152156/9>. - July 08 - Jan 09
- <http://www.scotland.gov.uk/Publications/2009/03/30145009/20> - July 07 - July 08
- 2.4 There is seasonal and geographic variation in the number and scale of unauthorised camps.
- 2.5 Twice Yearly Count data records that in the 6 month period to July 2009 23 separate locations were known to have been used for encampments in Highland.
- 2.6 Public agencies such as the Highland Council are significant landowners in the Highland area. This policy sets out how The Highland Council shall manage unauthorised camps on land in its ownership or control.
- 2.7 The Highland Council will not evict Gypsy/Travellers needlessly from land that it owns or controls. Unauthorised Encampments will be managed with regard to the principles of this policy and its guidelines. Where required, decisions to evict will be made with reference to these guidelines and shall ensure a balance is struck between the needs of all parties.
- 2.8 The Highland Council does not have responsibility for management or enforcement of unauthorised camps on land that is in the ownership of another public agency or in private ownership although it will act in an advisory capacity within its general duties.
- 2.9 The Highland Council has no powers for eviction action on land which is not in its ownership or control and landowners must seek independent legal advice.
- 2.10 The Highland Council will deliver a visiting service to unauthorised camps on land that is not in its ownership or control as part of the commitment to partnership work in the management of unauthorised camping. Section 8 of this policy details the arrangements in this case.

3. Principles

There are basic principles encouraged by Scottish Government Guidance and accepted by the Highland Multi Agency Partners as fundamental to this area of service delivery:

- 3.1 This policy should seek to minimise disruption for all concerned and ensure that any anti-social behaviour is tackled firmly, regardless of who the perpetrators are.
- 3.2 The same standards of behaviour are expected from all members of the community, whether Gypsy/Travellers or the settled population, based on mutual respect and with equal rights, responsibilities, entitlements and obligations.
- 3.3 The consequences of breaking the law apply equally to all members of the community.

4. Legal Framework

The detail of the legislative framework relating to management of Unauthorised Camping is attached at **Annex 1** to this policy. This outlines the range of civil and criminal mechanisms applicable to Unauthorised Encampments.

The Legal Context for Gypsy/Travellers is as follows:

- 4.1 The Scottish Government and the Equality and Human Rights Commission (EHRC) have maintained that Scottish Gypsy Travellers are a racial group and should therefore be treated as such. It is acknowledged that Gypsy/Traveller communities have specific requirements and require the same level of protection from discrimination and abuse in common with all of Scotland's minority ethnic communities.
- 4.2 Under the Race Relations legislation the Highland Council and its partners have a General Duty to pay due regard in carrying out all their functions and practices to:
 - Eliminate unlawful discrimination
 - Promote equality of opportunity, and
 - Promote good relations between people of different racial groups.
- 4.3 The Highland Council's Race Equality Scheme 2008 – 2011 is available at <http://www.highland.gov.uk/livinghere/equalopportunities/>
- 4.4 The Council and its multi agency partners recognise that communities may have concerns about the impact of unauthorised sites and therefore expects that management of unauthorised encampments is to a standard that does not cause disturbance to the local settled community or to the environment.
- 4.5 In this way the Council and partners seek to promote a positive environment for community relations and to prevent incidents of racial harassment.

5. Partnership Arrangements

The Multi-Agency Action Plan for Gypsy/Travellers in the Highlands 2008 - 2011 available at <http://www.highland.gov.uk/livinghere/housing/gypsytravellersinhighland/> sets out the Partnership arrangements and actions which have been developed by a range of public sector agencies in Highland for the purpose of promoting equality and providing a consistent partnership approach to services for Gypsy/Travellers.

- 5.1 Multi Agency partners who have a role in delivering services relating to unauthorised encampments are:
 - the Highland Council
 - NHS Highland
 - Highlands and Islands Enterprise
 - Northern Constabulary
 - Highland Fire and Rescue Services

The responsibility of each partner is outlined at section 6 of this policy.

- 5.2 The Multi Agency partners will promote and encourage wider partnership work with

public and private landowners at strategic and operational levels to support a development of a Highland wide consistent and co-ordinated approach to managing unauthorised camping.

- 5.3 This policy and these procedures may be offered as a guide to managing unauthorised camping on land outside the Highland Council's ownership.

6. Unauthorised Camps - Responsibilities

The multi agency partners will ensure that they provide appropriate statutory services positively and appropriately to Gypsy/Travellers on unauthorised camps.

The specific role and responsibility of agencies involved in unauthorised camping is detailed in this section.

- ✓ The procedure relating to these roles and responsibilities is detailed in the **Flowchart** process at **Annex 4** of this policy.
- ✓ The relevant **Area Service Contacts** to be included in communications is noted at **Annex 3** of this policy.

6.1 Gypsy/Travellers

This policy recognises that Gypsy/Travellers will have responsibility to:

- Value, respect and look after land on which they camp.
- Manage the risk of fire in the countryside and follow the Country Code.
- Dispose of rubbish and waste responsibly and with respect to environmental and public health impact.
- Keep animals tied up or under control at all times.
- Respect the rights and way of life of others who use the land as well as for any particular designated land use.

This policy recognises that there can be occasions where these basic standards of responsible behaviour may not be followed and that on these occasions appropriate enforcement action based on the options outlined in **Annex 1** may be applicable.

6.2 Housing and Property Service

The Highland Council's **Housing and Property Service** has the lead role in the management of the response to any report of unauthorised camping.

- visit camps to determine the circumstances and plans of the household who is camping
- provide relevant advice and information to the household
- communicate the general details of the encampment and any impact to all relevant local stakeholders, including the landowner and the landowning service in the case of Highland Council owned land..

- where necessary, request statutory inspection visits from other partner services or agencies in relation to any specific concerns or complaints about the camp
- offer advice and guidance on length of stay and departure dates
- communicate the agreed departure date with the household at the encampment
- maintain communication updates with the area contacts and the landlord, following any subsequent visit to the camp
- visit at the agreed date of departure to establish the position and/or clarify the intentions of the household at the encampment
- communicate the findings at date of departure to the landowner or the landowning service and the area contacts
- maintain welfare and advice/information visits during the course of any due process being taken by the landowner, or until such time as the encampment moves off voluntarily.

Housing and Property is responsible for coordinating any case conferences with the relevant area contacts and landowner in the case of complex, sensitive or contentious encampments.

In the event that an unauthorised camp is on land held on the Housing Revenue Account, **Housing and Property** has decision making responsibility for any eviction action where that is necessary.

6.3 **Transport, Environmental & Community Services (TECS)**

1. **Waste Management**

The Highland Council's **Transport, Environmental and Community Services (TECS)** has primary responsibility for waste and refuse management at an unauthorised camp.

- It has responsibility to undertake **joint initial visits** (Waste Operations Officers) to the camp with Housing & Property Service (Gypsy/Traveller Site Officers or Housing Management Officers) for the purpose of ensuring there is adequate supply of refuse sacks or that arrangements are otherwise in place for adequate refuse collection, for example provision of wheely bins for a time limited period and confirmation of refuse collection arrangements
- to provide information and advice about waste management and bulky uplift arrangements
- Where not on Council owned land, to liaise and agree arrangements with the landowner

- To maintain waste and refuse collection arrangements during the course of the encampment.
- To continually assess and make recommendations for public health intervention where necessary
- To clear and make good sites following departure of encampments
- To recover costs from Gypsy/Travellers for any necessary interventions.

This policy recognises there may be local operational arrangements in place, for example, in Inverness, Nairn, Badenoch and Strathspey where **Housing and Property** deliver the refuse collection services at Unauthorised Encampments.

2. Environmental Health - Public Health

The Highland Council's **Environmental Health Department (TECS)** has primary responsibility to promote or enforce standards that preserve Public Health, Public Safety and Protect the Environment, including at unauthorised camp sites.

- It has a responsibility to undertake appropriate statutory impact assessments following concerns or complaints made about an encampment, and make recommendations as appropriate
- Provide advice, information and guidance to the Gypsy/Travellers and the multi agency area contacts on management or enforcement of public health issues at a particular encampment
- Where relevant take appropriate statutory action

6.4 Planning and Development Service

Planning and Development can occasionally have a limited advisory role in relation to unauthorised camping.

Planning and Development Service does have a role in managing unauthorised development, which is development on land without seeking permission, which is not covered by this policy.

The Highland Council's Planning and Development Service has responsibility to prepare plans for each of the Council's Areas setting out the land use planning framework for development and as such the basis on which planning applications will be determined.

6.5 Chief Executive's

1. Policy and Performance

The Policy and Performance team in The Highland Council advises Council Services in terms of obligations and requirements of UK Equal Opportunities legislation.

In this context this Service has a role to provide advice, information and guidance in terms of responses to unauthorised camping and any other matters relating to the delivery of services to Gypsy/Travellers.

Officers from the Policy and Performance team may be required to participate in case conferences.

2. Legal Services

The Highland Council's Legal Services provides advice, guidance and legal assistance on civil remedies to unauthorised encampments on land which is in the ownership or control of Highland Council.

Landowning Services are responsible for instructing any actions for eviction from unauthorised camps and these actions will be progressed by legal staff.

Guidance to landowning services in these circumstances is attached at **Annex 5** to this policy

Legal Services may be required to participate in case conference meetings.

3. Ward Managers

Ward Managers have responsibility to ensure the efficient delivery of services within each Ward and to work with other agencies and community groups.

Ward Managers will be included in communication updates about unauthorised encampments in their ward. Communication updates to elected representatives and communities will be managed and delivered through Ward Managers in collaboration with Area Housing & Property Managers.

Ward Managers may be required to participate in case conference meetings.

4. Public Relations

Enquiries from the media relating to unauthorised camps will be managed in consultation with Communication/Public Relations Officers from the Highland Council and where relevant partner agencies. As the Highland Council has the lead responsibility for the management of unauthorised camps, the Council's Public Relations Officer will have the lead responsibility for co-ordinating media responses.

6.7 Northern Constabulary

This policy recognises that the role of the Northern Constabulary is to act in partnership with Highland Council and the multi agency partners in ensuring that the welfare and human rights of the Gypsy/Traveller Community are met and at the same time ensuring that public order and wider community safety issues are effectively addressed at unauthorised camps locations in Highland.

Separate guidance is available to police authorities in terms of unauthorised

encampments and a summary of this guidance is included at **Annex 2**.

The relevant area based Northern Constabulary contact will be included in communication updates about unauthorised encampments.

The relevant Northern Constabulary contact may be required to participate in case conference meetings.

6.8 **NHS Highland**

NHS Highland will work with partners at an operational level where there is a specific issue at unauthorised camps relating to the health of individuals. Appropriate protocols will be developed and implemented to support this approach. In the interim any health issues identified during visits to unauthorised encampments should be referred to the NHS lead contact named in the Multi Agency Partnership Service Contacts directory which will be included in the published policy.

NHS Highland will work with partners to promote the health & wellbeing issues identified in the Multi Agency Action Plan referred to in section 5 of this policy.

7. Unauthorised Camps on Council owned or controlled land – what will happen?

When a report of an unauthorised camp is received, the following procedure will be followed.

The Flowchart at **Annex 2** summarises this process.

- 7.1** The person who receives the report of an encampment should advise the appropriate lead Area Contact of Housing and Property of the details by email. They should also pass on any information they may have regarding the ownership of land.
- 7.2** If there is doubt over the land ownership Housing and Property will investigate and where necessary confirm with Legal Services, and advise the Council owning service or the alternative public agency landowner, or private landowner.
- 7.3** The Housing and Property 'lead contact' notifies all 'other Council contacts' for the area **plus** Northern Constabulary of the encampment location and details, by email, and confirms the arrangements for the initial visit.

This initial visit should take place within 2 working days. Where possible this initial visit will be by Housing and Property Service and TECs, **jointly**, **or** by 2 Housing and Property staff.

- 7.4** At the initial visit Housing and Property staff will explain the procedure for unauthorised camping to the Gypsy/Travellers and provide them with a copy of the policy on request.

Staff will also obtain relevant information through a standard Unauthorised Encampment Form for follow on communication with the landowning service, and the other Area Contacts including:-

- The number of vehicles included in the camp in relation to capacity of the area
 - A general description of the camp and its environment
 - The intended length of stay
 - The reason given for the encampment
 - Any Road safety issues
 - Any Public Health Issues
 - Any waste or refuse management risks
 - Impact on the amenity of the area
 - Impact of camp on the normal operational use of the land and on the community – e.g. does it prevent the proper use of a lay-by
- 7.5** Any personal information collected through completion of the standard internal Unauthorised Encampment Form will not be shared with the landowner or the Area contacts. Where any vulnerabilities have been identified, a referral will be made by Housing and Property staff to appropriate relevant statutory partners.
- 7.6** At the initial visit Housing and Property staff will advise the Gypsy/Travellers of any relevant information and provide contact details - e.g. location, access, availability and cost of official Gypsy/Traveller Sites, contacts for information on services, e.g. education, health, housing benefit. They can also provide information and applications for social housing or permanent sites.
- 7.7** Following this initial visit the Housing and Property ‘lead contact’ notifies all ‘other council contacts’ for area **plus** Northern Constabulary of the general information about the encampment. This should also be by email.
- 7.8** Where the proposed or expected date of departure is considered unreasonable in the circumstances of the encampment, or no date of departure has been given by Gypsy/Travellers at the encampment, the Housing and Property ‘lead contact’ shall clarify the timescale guidelines as set out in **section 7.12** of this policy.
- 7.9** The landowning service shall consider the specific circumstances of the encampment and its location in relation to these timescale guidelines and confirm their position to all partners included in the communication chain.
- 7.10** Any decision not to follow these guidelines must be clearly stated.
- 7.11** Housing and Property staff will visit the unauthorised camp for the purpose of confirming the agreed date of departure. This follow up visit should take place where possible within 2 working days of the initial visit. Where possible this second visit should be a joint visit by Housing and Property and TECS, or 2 Housing and Property staff.
- 7.12** Housing and Property Service again communicates an update to the Area Contacts advising
- that the agreed date of departure has been communicated to the Gypsy/Travellers
 - of the general condition of the camp and environment at this subsequent visit

- of the role and responsibility of the named landowning service to establish whether the encampment has moved on at the agreed date of departure
 - of the role and responsibility of the named landowning service to progress and communicate any further action following the agreed date of departure.
- 7.13** At the agreed date of departure the landowning service establishes whether the encampment has moved on and responds by either arranging for the quick and efficient clearance of any debris, or by making an assessment of the need for enforcement action depending on the circumstances and the location of the camp.
- 7.14** Housing and Property staff will also make a visit at the 'Date of Departure' for the purpose of establishing the position, the intentions of the household at the camp, and whether there is a need for continuation of welfare visits.
- 7.15** Any assessment of the need for enforcement action shall take into account general guidance that:
- **Short stays** (e.g. overnight or weekend only) will normally be acceptable, unless there is a clear reason why they should not be accepted.
 - **Longer stays** (normally 1 – 2 weeks) will normally be acceptable unless there are specific lawful objections from any agency, for example, on the grounds of land use or road obstruction
 - **Extended stays** e.g. more than 3 to 4 weeks will normally only be considered where there are exceptional needs, where there is no impact on land use, public health or road obstruction, or any other statutory considerations, and where the landowning service permits.
- 7.16** The landowning service must notify all 'Area Contacts' plus Northern Constabulary of the outcome of this 'date of departure' visit and their intentions for managing the unauthorised camp.
- 7.17** This may include confirmation that they will be instructing Legal Services to progress a civil action for eviction, or whether there is a need for them to co-ordinate a case conference for all area contacts to attend to enable wider discussion.
- 7.18** In the case of instructions to Legal Services it should be noted that decrees for eviction are granted by the Sheriff Court and are subject to a reasonableness test. Landowning services wishing to progress a civil action for action should have reference to the guidelines for instructing legal action which are included at **Annex 4** to this policy.
- 7.19** Housing and Property Service will continue to communicate any visit update reports to all 'Area Contacts' and Northern Constabulary in their liaison capacity. These visits will continue until the camp has been evicted or has moved on voluntarily.
- 7.20** The landowning service must confirm the planned date of eviction with all 'Area Contacts' and Northern Constabulary.

- 7.21 Following any eviction, TECS must confirm to all 'Area Contacts' when they have cleared and made good the site, and what arrangements are in place for recovery of these costs from the Gypsy/Travellers.

8. Unauthorised Camps on non - Council owned or controlled land – what will happen?

The Highland Council will deliver a visiting service to unauthorised camps on land that is not in its ownership or control as part of the commitment to partnership work in the management of unauthorised camping.

The Highland Council will provide advice to landowners but has no responsibility for civil enforcement action on land that is not in its ownership or control.

- 8.1 The response to camps on non-Council owned or controlled land will be the same as those applied through 7.1 – 7.11 of this policy.
- 8.2 Following the 'date of departure' visit, Housing and Property Service will confirm the position with the landowner and advise whether further welfare visits will be maintained.
- 8.3 Private landowners are required to take independent legal advice and in their capacity as landowner are required to instruct any civil actions for removal of an unauthorised camp.
- 8.4 Landowners are requested to communicate their intentions and progress with any such legal action with the Housing and Property lead 'Area Contact'.
- 8.5 The Housing and Property lead contact will communicate any information updates from the landowner direct to the Area Contacts and Northern Constabulary.
- 8.6 The Housing & Property lead contact will also continue to communicate updates to the Area Contacts, Northern Constabulary and the landowner following any visits they make to the camp.
- 8.7 Where necessary, the landowner may request a multi agency case conference. In these circumstances Housing and Property will have the coordinating role. Requests should be made to the relevant Area Housing and Property Manager.

9. Communication

The Highland Data Sharing Partnership Information Sharing Protocol asserts

- 9.1 All organisations accept a duty of confidentiality and will not disclose information without the consent of the person concerned, unless there are statutory grounds and over-riding justification for doing so.
- 9.2 Organisations will use information only for the purpose of these procedures.
- 9.3 Information shared with a member of another organisation for a specific purpose will not be regarded as intelligence for general use of that organisation.

- 9.4 Enquiries from the media relating to unauthorised camps will be managed in consultation with the Highland Council's and partner agencies' Communication/Public Relations Officer. As the Highland Council has the lead responsibility for the management of unauthorised camps, the Council's Public Relations Officer will have the lead responsibility when co-ordinating a multi agency response.
- 9.5 Communication is a key issue when dealing with unauthorised camping. In order to facilitate communications and to promote consistency of approach each agency will have named contacts for dealing with unauthorised camping at operational area level and at a multi agency partnership strategic level. The contacts for 2010/2011 will be included in the final published policy.
- 9.6 Communication updates to elected representatives and communities will be managed and delivered through Ward Managers in collaboration with Area Housing and Property Managers.

10. Monitoring

Monitoring of Unauthorised Camps will take place in line with arrangements for the Scottish Government's Twice Yearly Count.

Monitoring of service delivery will be based on feedback from customers and stakeholders.

11. Review

This Policy will be reviewed in 2012.

The Scottish Government

SUMMARY OF LEGISLATIVE FRAMEWORK RELATING TO UNAUTHORISED ENCAMPMENTS

The Law in Scotland

The structure and application of the law in relation to unauthorised encampment in Scotland is not entirely clear. There are various civil and criminal law provisions which have the potential to impact on unauthorised camping. The police can, of course, deal with any criminal activity where they have powers to do so. For example, the police have powers to arrest and detain persons who commit a crime which can range from statutory offences to common law offences.

As regards prosecution, for unauthorised encampment, the **Trespass (Scotland) Act 1865** and the **Roads (Scotland) Act 1984** are relevant. The purpose of the prosecution would be to deal with one of the three sets of circumstances:

- 1) Where a suitable alternative stopping place has been identified and the individuals have refused to re-locate within a reasonable time. (The Local Authority is normally responsible for identifying a 'suitable alternative' and to agree a 'reasonable time' with the individuals).
- 2) Where the use of a particular site or the excessive size of the encampment causes a road safety or public health hazard.
- 3) Where the same individuals have been repeatedly moved from the same site only to return, although it may be relevant for the Fiscal to consider what action might have been taken by the landowner to prevent such further access.

Time limits for prosecution under both Acts are short and a degree of urgency may be required. After arrest the most common way of dealing with offenders is to release them on an undertaking to appear at court on a specified day rather than to keep them in custody.

Sections 61 and 62 of the Criminal Justice and Public Order Act 1994 deal 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 [Note that the Westminster Anti-social behaviour Act 2003 makes some changes to police powers in respect of section 62. However, those provisions do not extend to Scotland].

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."

It is clearly a matter of judgement for the senior police officer present at the relevant time.

These provisions could arguably be implemented to deal with the issue of unauthorised encampments by Gypsies/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 situation where, for example, Gypsies/Travellers are merely camping on a site without any authority to do so.

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

In any event, in Scotland it is the Procurator Fiscal who makes the final decision on whether or not to prosecute. Decisions to prosecute or to deal with cases in other ways are taken on an individual basis. A decision not to prosecute will take into account such matters as public interest considerations, dependent upon the circumstances. Enforcement, however, is a matter for the police responsible for the area in question. Discussions with the Procurator Fiscal and Local Authority will normally take place at an early stage before enforcement decisions are made. The Procurator Fiscal may advise on the course of action to be taken, dependent on the particular circumstances in each case but the decision would generally be an operational matter for the Police having regard to the Lord Advocate's guidelines on liberation. Options are likely to be a) report for citation (if considered appropriate) or b) arrest and appearance from custody or on an undertaking.

Procurators Fiscal are in possession of Crown Office guidance that directs them not to prosecute unauthorised campers unless there is a public interest in doing so.

Section 19 of the Crime and Disorder Act 1998

This provision deals with Anti-social behaviour orders and, in essence, allows a local authority to make an application for a section 19 order from the appropriate sheriff where it considers that a person or persons have either acted in an anti-social manner or have taken part in anti-social conduct within the meaning of that section.

Equal Opportunities legislation

The Scottish Parliament and Government, the Association of Chief Police Officers Scotland (ACPOS), the Convention of Scottish Local Authorities (COSLA), and the

Equality and Human Rights Commission (EHRC) recognise Gypsies/Travellers as an ethnic group and encourage others to do likewise. A recent judgement in relation to an employment tribunal (K. MacLennan Vs Gypsy Traveller Education and Information Project) has set a precedent in this regard, it concluded that "Scottish Gypsy/Travellers" is a group which can be defined by reference to its ethnic origins and therefore can be afforded the protection offered by section 2(1)(d) of the Race Relations Act 1976.

The Race Relations (Amendment) Act 2000 imposes a positive duty on public bodies, in carrying out their various functions, to have due regard to the need to:

- eliminate unlawful discrimination and
- promote quality of opportunity, and
- promote good relations between people of different racial groups.

The Equality and Human Rights Commission and the Scottish Government recommend that Gypsy/Travellers are recognised as an ethnic group within the terms of the Act. The Equality Act 2010 will replace the range of current equal opportunities legislation in October 2010 and a new Single Equality Duty will apply to public bodies from April 2011

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**. **Section 96 of the 1998 Act** also creates an aggravation of any offence which is racially motivated.

The Public Order Act 1986, Part III, 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; possession of inflammatory material; etc.

The European Convention on Human Rights

The rights and protections afforded by the articles of the European Convention on Human Rights (and laterally 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."

The question of whether the above provisions (in particular, section 61 of the Criminal Justice and Public Order Act 1994) will be deemed to be compatible with Article 8 remains unanswered although the case law is developing ¹.

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."

European Community legislation

Council Directive 2000/43/EC (the Race Directive) is due to be implemented in member states by 19th July 2003 ². 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."

Fly-tipping legislation

Fly-tipping is an offence under section 33 of the Environmental Protection Act 1990 (EPA) and can be defined as the unauthorised deposit of waste on land that is not licensed for this purpose. 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.

Explanation of Offences

TRESPASS (SCOTLAND) ACT 1865

OFFENCE

Section 3

Every person who lodges in any premises, or occupies or encamps 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 hereinafter provided. (Section 3, as amended by Schedule 1 Pt. VI, Statute Law (Repeals) Act, 1973 and Schedule 9, Roads (Scotland) Act, 1984).

APPREHENSION & PUNISHMENT

Section 4

Every person who commits any offence against the provisions of this Act may, if found in the act of committing the same by any officer of Police or Constable, be apprehended by such officer or constable, and detained in any prison, Police station, lock-up, or other place of safe custody, and not later than in the course of the next lawful day after he shall have been so taken into custody shall be brought before a magistrate; and every person charged with the commission of any such offence may, if not so taken into custody, or if he shall have been liberated on bail or pledge, be summoned to appear before a magistrate; and every person committing an offence against the provisions of this Act shall be liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

PROSECUTIONS

Section 5

Every prosecution for an offence against the provisions of this Act shall be raised and proceeded in at the instance of the Procurator Fiscal, and shall be heard and

determined by one or more magistrate or magistrates in a summary form; and every such prosecution shall be commenced within one month after the offence has been committed.

ROADS (SCOTLAND) ACT 1984

OFFENCES

Section 100(c)

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(4)

A person who pitches a tent or encamps in a road commits an offence.

Footnotes

1. R (Fuller) v Chief Constable of Dorset Police, The Secretary of State for the Home Department [2003] Q.B. 480; Chapman v The United Kingdom 2001 (Application no. 27238/95); Varey v The United Kingdom 1998 (Application no. 26662/95); Buckley v The United Kingdom 1994 (Application no. 20348/92).
2. Implemented in the UK by the Race Relations Act 1976 (Amendment) Regulations 2003
3. www.scotland.gov.uk

Summary of ACPOS Operational Guidance for the Management of Unauthorised Encampments of the Gypsy/Traveller Community.

GUIDELINES FOR MANAGING UNAUTHORISED CAMPING BY GYPSIES/TRAVELLERS IN SCOTLAND

ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND (ACPOS)

1.0 Introduction

1.1 In accordance with recommendations proposed by the Advisory Committee on Scotland's Travelling People and the Scottish Parliament Equal Opportunities Committee, the Association of Chief Police Officers in Scotland (ACPOS) has produced Operational Guidance for the Scottish Police Service on the Management of Unauthorised Encampments of the Gypsy/Traveller Community.

1.2 The guidance document has been produced in conjunction with Local Authorities across Scotland who have also been undergoing a process of reviewing arrangements for service provision and social inclusion in respect of the Gypsy/Traveller Community.

1.3 The guidance document has been produced by a Group of representatives from each of the Scottish Forces working under the auspices of the ACPOS Race and Community Relations Standing Committee.

1.4 The Guidance document was also produced in consultation with Crown Office.

2.0 Summary

2.1 The ACPOS Guidance document is intended to provide guidance for police officers on the Police role in relation to unauthorised encampments including their role during civil eviction proceedings, internal monitoring processes and guidance on legislative issues.

2.2 There is a general presumption against prosecution in relation to unauthorised encampments of Gypsies/Travellers. However, there are circumstances where this may be overridden by public interest considerations dependent upon the prevailing circumstances.

2.3 The guidance document emphasises the lead role assumed by local authorities in managing the variety of issues around unauthorised encampments. Its focus is upon service provision and social inclusion and it also takes into account human rights considerations.

3.0 Conclusion

3.1 The ACPOS Guidance Document for the Scottish Police Service is intended to complement each Local Authority's policy and strategy in relation to the Gypsy/Traveller Community. It is also produced in accordance with the guidance developed by the Scottish Executive.

3.2 It is recognised that the role of the Scottish Police Service will essentially be to act in partnership with local authorities in ensuring that the welfare and human rights of the Gypsy/Traveller Community are met and at the same time ensuring that public order and wider community safety issues are effectively addressed.

Managing Unauthorised Camps in Highland 2010/2011

Service Contact Details

Ross, Skye & Lochaber Lochaber Skye & Lochalsh Ross	 Page 21 Page 22 Page 23
Inverness, Badenoch & Nairn Inverness Badenoch & Strathspey Nairn	 Page 24 Page 26 Page 27
Caithness, Sutherland & Easter Ross Caithness Sutherland Easter Ross	 Page 28 Page 29 Page 30
Multi Agency Partnership Contacts	Page 31

Last Updated – 1 September 2010

Ross, Skye & Lochaber

Lochaber		Wards: Ward 12 – Caol & Mallaig Ward 22 – Fort William & Ardnamurchan		
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Housing & Property	Morag Cameron	Principal Housing Officer	01397 707217	Morag.cameron@highland.gov.uk
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Legal	Ninian Christie	Solicitor	01397 707228	Ninian.christie@highland.gov.uk
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Social Work	Gerard Storey	C & F	01397 707025	Gerard.storey@highland.gov.uk
	Morag Reid	CC	01397 707025	Morag.reid@highland.gov.uk
Corporate	Dot Ferguson	Ward Manager	01397 707231	Dot.ferguson@highland.gov.uk
Other Agency Contacts				
Northern Constabulary	Inspector Allan	Area Inspector	01397 707627	Douglas.allan@northern.pnn.police.uk
NHS				
Fire Service		District Officer	01397 707670	

Skye & Lochalsh		Wards: Ward 11 – Eilean a’ Cheò		
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	Liz Featherstone	CC	01471 820174	Liz.featherstone@highland.gov.uk
Corporate	Jan Laing	Ward Manager	01478 613849	Jan.laing@highland.gov.uk
Other Agency Contacts				
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NHS				
Fire Service		District Officer	01478 612793	

Ross		Wards: Ward 6 – Wester Ross, Strathpeffer & Lochalsh Ward 9 – Dingwall & Seaforth Ward 10 – Black Isle		
Service/Agency	Contact person	post	Contact details	Email address
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Other Council Contacts				
Education	Karen MacMaster	Development Officer Interrupted Learning	01349 863441	Karen.macmaster@highland.gov.uk
Legal	Susan Blease/ Shona Pottinger	Solicitor	01349 868538 01349 868539	Susan.blease@highland.gov.uk Shona.pottinger@highland.gov.uk
TECs	Andy Tuckwood	Waste Operations Manager	01397 709016	andy.tuckwood@highland.gov.uk
Environmental Health	Archie Lang	Environmental Health Manager	(01349) 868447	Archie.lang@highland.gov.uk
Social Work	Patricia Haigh	<i>C & F</i>	01349 868700	Patricia.haigh@highland.gov.uk
	Ian Smith	CC	01854 613900	Ian.smith2@highland.gov.uk
Corporate	Bob Cameron	Corporate Manager	01349 868500	Bob.cameron@highland.gov.uk
Other Agency Contacts				
Northern Constabulary	Chief Inspector Coats	Area Commander	01349 869501	Mike.coats@northern.pnn.police.uk
NHS				
Fire Service		District Officer	01349 852341	
HIE				

Inverness, Badenoch & Nairn

Inverness		Wards: Ward 13 – Aird & Loch Ness Ward 14 – Inverness West Ward 15 – Inverness Central Ward 16 – Inverness Ness-side Ward 17 – Inverness Millburn Ward 18 – Culloden and Ardersier Ward 20 – Inverness South		
Service/Agency	Contact person	post	Contact details	Email address
Lead Council Contact				
Housing & Property	Stephanie Johnson	Tenant Services Officer	01463 246027	Stephanie.johnson@highland.gov.uk
Other Council Contacts				
Education	Karen MacMaster	Development Officer Interrupted Learning	01349 863441	Karen.macmaster@highland.gov.uk
Legal	Donald Somerville	Area Solicitor	01463 724210	Donald.somerville@highland.gov.uk
TECs	Alan McKinnie	Waste Operations Manager	01463 245783	Alan.mckinnie@highland.gov.uk
Environmental Health	John Lee	Environmental Health Manager	(01463) 703945	John.lee@highland.gov.uk
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	Sheena McLellan	CC – East	01463 798337	Sheena.mclellan@highland.gov.uk
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			01463 724378	W14 – Stewart Wardlaw stewart.wardlaw@highland.gov.uk

			01463 724273	W15 – Jimmy Flint jimmy.flint@highland.gov.uk
			01463 724378	W16 – Stewart Wardlaw stewart.wardlaw@highland.gov.uk
			01463 724273	W17 – Jimmy Flint jimmy.flint@highland.gov.uk
			01463 724246	W18 – Charles Stephen charles.stephen@highland.gov.uk
			01463 724276	W20 – Charles Stephen charles.stephen@highland.gov.uk
Other Agency Contacts				
Northern Constabulary	Chief Inspector Maclean	Area Commander	01463 228402	Andrew.maclean@northern.pnn.police.uk
NHS	Anne Johnstone	Public Health Nurse	01463 706700	
Fire Service		District Officer	01463 227057	

Badenoch & Strathspey		Wards: Ward 21 – Badenoch & Strathspey		
Service/Agency	Contact person	post	Contact details	Email address
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Other Council Contacts				
Education	Karen MacMaster	Development Officer Interrupted Learning	01349 863441	Karen.macmaster@highland.gov.uk
Legal	Donald Somerville	Area Solicitor	01463 724210	Donald.somerville@highland.gov.uk
TECs	Alan Mckinnie	Waste Operations Manager	01463 245783	Alan.mckinnie@highland.gov.uk
Environmental Health	John Lee	Environmental Health Manager	(01463) 703945	John.lee@highland.gov.uk
Social Work	Sue Roddick	C & F	01463 791338/ 01479 810251	Sue.rodick@highland.gov.uk
	Lyne Brown	CC	01667 453951	Lyne.brown@highland.gov.uk
Corporate		Ward Manager	01540 664537	W21 – Sue Palmer sue.palmer@highland.gov.uk
Other Agency Contacts				
Northern Constabulary	Chief Inspector Henderson	Area Commander	01479 810222	Donald.henderson@northern.pnn.police.uk
NHS	Margaret Bentley	Public Health Nurse	01479 813403	Margaret.bentley@nhs.net
Fire Service		District Officer	01479 811410	

Nairn		Wards: Ward 19 - Nairn		
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Legal	Donald Somerville	Area Solicitor	01463 724210	Donald.somerville@highland.gov.uk
TECs	Alan Mckinnie	Waste Operations Manager	01463 245783	Alan.mckinnie@highland.gov.uk
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Northern Constabulary	Inspector MacLennan	Area Inspector	01667 452222	willie.maclennan@northern.pnn.police.uk
NHS				
Fire Service		Inv District Officer	01463 227057	

Caithness, Sutherland & Easter Ross

Caithness		Wards: Ward 2 – Thurso Ward 3 – Wick Ward 4 – Landward Caithness		
Service/Agency	Contact person	post	Contact details	Email address
Lead Council Contacts				
Housing & Property	George Sanders	Principal Housing Officer	01955 607707	George.sanders@highland.gov.uk
Other Council Contacts				
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Legal	Fiona Sinclair	Area Solicitor	01955 607705	Fiona.sinclair@highland.gov.uk
TECs	Alan Mckinnie	Waste Operations manager	01463 245783	Alan.mckinnie@highland.gov.uk
Environmental Health	Chris Ratter	Area Environmental Health Manager	(01408) 635322	Chris.ratter@highland.gov.uk
Social Work	Ian McElroy	<i>C & F</i>	01955 605040/ 01847 893835	Ian.mcelroy@highland.gov.uk
	Julie Catterall	CC	01955 605040	Julie.catterall@highland.gov.uk
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NHS				
Fire Service		District Officer	01847 893338	

Sutherland		Wards: Ward 1 – North West & Central Sutherland Ward 5 – East Sutherland & Edderton		
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Lead Council Contact				
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Other Council Contacts				
Education	Karen MacMaster	Development Officer Interrupted Learning	01349 863441	Karen.macmaster@highland.gov.uk
Legal	Fiona Sinclair	Area Solicitor	01955 607705	Fiona.sinclair@highland.gov.uk
TECs	Andy Tuckwood	Waste Operations Manager	01397 709016	Andy.tuckwood@highland.gov.uk
Environmental Health	Chris Ratter	Area Environmental Health Manager	(01408) 635322	Chris.ratter@highland.gov.uk
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NHS				
Fire Service		District Officer	01862 811044	

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Other Agency Contacts				
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NHS				
Fire Service		District Officer	01349 852341	

Highland Multi Agency Gypsy/Traveller Action Plan : Contacts

Service/Agency	Contact person	post	Contact details	Email address
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Other Council Contacts				
Education	Karen McMaster	Gypsy/Traveller Development Officer - Education	01349 868208	Karen.macmaster@highland.gov.uk
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TECs				
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Other Agency Contacts				
Northern Constabulary	David Ogilvie	Inspector Policy & Co-ordination	01463 723371	david.ogilvie@northern.pnn.police.uk
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Fire Service	Cathie Way	Community Risk	01463	cathie.way@hifrs.org

		Management Co-ordinator	227170	
Careers Scotland	Rhoda Charlton		01463 667 272	Rhoda.Charlton@careers-scotland.org.uk
Job Centre Plus	Gillian Neill??			gillian.neill2@jobcentreplus.gsi.gov.uk
HIE	Liz Scott??			liz.scott@hient.co.uk

Unauthorised Encampment Procedures - These procedures are minimum standards for Managing Unauthorised Encampments. Key staff for 2010/2011 will be named in the final published version of this procedure. (last update 26 April 2010)

Appendix 4

Report of an Unauthorised Encampment

- Contact Housing & Property to advise – see 'Lead Council Contact' for area in which encampment located in Service Contacts document

Housing & Property advised of encampment

- H&P 'lead contact' notifies all 'other council contacts' for area **plus** Northern Constabulary of encampment location and confirms arrangements for initial visit.
- Initial visit within 2 working days.
- Where possible initial joint visit by H&P and TECs, **or** 2 H&P staff.

Purpose of Initial Joint Visit

- consider encampment in relation to procedures
- provide advice & information
- establish any special needs or vulnerability
- establish intended length of stay
- advise of procedures and time limits
- assess refuse & waste needs & makes arrangements
- completes confidential record of visit.

Housing & Property provides information update following initial visit

- H&P 'lead contact' notifies all 'other council contacts' for area **plus** Northern Constabulary of the general outcomes of the visit:-
- Description of encampment and general conditions
- what is the residents expected date of departure
- where expected date of departure is considered unreasonable in circumstances, or no date of departure was given, H&P 'lead contact' offers guidance on a reasonable timescale in the circumstances of the specific encampment and its location.
- Confirms details of land ownership where known, requests confirmation where not.

Date of Departure

- **visit by landowning service** to establish whether encampment has moved on
- where encampment has moved on, then arrangements made for quick & efficient clearance of any debris
- where not moved on, decision required by landowner/landowning service of need for further action depending on the circumstances & the location

Housing & Property provides information update following second visit

- H&P 'lead contact' notifies all 'other council contacts' for area **plus** Northern Constabulary that the date of departure has been confirmed with encampment residents
- In addition, provide updated description of the encampment and general conditions
- Confirm which landowner/landowning service has responsibility for any further action/decisions

Visit to encampment to confirm agreed date of departure

- H&P lead contact confirms either that original proposed date is acceptable **OR**
- confirms revised date, with reasons
- provides further advice as necessary
- second visit within 2 working days of initial visit
- Where possible joint visit by H&P and TECs, **or** 2 H&P staff

Landowning Service provides information update following date of departure

Landowning Service 'contact' notifies all 'council contacts' for area **plus** Northern Constabulary of the outcome of this visit and the need & intentions of any further action. Where the need for a case conference is identified (at this or any stage in the process) the H&P lead contact should be contacted for the purpose of coordinating via Area Housing & Property Managers.

Further communications

The Landowning Service 'contact' is required to continue to notify all 'council contacts' for area **plus** Northern Constabulary of progress with any decisions made to manage the encampment, including court dates for eviction. H&P will maintain welfare visits to encampment and follow up on any accommodation needs if household has no permanent residence

Guidance on instructing enforcement powers to evict

Effective enforcement can promote confidence in the ability of the local authority to manage Unauthorised Encampments. Local people need to know that they and their local environment can be and will be protected. This guidance relates to enforcement powers to evict and is intended for use by Highland Council Services in situations where the land is owned or controlled by the Service.

1. Enforcement Action

Enforcement action against unauthorised encampments require a landowner whether a private individual, a company or the Council to make an application to the Sheriff Court for authority to eject an encampment from land in its ownership or control.

These applications are made in terms of the Summary Cause Rules of Procedure. In summary

- actions can only be raised by a party with an interest in the land eg owner
- are used to recover possession of land
- require that recovery of possession is enforced by Sheriff Officers
- do not provide any sanction for the return of trespassers onto land

2. Making Decisions

Highland Council and its services are required to ensure that Unauthorised Encampments are managed sensitively and proportionately within the framework of the Unauthorised Encampment Policy.

Landowning services must ensure that they follow the procedures and that their actions including any decision to seek recovery of possession are fully documented.

The following questions should be considered. These are not exhaustive.

Is enforcement necessary?

What are the grounds for seeking recovery of possession?

The court will require to be satisfied that the decision of the Council to seek recovery is reasonable. For example, is there a road safety issue, an assessed risk to public health or an anti-social behaviour issue?

What complaints have been received and what has been the nature of the concerns raised?

The Service should assess the situation and have regard to the views of partner agencies such as the police.

Could the encampment be managed with a lighter touch?

For example, based on previous experience is the encampment likely to move off the site in due course?

Is the decision to evict likely to be challenged?

In accordance with wider obligations the Service must ensure that welfare enquiries have been carried out to determine whether there are pressing needs presented by the unauthorised campers and that the appropriate agencies are involved as required.

Is there relevant evidence available in relation to the encampment which supports the need for choosing use of this type of enforcement action as the most appropriate in the circumstances? The Service should identify an appropriate witness who will be able to give evidence in support of the decision and provide copies of any photographs, witness statements or other documents such as minutes of case conferences, which might be lodged in court.

Do the households at the encampment have accommodation available to them elsewhere, and if not, is there availability at any permanent sites?

The policy and procedure on managing unauthorised encampments clearly sets out the intention that staff involved in visiting camps provide information and advice as well as support and assistance. Any accommodation needs will have been identified as part of following the procedures and hence landowning services are required to reference this type of information in any instructions to Legal Services for using enforcement powers.

Would it be more appropriate to consider other powers or actions – eg interdicts or anti-social behaviour orders?

There may be circumstances where convening a multi agency case conference may help identify alternative enforcement or indeed management mechanisms more appropriate to the circumstances of a complex and difficult case. For example, do particular groups repeatedly return to the same area?

3. Avoiding Legal Challenge

Landowning services should be aware that considerable delays can occur if the unauthorised campers mount a challenge to the action of recovery. Clearly this can impact on the costs, duration, seriousness and community impact of an encampment.

Challenge can also be made against any public body through judicial review on the grounds that decision-making was flawed.

However, it is expected that landowning services can minimise this risk with reference to this guidance note before instructing enforcement powers.

4. Instructing enforcement powers for eviction

Landowning Services should consult with Legal Services on a case by case basis at the earliest possible time it appears there may be a need for this type of civil action.

In addition, the Unauthorised Encampment procedures outline that Legal Services be included in any multi agency case conferences to make sure that all enforcement and/or management mechanisms are given due consideration.