

**A Guide
to Effective Use of
Enforcement Powers**



0845 370 7401

**Able Investigations
& Enforcements**

including Specialist Eviction Group UK

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Introduction

1. Some parts of the country experience regular unauthorised encampments, which can cause disruption and conflict locally, and can be expensive and time-consuming to clear. The Government's policies on Gypsy and Traveller accommodation and enforcement are set within a framework of rights and responsibilities in which everyone's rights must be equally respected but where, at the same time, equal standards of behaviour are expected from all. Creating and sustaining strong communities is at the heart of the Government's Respect agenda and will have benefits for the settled and Gypsy and Traveller communities alike.
 2. Unauthorised camping is a problem which requires a range of solutions. The Government has already introduced new housing and planning policies to ensure that in the future the accommodation needs of Gypsies and Travellers will be properly understood and properly addressed, part of which is a new obligation on local authorities to identify suitable locations in their areas that can be used for the establishment of new public and private Gypsy and Traveller sites. In the meantime the Government is working with the Gypsy and Traveller community to find pragmatic local solutions to accommodation shortages while the longer-term policies take effect.
 3. But part of the solution also lies in swift and effective enforcement. Where problematic encampments are allowed to remain, or repeatedly return, community hostility and conflict will be inflamed, and a sustainable long-term solution will become much harder to achieve. Effective enforcement will promote confidence in the ability of local agencies to manage Gypsy and Traveller issues properly, and forms an essential backdrop to the provision of more authorised sites. Local people need to know that they and their local environment can be and will be protected.
 4. Strong powers are available to the police, local authorities and other landowners to deal with unauthorised encampments. This document provides a detailed step-by-step practical guide to the use of these powers.
 5. It also sets out advice on:
 - Choosing the most appropriate power.
 - Speeding up the process.
 - Keeping costs down.
 - The eviction process.
 - Preventing further unauthorised camping.
 6. This document is intended for elected officials and others in the community who have an interest in how unauthorised camping by Gypsies and Travellers is managed in their area, and provides information to local authority officers and other landowners on options for dealing with such incidents.
 7. This guidance explains the ways in which enforcement action can be made quicker, cheaper and more effective. Local authorities should also be aware that the wider policy they adopt towards Gypsy and Traveller issues will also make a great deal of difference. Enforcement action can be taken more swiftly, and can be more effective, where appropriate authorised provision for Gypsies and Travellers is in place within a local authority's area.
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8. The use of joint protocols between the local authority, the police and any other relevant agencies is also highly effective in establishing how individual cases will be dealt with, and making sure that all parties are clear about their responsibilities and how they will work together.
9. Local authorities have an obligation to carry out welfare assessments on unauthorised campers to identify any welfare issues that need to be addressed, before taking enforcement action against them. Where police are taking enforcement action, it is good practice for them to liaise with the local authority over any welfare issues. It is also good practice for local authority officers to be present at any eviction from public land, to ensure that any welfare issues that arise at that time can be dealt with appropriately.
10. The Government is also establishing a new Task Group which draws together central and local Government, the police and other agencies to address the wide variations in the use of enforcement powers and to champion best practice. The group will act as expert advisers to the Office of the Deputy Prime Minister (ODPM) and the Home Office, who are working together to consider potential new measures to further strengthen enforcement, alongside the provision of more authorised sites.
11. Information on the Government's wider policies concerning Gypsies and Travellers, *Local authorities and Gypsies and Travellers – guide to responsibilities and powers*, can be found on the ODPM website at the following address:

www.odpm.gov.uk/gypsiesites

12. The information contained in this document should be read in conjunction with the joint ODPM/Home Office document, *Guidance on Managing Unauthorised Camping* and its supplementary document on Section 62A-E police powers. This gives more detailed advice on a range of matters, including toleration, joint working protocols and obligations on local authorities and other public agencies in respect of welfare enquiries.
13. Further documents will follow in this series which will provide guidance on dealing with unauthorised developments of land without planning permission, and anti-social behaviour, including fly-tipping.

Unauthorised Encampment – The Powers in Summary

Common law powers

- can only be used by the landowner;
- are used to regain possession of land;
- does not require the involvement of the courts;
- enforced by the landowner and/or private bailiffs where necessary;
- does not provide any sanctions offence for the return of trespassers onto land.



Part 55 Civil Procedures Rules

- can only be used by the landowner;
- are used to regain possession of land;
- require civil court procedure;
- possession is enforced by county court bailiffs, where necessary;
- do not provide any sanctions for the return of trespassers onto land.

Sections 77-78 Criminal Justice and Public Order Act 1994

- can only be used by a local authority;
- can be used on any land within the local authority's area, irrespective of ownership;
- are used to remove identified individuals from land;
- only require the involvement of the courts when unauthorised campers do not leave when directed to do so;
- possession is enforced by local authority officers or private bailiffs employed by the local authority;
- the return of unauthorised campers and/or their vehicles to the location within three months carries criminal sanctions.

Sections 61-62 Criminal Justice and Public Order Act 1994

- can only be used by the police;
- can be used on any land except the highway;
- are used to remove identified individuals and/or their vehicles from land;
- there must be two or more persons trespassing on the land before the power can be used;
- do not require the involvement of the courts;
- possession is enforced by the police;
- the return of unauthorised campers to the location within three months carries criminal sanctions.

Section 62A-E Criminal Justice and Public Order Act 1994

- can only be used where an alternative site is available;
- can only be used by the police;
- can be used on any land;
- is used to remove identified individuals and/or their vehicles from the land;
- does not require the involvement of the courts;
- possession is enforced by the police;
- the return of unauthorised campers to the local authority area within three months carries criminal sanctions.



Unauthorised Encampment – The Powers in Detail

Common Law Powers

14. All landowners can use their common law rights to recover land (i.e. the tort of trespass against property). This allows the person in possession of land to evict an individual from their land, seek damages for their trespass on their land, and/or seek an injunction to prevent the trespass from occurring again.
15. Case law has established that a trespasser who enters land peaceably is entitled to a request to leave the land before being forcibly removed, while a trespasser who has entered land with force and violence may be removed without a previous request to depart.
16. If the trespasser does not leave the land the possessor of the land may use no more force than is reasonably necessary to evict him or her. Private bailiffs may be used to carry out the eviction. The issue of what is 'reasonable force' is a question of fact to be decided in each individual case, however it must be an honestly held belief that in the particular circumstances the force that is used is reasonable, rather than excessive. Use of excessive force could give rise to a claim against the landowner by the trespassers.
17. Whenever a landowner is considering the use of common law rights he/she should notify the police of his/her intentions so that police officers can be present to prevent any breach of the peace.
18. If the police advise that, in the particular circumstances, it is inappropriate to attempt an eviction, action should always be delayed until such time as the police believe that it is safe to continue.
19. Parliament provides strong statutory powers to local authorities to enable them to deal with incidents of unauthorised camping under Section 77 of the Criminal Justice and Public Order Act 1994. The civil courts also offer an avenue to deal with unauthorised camping under Civil Procedures Rules Part 55.




Part 55 Civil Procedures Rules

20. Part 55 of Civil Procedure Rules allow any landowner to regain possession of his/her land. Where the land is leased, the terms of the lease will determine who has this power – long-lessees and many short-lessees will be responsible for evictions, where they are "person entitled to occupation of the land". Someone with only the right, or permission, to use the land (i.e. who does not have a controlling interest in it, for instance someone with the right to graze livestock) would not generally be able to recover possession of the land in this way if it is trespassed upon.
21. The first step is for the landowner to ask the trespassers to leave the land. If they refuse to do so, or ask to be allowed to remain for what the landowner considers to be an unacceptable time period, the landowner can then begin action against the unauthorised campers through the County Court.

22. If the objective is to achieve eviction as rapidly as possible, the landowner should alert the County Court to the need for expediting the case as soon as they are aware of the encampment's arrival.
23. The landowner completes the relevant documentation, including any evidence in relation to the encampment (photographs, witness statements and so on) and presents this to the court manager in the County Court. A date for a hearing is then agreed.
24. The Court then provides the landowner with the claim form to serve on the defendants (the papers can be issued to "persons unknown" if it is not possible to ascertain the identities of the unauthorised campers). Service of the claim form can then be made by the landowner or his appointed representative (process servers can be employed to carry this out) either by handing the claim to the unauthorised campers directly, or by posting the claim in a prominent position on the land if this is not possible.
25. At the hearing, the facts of the case are set out before the judge. The landowner should provide documentation which satisfies the judge that the landowner has a legitimate interest in the land. The judge will be concerned to establish that the unauthorised campers have been dealt with appropriately before granting an eviction order but, thus satisfied, may grant the order immediately. In some cases, for instance, where the defendants have attended the hearing to defend the claim, the hearing may be adjourned to allow more time for more evidence to be gathered.
26. If the defendant fails to leave the land by the date of the hearing and the judge has agreed to grant possession to the landowner, a warrant will be issued immediately. Bailiffs (who will be court-appointed in most circumstances) will then visit the encampment and notify the defendant(s) of the eviction date and time and provide them with the eviction notice. Once again, this may be handed directly to the unauthorised campers or posted prominently on the land.
27. On the date of the eviction (which must be at least twenty four hours from the time at which the notice of eviction was served) the landowner or his appointed representative will accompany the bailiff to witness the eviction. The police should be alerted so that they can provide appropriate advice and be on hand to ensure that there are no breaches of the peace. After the eviction has taken place the land owner will then sign the warrant of possession to acknowledge that he has regained possession of the land (if court bailiffs are not available to carry out the eviction, private bailiffs may be employed in this capacity).
28. It should be noted that, where the landowner is a local authority or other public body, the necessary welfare assessments should be carried out alongside the court procedures and should be completed before any eviction is carried out.
29. Further details of the court procedures and forms can be found on line at:
http://www.dca.gov.uk/civillprocedures_fin/index.htm

Sections 77-78 Criminal Justice and Public Order Act


30. **Section 77** of the CJPOA gives local authorities the power to direct individuals to remove their vehicles and belongings and to leave highway land, or any land occupied without the consent of the landowner, whether owned by the local authority itself or by any other public or private landowner.

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31. Before commencing any action to evict an unauthorised encampment, local authorities have an obligation to carry out welfare assessments of the unauthorised campers. This may necessitate the involvement of local NHS bodies, where health issues are apparent.
 32. Local authorities may then draw up a Direction which instructs the unauthorised campers to leave on a particular date and time. This document is approved and signed by an authorised signatory of the local authority (usually a solicitor or legal executive employed by the authority). It also identifies either individuals or vehicles on the unauthorised encampment.
 33. The Direction is then served on the unauthorised campers by a local authority officer (the document must be given directly to one of the named unauthorised campers or affixed prominently to one of the vehicles).
 34. If the campers have failed to move and/or remove any vehicles and other property by the date specified in the Direction, or return to the same location within three months of the date of the Direction, they are then committing a criminal offence and may be arrested by the police. If a prosecution is successful they may then be given a custodial sentence of up to three months, or be liable to a fine of up to £1,000.
 35. In practice however, it can be more effective for local authorities to pursue unauthorised campers who have contravened a direction under Section 77 by using their powers under **Section 78** of the CJPOA. This allows local authorities to advise the Magistrates' Court of the contravention and, if the court is satisfied, then they may grant an Order for Removal of Persons and Vehicles.
 36. In the first instance, the Listing Clerk at the Magistrates' Court should be contacted in order to obtain a date for a court hearing, which is required before the Order can be issued. Depending on the location of the encampment, the local authority may ask the court to expedite the process so that the unauthorised campers can be moved quickly.
 37. The appropriate local authority officer then attends the Application Court to make an application for a summons, which can be issued immediately. This summons requires the person(s) in charge of the caravan(s) to appear before a court hearing to answer the complaint.
 38. The summons is then served on the unauthorised campers by the appropriate local authority officer or by a process server contracted to perform this service for the local authority.
 39. A hearing in the Magistrates' Court is set for later in the day on which the summons is served, or on the following working day. A solicitor must appear at the hearing on behalf of the local authority. Good practice indicates that, where possible, the same solicitor should be used in all court proceedings relating to unauthorised camping by Gypsies and Travellers so that they have a good working knowledge of the legislation. The solicitor should be provided with all of the necessary court documents as well as any relevant background information (the findings of welfare enquiries for example). The solicitor will request that the magistrate grants an Order for Removal of Vehicles and Persons.



40. If the unauthorised campers attend the hearing and contest the eviction, the case may be adjourned in order to allow time to hear all the evidence. However, if the magistrate is satisfied that the correct procedures have been followed, the Order will be granted immediately in normal circumstances.
41. Once granted, the Order should be served on the unauthorised campers as soon as possible by a local authority officer or process server, as above.
42. Twenty-four hours must be allowed to elapse between serving the Order and any action to remove the unauthorised campers. At any point thereafter, the local authority (or private bailiffs employed on their behalf) may remove the unauthorised campers and their vehicles from the land. As with any eviction, police should be present to ensure that no breach of the peace takes place.

Sections 61-62 Criminal Justice and Public Order Act

43. If the landowner or his agent has asked the unauthorised campers to leave the land by a particular date and time, and they have failed to do so, and any of the three following conditions have also been met:
 - the unauthorised campers have caused damage to the land or property on the land;
 - they have used threatening, abusive or insulting words or behaviour to the occupier, a member of his family or his employee or agent;
 - there are six or more vehicles on the land.
44. The police can use Section 61 of the CJPOA to direct unauthorised campers to leave the site. They can do this without reference to the courts.
45. The initial step is for the landowner to make a formal request to the police that they use their powers under the CJPOA.
46. A senior police officer then considers whether it is appropriate to use the power, based on various factors:
 - whether there are there other activities on the encampment, such as serious breaches of the peace, disorder, criminal activity or anti-social behaviour which would necessitate police involvement under their wider powers;
 - given the impact of the unauthorised encampment on the environment and the local settled community, is it reasonable and proportionate to use police powers;
 - is action by the police legally sustainable;
 - are sufficient resources available.
47. Although case law (R v The Commissioner of the Metropolitan Police ex p. Small) has established that police officers are not under any obligation to undertake welfare enquiries with unauthorised campers, they must be aware of humanitarian considerations when considering action to remove an encampment. The joint ODPM/Home Office document 'Guidance on managing unauthorised camping' recommends that local authorities should be involved in the process.

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48. Once a decision to use police powers is made, a uniformed police officer visits the encampment and advises the occupiers that they are required to leave by a certain date and time, and provides them with a copy of the legislation. The police may determine the period of notice to the unauthorised campers to leave, and this may be hours or days. The police may also videotape their visit to the encampment in case of later challenge or dispute.
49. If the unauthorised campers fail to leave by the date and time specified by the police officer, or return to that location within three months of the direction, they are then committing an offence and liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding £2,500. Further, if a direction issued under Section 61 is contravened, a police officer may then seize and remove the vehicles under **Section 62** of the CJPOA. Vehicles would be impounded in an appropriate police facility with a fee payable for their return.

Section 62A-E Criminal Justice and Public Order Act

50. **Section 62A** of the CJPOA allows the police to direct trespassers to remove themselves and their vehicles and property from land where a suitable pitch on a relevant caravan site is available within the same local authority area (or within the county in two-tier local authority areas).
51. A suitable pitch on a relevant caravan site is one which is situated in the same local authority area as the land on which the trespass has occurred, and which is managed by a local authority, registered social landlord, or other person or body as specified by order by the Secretary of State. In two tier authority areas, where a district council is situated within a wider county council area, the relevant caravan site may be anywhere within the county council area.
52. The power may be used where the following conditions are met:
- at least two persons are trespassing;
 - the trespassers have between them at least one vehicle on the land;
 - the trespassers are present on the land with the common purpose of residing there for any period;
 - it appears to the officer that the person has one or more caravans in his possession or under his control on the land, and that there is a suitable pitch on a relevant caravan site for that caravan or each of those caravans;
 - the occupier of the land (i.e. the freehold owner or lessee), or a person acting on the occupier's behalf has asked the police to remove the trespassers from the land.
53. If the unauthorised campers do not leave when directed to do so under **Section 62A**, or if they return to the district within three months after being directed, they are committing an offence, and the police may then use their powers under **Section 62B** of the CJPOA to arrest and detain them. If the campers are subsequently convicted of an offence under the Act, they may then be subject to a custodial sentence of not more than three months, or a fine not exceeding level 4 on the standard scale (currently, a maximum of £2,500).
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54. The police may also use their powers under **Section 62C** of the CJPOA to seize and remove the vehicles and property from the land. Vehicles would be impounded in an appropriate police facility with a fee payable for their return.
55. Local authorities will need to confirm that appropriate alternative pitches are available in the area before the police use their powers (note the duty to consult local authorities within the area under Section 62A (5)) and, as with Section 61 of the CJPOA, it is good practice for local authorities to be involved in the process to ensure that any welfare needs are identified.
56. Specific guidance on the use of ss.62A-E powers was issued in March 2005, and is available on the ODPM website at:

www.odpm.gov.uk/gypsiesites

Choosing the Most Appropriate Power

57. The powers set out above all have different characteristics, and accordingly will be appropriate for different circumstances. The questions set out below will help agencies to determine the most appropriate power to use in different circumstances. In addition to the information that is provided here on relevant powers, it is important for the relevant enforcement provisions to be considered carefully in each situation to ensure that all requirements can be met. Local authorities and police forces should also agree protocols so that an overall policy and clear lines of responsibility are in place before the need for action arises.
58. The questions set out below will help agencies to determine the most appropriate power to use in different circumstances.

How important is speed?

59. It is unlawful for Gypsies and Travellers to camp on land they do not own without the landowner's permission. There are locations where immediate action to remove them should be taken because the presence of the encampment is seriously disrupting the ability of the settled community to make use of facilities or to conduct their business, for instance:
 - on school grounds during term time;
 - on urban parks;
 - on business or retail parks.
60. Similarly, swift action should be taken where the encampment is located on contaminated land or where the encampment is very close to a busy highway, potentially endangering the health and safety of the campers and others, or on land of a particularly sensitive nature, a Site of Special Scientific Interest (SSSI) for example.
61. In the above circumstances, Section 61 of the CJPOA is likely to be the most appropriate power, provided that the conditions for its use are met. The police can act immediately without reference to the courts, and can direct travellers to leave the site within a matter of hours. Clearly, this course of action will be more effective if there is an alternative site to which Gypsies and Travellers can be directed, either pitches on an authorised transit site, or a location which is deemed to be a more "acceptable" unauthorised site.

Are there problems on the encampment such as anti-social behaviour, public disorder and so on?

62. In these circumstances it will be appropriate for the police to deal with these issues directly using their wider powers, and for them to disperse the encampment using S61 or S62A.

Is it desirable to evict some but not all the trespassers?

63. If the anti-social behaviour is focused amongst particular individuals in the group, or if a member of the group is ill, it may be appropriate to take action to evict some people but not others. In this case it may be most effective to use the powers under ss. 77-78 CJPOA, which focus on named individuals or vehicles, or to use the police powers.

Is the group of unauthorised campers stable, or are different vehicles arriving and departing?

64. Where the occupants of an unauthorised encampment change frequently, it may be more effective to use Civil Procedures Rules Part 55, which relate to the land itself, rather than the powers under the CJPOA, which require the individuals or vehicles on the encampment to be identified. Where these change, a new direction will have to be drawn up.

Do the unauthorised campers present welfare issues?

65. Local authority officers should conduct thorough welfare enquiries when a new encampment of Gypsies and Travellers arrives in the area. Where pressing needs for particular services are identified as part of the local authority's enquires, relevant departments or external agencies should be contacted in order to meet these needs as appropriate (health services, social services, housing departments and so on).
66. If necessary, removal of the encampment could be delayed while urgent welfare needs are addressed (unless, as above, the site on which the unauthorised campers are using is particularly sensitive or hazardous, in which case the unauthorised campers should be asked to relocate to a more appropriate location in the vicinity). Further, it may be possible to negotiate a date for the encampment to leave if, for instance, the Gypsies and Travellers have camped in the vicinity for a specific purpose; in order to attend an outpatient's appointment at the local hospital for example.

Is enforcement necessary?

67. If the Gypsies and Travellers are cooperative, only wish to stay for a short time and the encampment is not in a sensitive location, it may only be necessary to monitor the situation pending their departure. It may also be appropriate to provide the unauthorised campers with some means of disposing of rubbish and waste in order to minimise clear-up costs when they have left.

Is the decision to evict likely to be challenged?

68. In this case it may be appropriate to use Part 55 Civil Procedures Rules so that a judge can affirm the decision to evict based on the available evidence.

Are there suitable pitches available on relevant sites in the local authority area to which the unauthorised campers might go?

69. If this is the case, s. 62A of the CJPOA can be used.

Do particular groups repeatedly return to the area?

70. In this case it may be appropriate for the police to use their powers under Section 62A, where there are suitable pitches available in the area. Section 62A can prevent campers returning to anywhere in the local authority area for a period of three months.
71. Where groups return to a specific location, ss. 61-62 and 77-78 can be used to prevent them returning to that location for a period of three months. It may also be appropriate to explore further options such as injunctions or Anti-Social Behaviour Orders.

Speeding up the Process

Making authorised provision

72. Enforcement action will be quicker and more effective, and a wider range of powers can be used, where appropriate authorised provision is made for Gypsies and Travellers within the area. The Housing Act 2004 requires local authorities to undertake accommodation needs assessment for Gypsies and Travellers who reside in or resort to their areas, and then to set out a strategy to meet those needs. Adequate provision will have wide benefits in the management of unauthorised camping as:
 - there will be less unauthorised camping in the first place;
 - the police will not be restricted in the use of ss. 62A-E CJPOA if suitable pitches are available;
 - legal challenges are less likely to occur or succeed;
 - the courts are more likely to grant possession orders to local authorities who show they are acting responsibly in carrying out their wider duties and who deal with each incident of unauthorised camping on its merits.

Being prepared

73. Arrangements should be reached in advance, both within local authorities and the police themselves, but also between the parties, about how cases of unauthorised camping will be dealt with.
74. Local authorities should ensure that reports of unauthorised camping can be acted upon swiftly. They should nominate a named officer who has the appropriate level of authority to make operational decisions on the ground, and cover arrangements should be put in place for those instances where this officer is unavailable.
75. Procedures should be agreed with each agency that will be involved in the eviction process (including the police and those departments and agencies that may be called upon for assistance as a consequence of welfare enquiries). Good working relations, and clear lines of responsibility, particularly between the local authority and the police, can do a great deal to speed the processes up. Some areas that use police powers effectively have units staffed by both local authority employees and police officers.



Avoiding legal challenge

76. Considerable delays can occur if the unauthorised campers mount a legal challenge to the eviction. In some cases, this may be as part of a court process. However, a challenge can also be mounted to any public body via judicial review on the grounds that its decision-making was flawed. However, this risk can be minimised.
77. Local authorities should ensure that, in accordance with their wider obligations, and to ensure that they comply with Human Rights legislation, proper welfare enquiries are carried out to determine whether there are pressing needs presented by the unauthorised campers and that, where necessary, the appropriate agencies are involved as soon as possible.
78. Local authorities should also ensure that they follow proper procedures in dealing with an unauthorised encampment, and that their actions are fully documented. Comprehensive advice is set out in, *Managing Unauthorised Camping*, jointly issued by ODPM and Home Office, and available on the ODPM website at:

www.odpm.gov.uk/gypsiesites

79. Local authorities should also prepare carefully for court appearances, making sure that evidence/court papers etc are in order, and that all legal requirements (such as serving notices) have been met.

Working with the courts

80. Local authorities should maintain regular contact with their local court service and discuss with them in advance any issues that are expected to arise. It may also be helpful for local authority officers to join the Court User Group, which is a forum for discussing new legislation, and provides opportunities to raise issues such as court practice.
81. When unauthorised camping takes place and it is deemed that court action is appropriate, the court should be advised of any intention to file an application immediately (without waiting until all the paperwork is complete), so that the date for a hearing can be expedited.


Keeping Costs Down

82. Speeding up the enforcement process will in itself help to keep costs down, so the points set out in the previous section will be relevant here as well. In addition, the following points should be considered.

Avoiding unnecessary enforcement action

83. Before taking action, landowners should consider whether enforcement is absolutely necessary. It may be that in certain circumstances, alternatives to eviction action are appropriate, for example:
 - where unauthorised campers have chosen an unobtrusive location in which to camp it may be preferable to agree a departure date with them;




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- where unauthorised campers have chosen to stop in an unacceptable location, but where the local authority has also identified a location in the vicinity which would be much less damaging or obtrusive, unauthorised campers could be encouraged to move to this location.
84. If eviction is deemed necessary, in many cases the trespassers will leave after being served with an initial notice under Part 55 or a direction under the CJPOA powers, and no further enforcement action will be needed.

Avoiding unnecessary clean-up costs

85. Waste clearance from sites that have been used as unauthorised encampments should be undertaken rapidly in order to minimise the amount of fly-tipping that may take place after the encampment has gone. Where they can be identified, fly-tippers can also be fined for depositing waste illegally.

Avoiding unnecessary legal costs

86. Expertise and legal advice relating to unauthorised camping may be available from the district or county council, and landowners, parish councils and so on are advised to ensure that they have consulted with these bodies before taking further action. Good practice guidance and general advice on the management of unauthorised camping is also available from the ODPM, although the Department is not able to offer definitive legal advice on specific cases.
87. Local authorities should consider which parts of the enforcement process may be appropriately carried out by their own staff, as this is likely to be cheaper than contracting the work out to others. However, the local authority will wish to satisfy itself that their staff have the necessary expertise, and that their safety can be assured.
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The Eviction Process

88. Where an eviction is being carried out by a local authority, its appointed representatives or the police, a local authority officer should always attend, as the local authority may have obligations to offer assistance to those who have been evicted, due to their wider social responsibilities. This may include temporarily caring for children where parents or guardians have been arrested and held in custody, or offering alternative accommodation to those Gypsies and Travellers who are identified as being homeless and in priority need.
89. Local authorities should also ensure that the appropriate departments, such as housing, social services, education and NHS bodies are made aware of the eviction and are in a position to be able to respond swiftly to any requests for assistance. If unauthorised campers have pets or livestock it may also be appropriate to involve the relevant bodies, the RSPCA for instance, in finding appropriate accommodation for them.
90. If an eviction is being carried out by a local authority or bailiffs, the police should be advised at an early stage so that they can advise and assist in relation to the issue of personal safety in order to minimise the possibility of physical harm. Police should also be on hand when an eviction is taking place in order to ensure that breaches of the peace do not occur. If the police recommend that the eviction should not proceed for any reason, action should be delayed until an agreed time.



91. If private bailiffs are to be used to evict unauthorised campers, stringent vetting should take place to ensure that those employed in this capacity are appropriately qualified to do so. The bailiffs should also indemnify the landowner against any potential liability (in terms of further costs incurred due to possible legal action) in respect of their activities to evict the unauthorised campers.
92. Wherever possible, the forthcoming eviction should be discussed with those on the encampment, and they should be notified of the date and time for the eviction. This will give those on the encampment time to prepare to leave, and will help to ensure that the eviction runs as safely and smoothly as possible.
93. However, there may be circumstances in which this is not appropriate – for example where those on the encampment have announced their intention of violently resisting the eviction. In this case it will be essential that the eviction is thoroughly planned, with the full involvement of the police at an early stage, and that every care is taken to ensure the safety of everyone involved.

Preventing Further Unauthorised Camping

Following up on enforcement action

94. Where a particular group of Gypsies and Travellers repeatedly camp in a specific location, and the police or the local authority have used their powers under the CJPOA to remove them, it is important that the criminal sanctions set out in the legislation are pursued if the unauthorised campers return within three months of being directed to leave.

Other legal action

95. Other legal remedies such as injunctions and Anti-Social Behaviour Orders (ASBOs) may be used to prevent Gypsies and Travellers from returning to an area where they have caused problems in the past. Local authorities may be able to obtain these remedies at the same time as taking court action for possession or eviction. Guidance on their use can be found at:

www.together.gov.uk/home.asp

96. If injunctions or ASBOs are obtained to prevent unauthorised camping by particular groups, it is important that breaches are followed up with the appropriate legal sanctions, such as fines or imprisonment.

Provision of appropriate sites

97. The most effective method of combating unauthorised camping is to provide sites in accessible locations for those Gypsies and Travellers who pass through the area. This may not be limited to official residential and transit sites; it might also include particular locations which have been identified in the district where Gypsies and Travellers can stop for limited and agreed short periods of time, without having any adverse impact on the settled community.



Site protection measures

98. Site protection measures could also be considered in locations which are particularly vulnerable to unauthorised camping, for instance by creating earth bunds, or embankments, around the site, or by introducing height restrictions to entrances.

Additional Sources of Information

Part 55 Possession Claims – Department for Constitutional Affairs guidance, available on the internet at: www.dca.gov.uk/civil/procrules_fin/contents/parts/part55.htm#4223902

Guidance on Managing Unauthorised Camping – ODPM/Home Office joint guidance, available on the internet at: www.odpm.gov.uk/stellent/groups/odpm_housing/documents/page/odpm_house_027535.hcsp

Additional Guidance on Sections 62A-E CJPOA:
www.odpm.gov.uk/stellent/groups/odpm_housing/documents/page/odpm_house_035805.hcsp

Information on the Government's Policies relating to Gypsies and Travellers:
www.odpm.gov.uk/gypsiesites

Information on HM Courts Service: www.hmcourts-service.gov.uk/cms/aboutus.htm

Information on tackling anti-social behaviour in the community: www.together.gov.uk

Information on fly-tipping: www.defra.gov.uk/environment/localenv/flytipping/index.htm


Glossary of Terms

Breach of the Peace – a disturbance of public peace or order. Traditionally, one of the roles of the police is to “keep the peace”. Breach of the peace is a common law offence.

Common Law – law determined as a result of decisions made by the courts as distinct from law laid down by statute.

Civil Offence – civil law governs the relationships and transactions between citizens set out in statute and common law. The majority of civil actions are heard in the 218 county courts, where cases are presided over by a district judge.

Criminal Offence – criminal law mostly involves the rules laid down by the state concerning the conduct of citizens. Most minor criminal cases, called summary offences, are heard in local Magistrates' Courts either by a panel of lay magistrates assisted by a legally-trained clerk, or by a legally-trained district judge sitting alone. The most serious offences, called indictable-only offences, are passed on by the Magistrates' Courts to the Crown Court to be heard, usually by a judge and jury. Only Crown Court judges have the power to pass sentences above a certain level of severity, and so some cases may be transferred from Magistrates' Courts for sentencing once a verdict has been reached. There are 78 Crown Court centres throughout England and Wales.



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County Court – the court which deals with the majority of civil actions. Cases are presided over by a district judge.

County Court bailiff – they are employees of the County Court, and enforce County Court Judgements, such as warrants of execution for debts. They also have a role in evictions of unauthorised campers under Civil Procedures Rules Part 55.

Fly-Tipping – the illegal and unauthorised dumping of waste.

Human Rights Act – an Act passed in 1998, and brought into force in October 2000, which requires all public authorities making decisions that affect individuals to consider whether those decisions are reasonable and proportionate, bearing in mind all the circumstances.

Injunction – an order made by a Civil Court (County or High Court) which usually prohibits a somebody from doing something, based on the fact they have done it before, usually seriously and/or often. If an injunction is breached, the person can be fined or imprisoned for a contempt of the court by not according with the terms of the injunction.



Magistrates' Court – the lowest kind of criminal court in England and Wales and other common law jurisdictions. A Magistrate's Court is presided over by two or more Justices of the Peace (magistrates), or by a stipendiary magistrate, and dispenses summary justice, under powers usually limited by statute. The court will also determine committals to the Crown Court.

Private Bailiff (or Enforcement Agent) – someone who is responsible for the enforcement of court orders. Private landowners can also use them where there is no court order. Employed in the private sector. Private bailiffs can also be used to evict unauthorised campers following court proceedings under Civil Procedures Rules Part 55 where court bailiffs are not available.

Process Server – a privately employed individual who personally delivers a process (a writ compelling attendance in court) or court papers to a defendant (process servers are normally employees of private investigation companies).

Protocol – an agreement of an approach, usually between various different public bodies.

Site of Special Scientific Interest – this is a planning policy definition, and it is the name given to specific pieces of land which should not be disturbed or developed. They may be the home of, or an area resorted to by, a rare or protected animal or bird, the site may include a rare type of vegetation, or the land may contain a special geological feature or something else unique. By definition, they must not have houses, caravan sites or other development on them.

Statutory Powers – powers given by an Act of Parliament, as distinct from powers under common law.



Title (to land) – the evidence of someone's ownership of a piece of land, based on tracing the history of it, and showing legal transfer of ownership to them.

Tort – a civil wrong committed by one person against another (e.g. trespassing on their land).

Unauthorised development – development of a site on land owned by Gypsies and Travellers, but for which they do not have planning permission.

Unauthorised encampment – trespassing by Gypsies and Travellers on land which they do not own (e.g. playing fields, farmers' fields or other private land).

Welfare Assessments – action carried out by local authority officers with unauthorised campers to identify and address any issues that require the involvement of other local authority departments and agencies in terms of immediate health, education etc needs.

Appendix – Primary Legislation

Criminal Justice and Public Order Act 1994

Part V

Public Order: Collective Trespass or Nuisance on Land

Powers to remove trespassers on land.

61.—(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and—

(a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or

(b) that those persons have between them six or more vehicles on the land, he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

(2) Where the persons in question are reasonably believed by the senior police officer to be persons who were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after those persons became trespassers before he can exercise the power conferred by that subsection.

(3) A direction under subsection (1) above, if not communicated to the persons referred to in subsection (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.



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

- (a) fails to leave the land as soon as reasonably practicable, or
- (b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given, he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

(5) A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without a warrant.

(6) In proceedings for an offence under this section it is a defence for the accused to show—

- (a) that he was not trespassing on the land, or
- (b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

(7) In its application in England and Wales to common land this section has effect as if in the preceding subsections of it—

- (a) references to trespassing or trespassers were references to acts and persons doing acts which constitute either a trespass as against the occupier or an infringement of the commoners' rights; and
- (b) references to "the occupier" included the commoners or any of them or, in the case of common land to which the public has access, the local authority as well as any commoner.

(8) Subsection (7) above does not—

- (a) require action by more than one occupier; or
- (b) constitute persons trespassers as against any commoner or the local authority if they are permitted to be there by the other occupier.

(9) In this section—

- "common land" means common land as defined in section 22 of the [1965 c. 64.] Commons Registration Act 1965;
- "commoner" means a person with rights of common as defined in section 22 of the [1965 c. 64.] Commons Registration Act 1965;

- “land” does not include—
 - (a) buildings other than—
 - (i) agricultural buildings within the meaning of, in England and Wales, paragraphs 3 to 8 of Schedule 5 to the [1988 c. 41.] Local Government Finance Act 1988 or, in Scotland, section 7(2) of the [1956 c. 60.] Valuation and Rating (Scotland) Act 1956, or
 - (ii) scheduled monuments within the meaning of the [1979 c. 46.] Ancient Monuments and Archaeological Areas Act 1979;
 - (b) land forming part of—
 - (i) a highway unless it falls within the classifications in section 54 of the [1981 c. 69.] Wildlife and Countryside Act 1981 (footpath, bridleway or byway open to all traffic or road used as a public path) or is a cycle track under the [1980 c. 66.] Highways Act 1980 or the [1984 c. 38.] Cycle Tracks Act 1984; or
 - (ii) a road within the meaning of the [1984 c. 54.] Roads (Scotland) Act 1984 unless it falls within the definitions in section 151(2)(a)(ii) or (b) (footpaths and cycle tracks) of that Act or is a bridleway within the meaning of section 47 of the [1967 c. 86.] Countryside (Scotland) Act 1967;
- “the local authority”, in relation to common land, means any local authority which has powers in relation to the land under section 9 of the Commons Registration Act 1965;
- “occupier” (and in subsection (8) “the other occupier”) means—
 - (a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him; and
 - (b) in Scotland, the person lawfully entitled to natural possession of the land;
- “property”, in relation to damage to property on land, means—
 - (a) in England and Wales, property within the meaning of section 10(1) of the [1971 c. 48.] Criminal Damage Act 1971; and
 - (b) in Scotland, either—
 - (i) heritable property other than land; or
 - (ii) corporeal moveable property,
- and “damage” includes the deposit of any substance capable of polluting the land;
- “trespass” means, in the application of this section—
 - (a) in England and Wales, subject to the extensions effected by subsection (7) above, trespass as against the occupier of the land;

(b) in Scotland, entering, or as the case may be remaining on, land without lawful authority and without the occupier's consent; and

- "trespassing" and "trespasser" shall be construed accordingly;
- "vehicle" includes—

(a) any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and

(b) a caravan as defined in section 29(1) of the [1960 c. 62.] Caravan Sites and Control of Development Act 1960; and a person may be regarded for the purposes of this section as having a purpose of residing in a place notwithstanding that he has a home elsewhere.

Supplementary powers of seizure.

62.—(1) If a direction has been given under section 61 and a constable reasonably suspects that any person to whom the direction applies has, without reasonable excuse—

(a) failed to remove any vehicle on the land which appears to the constable to belong to him or to be in his possession or under his control; or

(b) entered the land as a trespasser with a vehicle within the period of three months beginning with the day on which the direction was given, the constable may seize and remove that vehicle.

(2) In this section, "trespasser" and "vehicle" have the same meaning as in section 61.

Powers to remove unauthorised campers

Power of local authority to direct unauthorised campers to leave land.

77.—(1) If it appears to a local authority that persons are for the time being residing in a vehicle or vehicles within that authority's area—

(a) on any land forming part of a highway;

(b) on any other unoccupied land; or

(c) on any occupied land without the consent of the occupier, the authority may give a direction that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they have with them on the land.

(2) Notice of a direction under subsection (1) must be served on the persons to whom the direction applies, but it shall be sufficient for this purpose for the direction to specify the land and (except where the direction applies to only one person) to be addressed to all occupants of the vehicles on the land, without naming them.

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

(a) fails, as soon as practicable, to leave the land or remove from the land any vehicle or other property which is the subject of the direction, or

(b) having removed any such vehicle or property again enters the land with a vehicle within the period of three months beginning with the day on which the direction was given, he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A direction under subsection (1) operates to require persons who re-enter the land within the said period with vehicles or other property to leave and remove the vehicles or other property as it operates in relation to the persons and vehicles or other property on the land when the direction was given.

(5) In proceedings for an offence under this section it is a defence for the accused to show that his failure to leave or to remove the vehicle or other property as soon as practicable or his re-entry with a vehicle was due to illness, mechanical breakdown or other immediate emergency.

(6) In this section—

“land” means land in the open air;

“local authority” means—

(a) in Greater London, a London borough or the Common Council of the City of London;

(b) in England outside Greater London, a county council, a district council or the Council of the Isles of Scilly;

(c) in Wales, a county council or a county borough council;

“occupier” person entitled to possession of the land by virtue of an estate or interest held by him;

“vehicle” includes—

(a) any vehicle, whether or not it is in a fit state for use on roads, and includes any body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and

(b) a caravan as defined in section 29(1) of the [1960 c. 62.] Caravan Sites and Control of Development Act 1960; and a person may be regarded for the purposes of this section as residing on any land notwithstanding that he has a home elsewhere.

(7) Until 1st April 1996, in this section “local authority” means, in Wales, a county council or a district council.

Orders for removal of persons and their vehicles unlawfully on land.

78.—(1) A magistrates' court may, on a complaint made by a local authority, if satisfied that persons and vehicles in which they are residing are present on land within that authority's area in contravention of a direction given under section 77, make an order requiring the removal of any vehicle or other property which is so present on the land and any person residing in it.

(2) An order under this section may authorise the local authority to take such steps as are reasonably necessary to ensure that the order is complied with and, in particular, may authorise the authority, by its officers and servants—

(a) to enter upon the land specified in the order; and

(b) to take, in relation to any vehicle or property to be removed in pursuance of the order, such steps for securing entry and rendering it suitable for removal as may be so specified.

(3) The local authority shall not enter upon any occupied land unless they have given to the owner and occupier at least 24 hours notice of their intention to do so, or unless after reasonable inquiries they are unable to ascertain their names and addresses.

(4) A person who wilfully obstructs any person in the exercise of any power conferred on him by an order under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Where a complaint is made under this section, a summons issued by the court requiring the person or persons to whom it is directed to appear before the court to answer to the complaint may be directed—

(a) to the occupant of a particular vehicle on the land in question; or

(b) to all occupants of vehicles on the land in question, without naming him or them.

(6) Section 55(2) of the [1980 c. 43.] Magistrates' Courts Act 1980 (warrant for arrest of defendant failing to appear) does not apply to proceedings on a complaint made under this section.

(7) Section 77(6) of this Act applies also for the interpretation of this section.

Provisions as to directions under s. 77 and orders under s. 78.

79.—(1) The following provisions apply in relation to the service of notice of a direction under section 77 and of a summons under section 78, referred to in those provisions as a "relevant document"

(2) Where it is impracticable to serve a relevant document on a person named in it, the document shall be treated as duly served on him if a copy of it is fixed in a prominent place to the vehicle concerned; and where a relevant document is directed to the unnamed occupants of vehicles, it shall be treated as duly served on those occupants if a copy of it is fixed in a prominent place to every vehicle on the land in question at the time when service is thus effected.

(3) A local authority shall take such steps as may be reasonably practicable to secure that a copy of any relevant document is displayed on the land in question (otherwise than by being fixed to a vehicle) in a manner designed to ensure that it is likely to be seen by any person camping on the land.

(4) Notice of any relevant document shall be given by the local authority to the owner of the land in question and to any occupier of that land unless, after reasonable inquiries, the authority is unable to ascertain the name and address of the owner or occupier; and the owner of any such land and any occupier of such land shall be entitled to appear and to be heard in the proceedings.

(5) Section 77(6) applies also for the interpretation of this section.

Anti-Social Behaviour Act 2003

60. Power to remove trespassers: alternative site available

After section 62 of the Criminal Justice and Public Order Act 1994 (c. 33) insert – “**62A Power to remove trespassers: alternative site available.**

(1) If the senior police officer present at a scene reasonably believes that the conditions in subsection (2) are satisfied in relation to a person and land, he may direct the person-

- (a) to leave the land;
- (b) to remove any vehicle and other property he has with him on the land.

(2) The conditions are-

- (a) that the person and one or more others (“the trespassers”) are trespassing on the land;
- (b) that the trespassers have between them at least one vehicle on the land;
- (c) that the trespassers are present on the land with the common purpose of residing there for any period;
- (d) if it appears to the officer that the person has one or more caravans in his possession or under his control on the land, that there is a suitable pitch on a relevant caravan site for that caravan or each of those caravans;
- (e) that the occupier of the land or a person acting on his behalf has asked the police to remove the trespassers from the land.

(3) A direction under subsection (1) may be communicated to the person to whom it applies by any constable at the scene.

(4) Subsection (5) applies if-

- (a) a police officer proposes to give a direction under subsection (1) in relation to a person and land, and
- (b) it appears to him that the person has one or more caravans in his possession or under his control on the land.

(5) The officer must consult every local authority within whose area the land is situated as to whether there is a suitable pitch for the caravan or each of the caravans on a relevant caravan site which is situated in the local authority's area.

(6) In this section-"caravan" and "caravan site" have the same meanings as in Part 1 of the Caravan Sites and Control of Development Act 1960;

"relevant caravan site" means a caravan site which is –

- (a) situated in the area of a local authority within whose area the land is situated, and
- (b) managed by a relevant site manager;

"relevant site manager" means –

- (a) a local authority within whose area the land is situated;
- (b) a registered social landlord;

"registered social landlord" means a body registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996.

(7) The Secretary of State may by order amend the definition of "relevant site manager" in subsection (6) by adding a person or description of person.

(8) An order under subsection (7) must be made by statutory instrument and is subject to annulment in pursuance of a resolution of either House of Parliament."

61. Failure to comply with direction: offences

After section 62A of the Criminal Justice and Public Order Act 1994 (c. 33) (inserted by section 60) insert – **"62B Failure to comply with direction under section 62A: offences**

(1) A person commits an offence if he knows that a direction under section 62A(1) has been given which applies to him and-

- (a) he fails to leave the relevant land as soon as reasonably practicable, or
- (b) he enters any land in the area of the relevant local authority as a trespasser before the end of the relevant period with the intention of residing there.

(2) The relevant period is the period of 3 months starting with the day on which the direction is given.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

(4) A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without a warrant.

(5) In proceedings for an offence under this section it is a defence for the accused to show-

(a) that he was not trespassing on the land in respect of which he is alleged to have committed the offence, or

(b) that he had a reasonable excuse-

(i) for failing to leave the relevant land as soon as reasonably practicable, or

(ii) for entering land in the area of the relevant local authority as a trespasser with the intention of residing there, or

(c) that, at the time the direction was given, he was under the age of 18 years and was residing with his parent or guardian."

62. Failure to comply with direction: seizure

(1) After section 62B of the Criminal Justice and Public Order Act 1994 (inserted by section 61) insert – "**62C Failure to comply with direction under section 62A: seizure**

(1) This section applies if a direction has been given under section 62A(1) and a constable reasonably suspects that a person to whom the direction applies has, without reasonable excuse-

(a) failed to remove any vehicle on the relevant land which appears to the constable to belong to him or to be in his possession or under his control; or

(b) entered any land in the area of the relevant local authority as a trespasser with a vehicle before the end of the relevant period with the intention of residing there.

(2) The relevant period is the period of 3 months starting with the day on which the direction is given.

(3) The constable may seize and remove the vehicle."

(2) In section 67(1) (retention and charges for seized vehicles) after "section 62(1)" insert ", 62C(3)".

63. Common land: modifications

After section 62C of the Criminal Justice and Public Order Act 1994 (c. 33) (inserted by section 62) insert – “**62D Common land: modifications**

- (1) In their application to common land sections 62A to 62C have effect with these modifications.
- (2) References to trespassing and trespassers have effect as if they were references to acts, and persons doing acts, which constitute-
 - (a) a trespass as against the occupier, or
 - (b) an infringement of the commoners' rights.
- (3) References to the occupier-
 - (a) in the case of land to which the public has access, include the local authority and any commoner;
 - (b) in any other case, include the commoners or any of them.
- (4) Subsection (1) does not-
 - (a) require action by more than one occupier, or
 - (b) constitute persons trespassers as against any commoner or the local authority if they are permitted to be there by the other occupier.
- (5) In this section “common land”, “commoner” and “the local authority” have the meanings given by section 61.”

64. Interpretation

After section 62D of the Criminal Justice and Public Order Act 1994 (inserted by section 63) insert – “**62E Sections 62A to 62D: interpretation**

- (1) Subsections (2) to (8) apply for the interpretation of sections 62A to 62D and this section.
- (2) “Land” does not include buildings other than-
 - (a) agricultural buildings within the meaning of paragraphs 3 to 8 of Schedule 5 to the Local Government Finance Act 1988, or
 - (b) scheduled monuments within the meaning of the Ancient Monuments and Archaeological Areas Act 1979.
- (3) “Local authority” means-
 - (a) in Greater London, a London borough or the Common Council of the City of London;
 - (b) in England outside Greater London, a county council, a district council or the Council of the Isles of Scilly;



(c) in Wales, a county council or a county borough council.

(4) "Occupier", "trespass", "trespassing" and "trespasser" have the meanings given by section 61 in relation to England and Wales.

(5) "The relevant land" means the land in respect of which a direction under section 62A(1) is given.

(6) "The relevant local authority" means-


(a) if the relevant land is situated in the area of more than one local authority (but is not in the Isles of Scilly), the district council or county borough council within whose area the relevant land is situated;

(b) if the relevant land is situated in the Isles of Scilly, the Council of the Isles of Scilly;

(c) in any other case, the local authority within whose area the relevant land is situated.

(7) "Vehicle" has the meaning given by section 61.

(8) A person may be regarded as having a purpose of residing in a place even if he has a home elsewhere."



A GUIDE TO THE ENFORCEMENT LAW REGARDING CERTIFICATED ENFORCEMENT AGENTS FOR POLICE OFFICERS

Introduction

This is a guide to the work of Certificated Enforcement Agents formally known as Bailiffs.

Certificated Enforcement Agents are often thought to be debt collectors and “Repo men” but this is incorrect.

They are now usually known as EA’s. Certificated Enforcement Agents enforce court orders, Writs or warrants issued by a Court, Liability orders, Warrants of Control for Commercial Landlords (for their own property), and warrants issued by Government officials (commonly HMRC staff or for Child support issues).

Although these are often to do with the recovery of debt, Certificated Enforcement Agents also evict and arrest people. Certificated Enforcement Agents are the Law Enforcement Agents, responsible for enforcing the civil law. Certificated Enforcement Agents also exercise common law powers on behalf of landlords in evicting trespassers and repossessing property under trespass and Torts laws in fact a definition of the word bailiff is “landlords’ agent”

A Certificated Enforcement Agent is a person with legal authority to enforce the payment of debts by seizing the debtor’s goods. This process is known as ‘taking control of goods’ debt collectors do not have this authority.

It is a Criminal Offence to impersonate an Enforcement Agent

Tribunals Courts and Enforcement Act Part 3
ENFORCEMENT BY TAKING CONTROL OF GOODS
CHAPTER 1 PROCEDURE

63 Enforcement agents

(1) This section and section 64 apply for the purposes of Schedule 12.

(2) An individual may act as an enforcement agent only if one of these applies—

(a) he acts under a certificate under section 64;

(b) he is exempt;

(c) he acts in the presence and under the direction of a person to whom paragraph (a) or (b) applies.

(3) An individual is exempt if he acts in the course of his duty as one of these—

(a) a constable;

(b) an officer of Revenue and Customs;

(c) a person appointed under section 2(1) of the Courts Act 2003 (c. 39) (court officers and staff).

(4) An individual is exempt if he acts in the course of his duty as an officer of a government department.

(5) For the purposes of an enforcement power conferred by a warrant, an individual is exempt if in relation to the warrant he is a civilian enforcement officer, as defined in section 125A of the Magistrates' Courts Act 1980 (c. 43).

(6) A person is guilty of an offence if, knowingly or recklessly, he purports to act as an enforcement agent without being authorised to do so by subsection (2).

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Certificated Enforcement Agents formally known as Bailiffs and the Police

There is legislation that determines how a Police officer should deal with Enforcement Agents (Bailiffs) which is as follows:

The first of these is applicable to any EA enforcing debt warrants /writs and orders and that makes it an offence to obstruct an Enforcement Agent. Found as D21064 police national legislation database

Tribunals, Courts and Enforcement Act 2007

SCHEDULE 12 Part 2

Offences

68(1) A person is guilty of an offence if he intentionally obstructs a person lawfully acting as an enforcement agent.

(2) A person is guilty of an offence if he intentionally interferes with controlled goods without lawful excuse.

(3) A person guilty of an offence under this paragraph is liable on summary conviction to—

(a) imprisonment for a term not exceeding 51 weeks, or

(b) a fine not exceeding level 4 on the standard scale, or

(c) both.

(4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), the reference in sub-paragraph (3)(a) to 51 weeks is to be read as a reference to 6 months.

Section 99 Courts Act 2003 Schedule 7 when an EA or an HCEO in person is executing any High or County Court warrants

Constable's duty to assist enforcement officers

5. It is the duty of every constable, at the request of—
- a. an enforcement officer, or
 - b. a person acting under the officer's authority,
- to assist the officer or that person in the execution of a writ.

Criminal Law Act 1977 applies when any EA is enforcing warrants, writs and orders re possession of land and property.

Obstruction of court officers executing process for possession against unauthorised occupiers.

(1) Without prejudice to section 8(2) of the Sheriffs Act 1887 but subject to the following provisions of this section, a person is guilty of an offence if he resists or intentionally obstructs any person who is in fact an officer of a court engaged in executing any process issued by the High Court or by any county court for the purpose of enforcing any judgment or order for the recovery of any premises or for the delivery of possession of any premises.

(2) Subsection (1) above does not apply unless the judgment or order in question was given or made in proceedings brought under any provisions of rules of court applicable only in circumstances where the person claiming possession of any premises alleges that the premises in question are occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation of the premises without the licence or consent of the person claiming possession or any predecessor in title of his.

(3) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he believed that the person he was resisting or obstructing was not an officer of a court.

(4) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding [F1] level 5 on the standard scale] or to both.

(5) A constable in uniform or any officer of a court may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of an offence under this section.

(6) In this section "officer of a court" means—

- (a) any sheriff, under sheriff, deputy sheriff, bailiff or officer of a sheriff; and
- (b) any bailiff or other person who is an officer of a county court within the meaning of the County Courts Act 1959.

There are also laid down procedures and case law that should be of note for Police officers in dealing with Certificated Enforcement Agents formally known as Bailiffs in particular concerning breach of the peace.

Breach of the Peace

Certificated Enforcement Agents are sometimes arrested for provoking a breach of the peace because the debtor gets upset at the prospect of having his or her goods removed. It should be remembered that a Certificated Enforcement Agent is enforcing a court order or warrant, and the issue of whether the money is properly due will have already been considered by a court or a government official or commercial landlord.

A Certificated Enforcement Agent should not be prevented from enforcing just because someone is upset by the activity. Though in some circumstances it is possible for a Certificated Enforcement Agent to behave in a wholly unreasonable way.

The Court of Appeal set out the circumstances when a Certificated Enforcement Agent could be arrested for a breach of the peace in *Bibby v the Chief Constable of Essex* (2000). They are:

1/ There must be a clear, sufficiently real and present threat to breach the peace:

As in *Foulkes v Chief Constable of Merseyside Police* (1998).

2/ The threat must be coming from the person to be arrested:

Redmond-Bate v Director of Public Prosecution (1999). It is important to note that if a debtor is preventing or threatening to prevent the Certificated Enforcement Agent from enforcing, the debtor is the source of the threat.

3/ The conduct must clearly interfere with the rights of others (*Redmond-Bate*);

A case established that a debtor cannot interfere with the Certificated Enforcement Agents right to enforce. The Certificated Enforcement Agent has a duty to enforce and the necessary legal authority to do it and may be liable to the creditor or court for not acting, especially if as a result of his failure the Opportunity to enforce is lost. It has also been established that a police officer has an obligation to ensure a Certificated Enforcement Agent is not obstructed both in TCE 2007 and under the case law of: *R. v Clarke* (1835) and *Skidmore v Booth* (1854).

The duties and responsibilities of Enforcement Agents

Certificated Enforcement Agents do not intimidate people although it is inevitable that some people who Certificated Enforcement Agents visit will feel intimidated. This is usually because the person has tried to ignore the debt in the hope that the problem will go away and the presence of the Certificated Enforcement Agents is itself perceived as a threat.

Certificated Enforcement Agents do not visit without warning; they only visit after

1/ Enforcement Power has been issued (Warrant, Writ or Liability order)

2/ A warning letter called a Notice of enforcement must be served upon the debtor before a bailiff takes control of goods this may be personally served or may be served post

Most companies choose to send by post or electronically. There is no requirement for proof of postage or to send by any type of registered mail.

Enforcement Agents (Bailiffs) can enter without warrant

The law says that without any special warrant an Enforcement Agent (Bailiff) can enter a property they cannot use force against a person and must enter by normal means ie walking through a door

Tribunals, Courts and Enforcement Act 2007 Schedule 12 Part 2

Entry without warrant

14(1)An enforcement agent may enter relevant premises to search for and take control of goods.

(2)Where there are different relevant premises this paragraph authorises entry to each of them.

(3)This paragraph authorises repeated entry to the same premises, subject to any restriction in regulations.

(4)If the enforcement agent is acting under section 72(1) (CRAR), the only relevant premises are the demised premises.

(5) If he is acting under section 121A of the Social Security Administration Act 1992 (c. 5), premises are relevant if they are the place, or one of the places, where the debtor carries on a trade or business.]

(6)Otherwise premises are relevant if the enforcement agent reasonably believes that they are the place, or one of the places, where the debtor—

(a)usually lives, or

(b)carries on a trade or business.

Types of Bailiffs

In England & Wales the main type of Bailiff is a Certificated Enforcement Agent

The EA could work for a Private Company, The Ministry of Justice, A High Court Enforcement Office's company or HMRC. Quite often they are self-employed individuals working for a variety of companies and authorities.

There are three other types of bailiff you may come across that do not have to hold a bailiff certificate to operate.

1/ A High Court Enforcement Officer appointed under the Courts Act 2003 there are about 42 of these people and they generally employ or delegate their authority to EA's to work at the sharp end.

2/ An employee of the Magistrates Court or County Court or the Ministry of Justice.

3/ An officer of a government department ie HMRC.



Each type of Certificated Enforcement Agent is responsible for all of the following:

- Enforcing debt payment
- Recovering goods
- Repossessing property
- Making arrests.

Courts & Government Departments

Before going into more detail about the law, it is useful to have a basic understanding of the Official structure of whom is responsible for Certificated Enforcement Agents and bailiff legislation.

The High Court hears the more difficult and complex civil cases. There is only one High Court but it operates through District Registries located in major cities. Approximately 240 County Courts around the country handle the bulk of debt cases and orders to repossess property.

Magistrates' Courts HMCTS deal with a wide range of criminal and civil matters, including liability orders for debt. They also issue warrants of control and arrest warrants enforcing criminal fines and other non-custodial sentences.

The Ministry of Justice is responsible for developing the civil law, the administration of the High Court and the County Courts and for supporting Magistrates' Courts. The Lord Chancellor makes the regulations for CRAR, Traffic Management Act penalties and "sheriffs' High Court Enforcement Officer regulations. He is also ultimately responsible for the county court bailiffs who are civil servants.

Her Majesty's Revenue & Customs HMRC is responsible for Income Tax; Value Added Tax. Both these Government departments write their own enforcement law and have the power to issue warrants without the need to obtain a court order.

The Office of the Deputy Prime Minister writes the enforcement law for local authorities to recover Council Tax and Non-Domestic Rates.

The DWP is responsible for the Child Support Agency and the enforcement of child maintenance payments.

Local authorities and the Child Support Agency can recover arrears of unpaid money under Tribunals, Courts and Enforcement Act 2007 by using the Schedule 12 procedure of taking control of goods but must first obtain a liability order from the Magistrates' Court. Local authorities also issue warrants of execution for parking penalties after they have obtained a County Court order via the traffic Enforcement Centre at Northampton County Court

The Law

Bailiff law (Certificated Enforcement Agents) in England & Wales has been updated by The Tribunals, Courts and Enforcement Act 2007 which came in to effect on April 6th 2014

The documents which authorise a Certificated Enforcement Agents to act are called warrants, writs or liability orders. They can be issued by courts (usually, Magistrates Courts, County Courts and the High Court), by certain central and local government organisations (for example, HMRC offices and local councils), by some other public sector organisations (for example, harbour authorities) and by some individuals (usually, commercial landlords).

The following are the most common types of debt enforcement undertaken by private bailiffs:

- Rent (commercial)
- Magistrates' Courts fines and orders
- Parking & Traffic Management Act penalties
- Income Tax
- Value Added Tax
- Council Tax
- Non-Domestic Rates (sometimes referred to as NNDR)
- Child support maintenance


Basic Procedure

For ease of reference, the term 'Enforcement Agents ' refers to all types. The term Certificated Enforcement Agents covers all the different types of Certificated Enforcement Agents. Enforcement falls into

Three basic steps:

- Notice of Enforcement called compliance
- Taking control of goods called the Enforcement stage
- Removal & sale. Called the Sale or Removal stage

To take control of the goods means to reserve them to pay the debt. 'taking them into the custody of the law'. A Certificated Enforcement Agent must enter peacefully the premises where the goods are (see below). The goods are not necessarily marked or removed. With the exception of commercial rent enforcement, goods can be seized in this way at the debtors place of residence, place of business or on the highway.




The goods can be removed immediately but usually they are left with the debtor under a controlled goods agreement. In almost all cases, a Certificated Enforcement Agents cannot force entry to premises in order to take control without an extra order from the court called a Warrant of reasonable force. The main exceptions to this are a force entry may be made on any magistrate courts fine debts, On High Court Writs against a commercial property or some debt types where there has been a signed controlled goods agreement and the debtor has breached this. However the EA must first serve a Notice of Intention to re -enter giving 2 clear days' notice.


Peaceful entry means that a Certificated Enforcement Agent must go in without forcing open a door and without passing someone with the legitimate authority to refuse them entry. A Certificated Enforcement Agent can enter through a door that is closed but not locked (unlocked entrances imply invitation!).

Days and times for taking control are on any day between 06.00 and 21.00 unless it is a business that operates outside these hours then any time is possible.

In all types of debt, a Certificated Enforcement Agent can only take control of the debtor's goods. Certificated Enforcement Agents cannot take essential domestic items (eg a cooker, fridge, bedding) but these are defined in legislation. Items such as the television or hi-fi are not usually essential.



With the exceptions of Non-Domestic Rate and Value Added Tax, tools of the trade are also exempt up to a value of £1350 - although a few years ago the High Court ruled that when enforcing High Court and County Court judgments and some other debts (including rent), tools of the trade were only exempt if they were for the exclusive use of the debtor. If a person objects to the Certificated Enforcement Agents taking control of certain goods, it is for the person (or the true owner of the goods) to apply to the court claiming that the taking control is illegal or irregular.



To take control of goods the EA can Remove them, Enter into a controlled goods agreement where the goods remain with the debtor to use but are in custody of the law and the debtor cannot sell or dispose of them without the EA's permission. The EA could also secure them with an immobilisation device where appropriate or remove and store them elsewhere. On commercial property the EA also has the right to lock up part or the whole of the property to secure the goods.

To remove and sell a debtor's goods is the last resort for a Certificated Enforcement Agent. With a few exceptions, sale must be at public auction,

Certificated Enforcement Agents should always treat people with dignity but this may be difficult when faced with foul language and aggressive behaviour. A disturbed debtor can easily misunderstand a Certificated Enforcement Agent but Certificated Enforcement Agent cannot simply withdraw - they must be firm, remain calm and carry out their duties.

Certificated Enforcement Agents Fees

The fees a bailiff can charge the debtor for enforcing their debts against them vary for the 2 different types of debt ie Non High Court and High Court .

For all debt types apart from High Court scale of fees are as follows

For Debts less than £1500

Compliance Fee when Enforcement Agent receives case £75

Enforcement Attendance by Enforcement Agent £235

Removal fee when goods are removed to auction £110

For Debts over £1500

Compliance Fee when Enforcement Agent receives case £75

Enforcement Attendance by Enforcement Agent £235 + 7.5% of debt above £1000

Removal fee when goods are removed to auction £110+ 7.5% of debt above £1500

Multiple cases enforced at same time admin fee only but for purpose of % all added together.

Fees High Court

For all High Court Enforcement debts scale of fees are as follows

For Debts less than £1000

Compliance Fee when Enforcement Agent receives case £75

Enforcement Attendance by Enforcement Agent £190

Enforcement 2 if debtor no cooperative by Enforcement Agent £495

Removal fee when goods are removed to auction £525

For Debts over £1000

Compliance Fee when Enforcement Agent receives case £75

Attendance by Enforcement Agent £190 + 7.5% of debt above £1000

Enforcement 2 if debtor no cooperative by Enforcement Agent £495

Removal fee when goods are removed to auction £525+ 7.5% of debt above £1000

£75 to be paid by creditor if abortive

If a person objects to the fees that are charged by a bailiff, the person should apply to the court for the fees to be reviewed by a judge.

Certificated Enforcement Agents Misconduct

Wrong action by the Certificated Enforcement Agents is covered under Tribunals, Courts and Enforcement Act 2007 SCHEDULE 12 Part 2

Remedies available to the debtor

66(1) *This paragraph applies where an enforcement agent—*

(a) breaches a provision of this Schedule, or

(b) acts under an enforcement power under a writ, warrant, liability order or other instrument that is defective.

(2) The breach or defect does not make the enforcement agent, or a person he is acting for, a trespasser.

(3) But the debtor may bring proceedings under this paragraph.

(4) Subject to rules of court, the proceedings may be brought—

(a) in the High Court, in relation to an enforcement power under a writ of the High Court;

(b) in a county court, in relation to an enforcement power under a warrant issued by a county court;

(c) in any other case, in the High Court or a county court.

(5) In the proceedings the court may—

(a) order goods to be returned to the debtor;

(b) order the enforcement agent or a related party to pay damages in respect of loss suffered by the debtor as a result of the breach or of anything done under the defective instrument.

(6) A related party is either of the following (if different from the enforcement agent)—

(a) the person on whom the enforcement power is conferred,

(b) the creditor.

(7) Sub-paragraph (5) is without prejudice to any other powers of the court.

(8) Sub-paragraph (5)(b) does not apply where the enforcement agent acted in the reasonable belief—

(a) that he was not breaching a provision of this Schedule, or

(b) (as the case may be) that the instrument was not defective.

(9) This paragraph is subject to paragraph 59 in the case of a breach of paragraph 58(3)

About Able Investigations & Enforcement Solutions

Able Investigations and Enforcement Solutions is an established business offering a range of specialist Bailiff, Enforcement & Investigations.

Based in Bristol in the South West we are considered a leading authority in our field and have featured on both local and national media as industry experts due to our knowledge of the laws that govern our profession.

We pride ourselves on providing the best possible service delivered to the highest of standards with guaranteed professionalism, sensitivity and discretion at all times.

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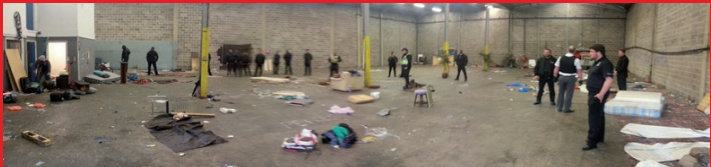
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