

Department for Communities and Local Government

Dealing with illegal and unauthorised encampments

A summary of available powers

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Department for Communities and Local Government

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Dealing with illegal and unauthorised encampments: a summary of available powers

This guide sets out the robust powers councils and landowners now have to clamp down quickly on illegal and unauthorised encampments.

As part of the Government's commitment to protecting the nation's green spaces, these powers will help protect Green Belt land and the countryside from illegal encampments. In addition to the powers which are available to councils to remove unauthorised traveller sites, protest camps and squatters from both public and private land, new Temporary Stop Notices now give councils powers to tackle unauthorised caravans, backed up with potentially unlimited fines. With the powers set out in this guide available to them, councils should be ready to take swift enforcement action to tackle rogue encampments and sites.

Recent experience has shown us the problems that can be caused for communities by the illegal occupation of land. It is often thought that local authorities and other enforcement bodies have limited powers available to tackle illegal and unauthorised encampments and the nuisance that they can cause. In fact there are extensive powers which are summarised below.

Whilst there is a clear leadership role for local authorities in tackling illegal and unauthorised encampments, they will some times need to work collaboratively with others, such as the police or the Highways Agency, depending on where the most appropriate powers sit.

This summary of powers is primarily aimed at local authorities but also intended to be helpful to land owners and others involved with illegal and unauthorised encampments.

Being prepared and acting swiftly: Questions local authorities will want to consider:

- Is there land particularly vulnerable to unlawful occupation/trespass?
  - What is the status of that land? Who is the landowner?
  - Do any special rules apply to that land (e.g. byelaws, statutory schemes of management, etc) and, if so, are any of those rules relevant to the occupation/trespass activity?
  - Has a process been established for the local authority to be notified about any unauthorised encampments?

- If the police are notified of unauthorised encampments on local authority land, do they know who in the local authority should be notified?

- If the power of persuasion by local authority officers (wardens/park officers/enforcement officers) does not result in people leaving the land/taking down tents, is there a clear decision making process, including liaison with local police forces, on how to approach unauthorised encampments? At what level of the organisation will that decision be made? How will that decision-maker be notified?

To plan and respond effectively, local authorities should consider:

- Working with local police to identify vulnerable sites.
- Working with landowners to physically secure vulnerable sites where possible.
- Preparing any necessary paperwork, such as applications for possession orders or injunctions, in advance.
- Working with private landowners to inform them of their powers in relation to unauthorised encampments, including advance preparation of any necessary paper -work.
- Developing a clear notification and decision-making process to respond to instances of unauthorised encampments.
- The prudence of applying for injunctions where intelligence suggests there may be a planned encampment and the site of the encampment might cause disruption to others.
- Working to ensure that local wardens, park officers or enforcement officers are aware of who they should notify in the event of unauthorised encampments.
- Working to ensure that local wardens or park officers are aware of the locations of authorised campsites or other alternatives.
- Working with the police to identify sites where protests could be directed / permitted.

A summary of the powers available to local authorities and the police to tackle unauthorised encampments is set out below:

Local Authority Powers	
Power	**When can the power be applied?**
Temporary Stop Notice	**Section 171E of the Town and Country Planning Act 1990** stops any activity that breaches planning control for a period of 28 days. This allows the local planning authority time to decide whether further enforcement action, such as issuing an enforcement notice, possibly with a stop notice, should be taken. Penalty for non-compliance is a fine of up to £20,000 on summary conviction or an unlimited fine on indictment (**section 171G**). A temporary stop notice differs from a stop notice (see below) in that it does not have to wait for an enforcement notice to be issued and the effect of the temporary stop notice is immediate. The Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005 were revoked on 4 May 2013. The revocation removes a previous restriction on the use of Temporary Stop Notices; this allows Local Planning Authorities to decide if enforcement action against a caravan, used as a main residence, is necessary and proportionate in the circumstances.
Injunctions to protect land from unauthorised encampments	If a local site is particularly vulnerable and intelligence suggests it is going to be targeted for unauthorised camping, causing disruption to others going about their day-to-day lives, local authorities could consider applying to the courts for a pre-emptive injunction preventing unauthorised camping (and/or protests) in a defined geographical area.

	The local authority will be required to point to an underlying claim on which the injunction application is based. The following are examples of possible bases: 1. the relief from trespass or public nuisance; 2. the prevention of obstruction of the highway (see "Public Highway" section); 3. the prevention of a breach of planning control (**section 187B, Town and Country Planning Act 1990**); and 4. the prevention of environmental damage.
Licensing of caravan sites	**The Caravan and Control of Development Act 1960** prohibits the use of land as a caravan site unless the occupier holds a site licence issued by the local authority. A caravan site includes anywhere a caravan (including mobile or 'park' home) is situated and occupied for human habitation including touring sites and single sites. However, it does not include sites where caravans are kept for storage only (driveways, retailers, storage parks) or where a caravan is used as additional accommodation for an existing dwelling. Violation of licensing terms brings a £100 fine for a first offence, and a £250 fine for any subsequent offence.
Tent site licence	**Section 269 of the Public Health Act 1936** gives the local authority powers to control the use of movable dwellings and to license the use of land as a site for such as a dwelling. If the land is to be used for more than 28 days in total in any calendar year, planning permission must be obtained. A site which is used for more than 42 days consecutively or 60 days in total in any consecutive 12 months, must have a site licence for the area concerned. The local authority may also decide to license tented areas on existing sites which operate within the 28 day planning allowance period. Violation of licensing terms brings a £2 fine per day.
Possession Orders	A possession order under **Part 55 of the Civil Procedure Rules** can be obtained by both local authorities and private landowners who require the removal of trespassers from property including land. The claim must be issued in a County Court which has jurisdiction over the affected land/property. A claim can be issued in the High Court in exceptional circumstances where there is a risk of public disturbance and harm to persons or property that requires immediate determination. Local authorities should also be prepared to advise private landowners about their rights to recover land from trespassers through the courts or using common law powers. It is also possible that local authorities may be called upon to assist other Government bodies such as the Highways Agency. The "ordinary" possession order may be used regardless of whether the property is a building or open land, and regardless of the type of squatter or trespasser. The landlord may combine the application for the possession order with suing the squatter for damages and/or an occupation rent for the period of squatting as well as the court fees. A possession order may be secured quickly against trespassers (a

	minimum of 2 days' notice before a hearing can take place if the property is non-residential, or 5 days for residential property), but not as quickly as an interim possession order, and is not backed up by criminal sanctions, unlike the interim possession order (see below).
Interim Possession Order	If trespassers have occupied premises (rather than open land), a local authority or private landowner could also consider applying (under **Section III of Civil Procedure Rules Part 55**) for an interim possession order, an accelerated process for regaining possession of property. Once the court has granted such an order and it has been served, trespassers who fail to leave within 24 hours of service of the order or return to the premises within the currency of the order are guilty of an offence under **section 76 of the Criminal Justice and Public Order Act 1994.** The interim possession order has the obvious advantages of speed and being backed up by the criminal law. It is, however, not a final order, and there is a return date at which the court will decide whether to make the order final. If the court decides that the interim order was not justified, the landlord may have to pay damages. The interim possession order is also more restricted in that it may only be used where the property is or includes a building, not open land, and may not be used where the landlord also wishes to claim damages and/or an occupation rent.
Local Byelaws	**Section 235 of the Local Government Act 1972** enables the local district council or London borough council to make byelaws for the good rule and governance of the whole or any part of the district or borough and for the suppression and prevention of nuisances. Such byelaws include noise in streets and other public places, urinating in a public place etc. **Section 150 (2) of the Police Reform and Social Responsibility Act 2011** enables local authorities to attach powers of seizure and retention of any property (which could include tents and sleeping equipment) in connection with any breach of a byelaw made under **section 235** and enables the courts to order forfeiture of any such property on conviction for contravention of any byelaw. Local authorities could use this byelaw as a pre-emptive tool to prohibit encampments, if the local authority considers it has an area at risk of encampment protest. This will save having to go through costly injunctions after any encampments have been set up. Local authorities should consider this option as part of their local risk assessment and mitigation plan; as such a byelaw would still be required to go through the normal processes for amending or introducing new byelaws. Westminster City Council has already introduced such a byelaw, which came into force for a specified area around Parliament Square on 30 March 2012.
Power of local authority to direct unauthorised	Where people are residing in vehicles (including caravans) on land the **section 77 of the Criminal Justice and Public Order Act 1994** gives local authorities in England and Wales power to give a direction to leave the land. The power applies only to land forming part of a highway, any

campers to leave land	other unoccupied land or occupied land on which people are residing without the consent of the occupier. It is an offence to fail to comply with such a direction. If the direction is not complied with, the local authority can apply to a magistrates' court for an order requiring the removal of vehicles and any occupants from the land (**section 78**). Responsibility for eviction lies with the local authority. Officers or agents of the local authority may use reasonable force to evict. It is usually recommended that the police attend such evictions in order to prevent a breach of the peace. Please note this power does not apply to other campers i.e. those sleeping under canvas.
Addressing obstructions to the Public Highway	If tents are erected on the public highway, so as to constitute a "nuisance", the relevant highway authority may serve a notice requiring their removal under the **Highways Act 1980** (England and Wales only). If the recipient fails to comply, the highway authority can apply to the Court for a removal and disposal order. The key issue is the need to demonstrate that the tents etc that are deposited on the highway are causing a clear, actual obstruction (a "nuisance"). The Highways Act provides other grounds on which highway authorities may take action in relation to protest activity on the highway. For example, under **sections 1 and 263 of the Act**, the freehold title of a highway maintained at public expense is vested in the highway authority. This means that, in some circumstances they could seek a possession order through the courts. Under **section 137**, it is the duty of the highway authority to protect the rights of the public regarding the use and enjoyment of the highway and to prevent the obstruction of the highway. This allows the authority to seek an injunction in relation to protests on the highway that restrict public use or create an obstruction. Normally a highway authority would take the time to initiate a dialogue with any party that is potentially causing an obstruction and would only use court procedures if it was obvious the party causing the obstruction won't back down. However, as with **section 149 of the Highways Act 1980** (Removal and disposal orders) if the object, e.g tents, was causing a danger then there is a provision for their immediate removal. The power won't be effective where the obstruction is temporary and formal proceedings are likely to be frustrated by the voluntary removal of the object before any court proceedings can bite. In these circumstances liaison and persuasion are the best option.

Planning contravention notice	**Section 171C of the Town and Country Planning Act 1990** provides the power to serve a planning contravention notice. This may be used where it appears that there may have been a breach of planning control and the local planning authority require information about the activities on the land or to find out more about the nature of the recipient's interest in the land. A notice can therefore be used to invite its recipient to respond constructively to the local planning authority about how any suspected breach of planning control may be satisfactorily remedied. These notices enable local planning authorities to take action quickly following complaints and may be sufficient to reach a solution to the problem without taking any further formal action. Penalty for non-compliance is a maximum £1,000 on summary conviction (**section 171D**). A second conviction for continuing non-compliance can be penalised by a daily fine. A false or misleading response to a planning contravention notice (either deliberately or recklessly) is subject to a maximum fine of £5,000.
Enforcement Notice and Retrospective Planning	**Section 172 of the Town and Country Planning Act 1990** is the power to issue an enforcement notice, requiring steps to be taken to remedy the breach of planning control within a given period. The steps can include demolition and restoration of a site or alterations to a building. There is a right of appeal to the Secretary of State against an enforcement notice (**section 174**). If the notice is upheld, the penalty for failure to comply is a fine of up to £20,000 on summary conviction or an unlimited fine on indictment (**section 179**). An enforcement notice should be written in plain English and should enable every person who receives a copy to know – • exactly what, in the local planning authority's view, constitutes the breach of planning control; and • what steps the local planning authority require to be taken, or what activities are required to cease to remedy the breach. If an enforcement notice has been issued, the local planning authority may decline to determine a retrospective planning application for development that would grant planning permission for any of the matters specified in the enforcement notice (**section 70C of the Town and Country Planning Act 1990 as inserted by section 123 of the Localism Act 2011**).
Stop Notice	**Section 183 of the Town and Country Planning Act 1990** This has the effect of quickly stopping any activity which contravenes planning control guidelines and where there are special reasons which justify doing this: for example to prevent further environmental damage or to stop the construction of an unauthorised building. A stop notice may only be served with or after an enforcement notice relating to the same activity. Penalty for non-compliance is a fine of up to £20,000 on

	summary conviction or an unlimited fine on indictment (**section 187**).
Breach of Condition Notice	**Section 187A of the Town and Country Planning Act 1990** enables a breach of condition noticed to be served where there is a failure to comply with any condition or limitation imposed on a grant of planning permission. Penalty for non-compliance is a fine of up to £2,500 on summary conviction.
Powers of entry onto land	**Sections 196A, 196B and 196C of the Town and Country Planning Act 1990** provides powers of entry for authorised officers of the local planning authority for them to obtain information required for enforcement purposes. This may be without a warrant at any reasonable hour (with 24 hours' notice for a dwelling house), or with a warrant if access has been or is expected to be refused, or it is an emergency. Wilful obstruction of an authorised person is an offence: penalty is a fine of up to £1,000 on summary conviction.
Police Powers	
Power	**When can the power be applied?**
Power of the Police to direct unauthorised campers to leave land	Should trespassers refuse to adhere to a request to leave the land, **sections 61- 62 of Criminal Justice and Public Order Act 1994** gives the police discretionary powers to direct trespassers to leave and remove any property or vehicles they have with them. The power applies where the senior police officer reasonably believes that two or more people are trespassing on land with the purpose of residing there, that the occupier has taken reasonable steps to ask them to leave, and any of the following: 1. that any of the trespassers have caused damage to land or property; 2. that any of the trespassers have used threatening, abusive or insulting words or behaviour towards the occupier, a member of the occupier's family or an employee or agent of the occupier; or 3. that the trespassers have between them six or more vehicles on the land. Failure to comply with the direction by leaving the land as soon as reasonably practicable is an offence. Similarly it is an offence for a trespasser who has left the land in compliance with an order to re-enter it as a trespasser within three months of the direction being given.
Police Powers to direct trespassers to an alternative site	Police have powers under **sections 62 A-E of Criminal Justice and Public Order Act 1994** to direct both trespassers and travellers to leave land and remove any vehicle and property from the land where there is a suitable pitch available on a caravan site elsewhere in the local authority area.

Offence of squatting in a residential building	The offence of squatting in a residential building, which comes into force on 1 September 2012, was created by **section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.** The offence will be committed where a person is in any residential building as a trespasser, having entered as a trespasser, knows or ought to know he or she is a trespasser, and is living in the building or intends to live there for any period. Although the new offence does not cover squatting in non-residential buildings or on land, squatters who have broken into those premises, removed items or caused damage might be guilty of other offences such as criminal damage or burglary and should be reported to the police.
Post site clean up powers	
Power	**When can the power be applied?**
To act in respect of Fly-tipping	Fly-tipping is the illegal deposit of waste on land that does not benefit from an appropriate environmental permit contrary to **section 33 of the Environmental Protection Act 1990** and local authorities and the Environment Agency may prosecute for the offence. There is an associated offence relating to the unlawful deposit of waste from a motor vehicle whereby the person who controls or is in a position to control the vehicle shall be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done. Prosecution may be taken by the local authority or in more serious cases by the Environment Agency where there is evidence that a person either deposited the waste or knowingly caused or permitted the deposit. This power is ineffective where it is uncertain whether the waste is controlled waste under **Environmental Protection Act 1990**. Such uncertainty might arise where the waste is not considered household, commercial or industrial.
Removal of waste from land	Local authorities are under an obligation to remove fly-tipped waste from public land, but on private land it is the responsibility of the landowner to remove the waste and dispose of it legally. Landowners are therefore often the victims of fly-tipping. Local authorities should advise landowners what local facilities are available to enable them to clear fly-tipped waste. **Section 59 of the Environmental Protection Act 1990** allows local authorities and the Environment Agency to require owners or occupiers of land to remove waste they *knowingly* caused or permitted to be deposited illegally. If the waste is not removed, the local authority or the Environment Agency can enter onto the land to clean up the waste and can charge the landowner the costs incurred. This power is effective where a person is still in occupation of land or where a landowner has refused to take steps to prevent fly-tipping or has allowed fly-tipping to occur (in most cases the landowner is the victim). However, it cannot be used against the offender unless they are

	the occupier or landowner or where there is doubt whether the deposit is an illegal deposit.
Power to remove any thing abandoned without lawful authority	Section 6 of the **Refuse Disposal (Amenity) Act 1978** provides a general power for local authorities to remove "any thing in their area, other than a motor vehicle, [which] is abandoned without lawful authority on any land in the open air or on any other land forming part of a highway", provided that they have given notice to the occupier of the land and they have not objected within 15 days, in accordance with the Removal of Refuse Regulations 1967. The local authority may be entitled to recover the costs of removal from the person who deposited the articles.
Harm to public health	Local authorities have certain duties and powers to control "statutory nuisances" pursuant to **sections 79 to 81 of the Environmental Protection Act 1990** (as amended). Various matters constitute "statutory nuisances" under this legislation. These include any premises and land that are in such a state as to be prejudicial to health or a nuisance. Something will be 'prejudicial to health' if it is 'injurious or likely to cause injury to health.' A 'nuisance' is unacceptable interference with the personal comfort or amenity of the nearby community. The statute requires local authorities to inspect their areas for statutory nuisances and to take such steps as are reasonably practicable to investigate complaints of statutory nuisance made by residents in their areas. A local authority has a duty to serve an abatement notice if it is satisfied that a statutory nuisance exists, or is likely to occur or recur. The abatement notice should generally be served on the person responsible for the statutory nuisance but can be served on the owner of the land if the person responsible (e.g. a tenant or leaseholder) cannot be found or if the nuisance has not yet occurred or recurred. If the abatement notice is not complied with, the local authority has the power to take further steps to deal with the nuisance (but it not obliged to take these steps). A local authority may abate the nuisance itself. In doing so the local authority may do whatever may be necessary in execution of the notice and may be able to recover expenses from the landowner, if necessary through a charge on the land. A local authority also has the power to take criminal proceedings against a person who fails to comply with an abatement notice if it considers that doing so is in the interests of the inhabitants in its area. If the local authority considers that the criminal procedure is inadequate (e.g. in an emergency) it has a power to seek an injunction in the High Court to deal with the statutory nuisance. Overall this power is effective in tackling statutory nuisance issues that may arise from illegal occupation (e.g., noise, smells, accumulation of material, fumes, dark smoke). The statutory nuisance regime cannot be used to require people who are responsible for a statutory nuisance to move from a site, even if they are occupying the site illegally.

Clearing of land	The scope of works under **section 215 of the Town and Country Planning Act 1990** enables a local authority to make good the loss of public amenity. If it appears that the amenity of an area is being adversely affected by the condition of neighbouring land and buildings these powers allow local authorities to serve a notice on the owner requiring that the situation be remedied.
Power to deal with accumulations of rubbish in the open air	The **Public Health Act 1961** gives local authorities powers to deal with accumulations of rubbish in the open air. In particular, section 34 of the Public Health Act creates a power for local authorities to remove rubbish on land in open air which is seriously detrimental to the amenity of the neighbourhood. For the power to be exercised a number of conditions must be met: 1. There must be rubbish. "Rubbish" is defined to mean "rubble, waste paper, crockery and metal, and any other kind of refuse (including organic matter)", however "any material accumulated for, or in the course of, any business" will not fall under this definition. 2. The rubbish must be on "land in the open air" in the local authority's area. 3. The presence of the rubbish must be "seriously detrimental to the amenities of the neighbourhood." 4. The local authority must have given 28 days prior notice to the owner and occupier of the land requiring the removal of the specified rubbish. 5. The recipient of a notice has the right to serve a counter-notice stating that they will remove the rubbish themselves. If a counter-notice is served the local authority must not remove the rubbish unless the person who served the counter-notice fails to take or complete the steps in the counter-notice within a reasonable time. 6. The recipient of a notice may appeal to the magistrates' court on the grounds that the authority should not take action under section 34 (for example, if they allege the rubbish is not seriously detrimental to the amenity of the neighbourhood) or the steps proposed in the notice are unreasonable. If an appeal is brought against the notice, the local authority must not remove the rubbish unless and until the appeal is finally determined its favour or withdrawn. This power could be used to deal with the accumulation of rubbish on land resulting from illegal occupation. This power does not extend to removing "material accumulated, for or in the course of, any business." Therefore, where illegal occupants are carrying on a business careful consideration will need to be given to whether the items the local authority wishes to remove fall under this exclusion. This power could not be used to evict the occupants from the unauthorised encampment.

Power to seize a vehicle	Where a vehicle has been used in the commission of an offence relating to the illegal deposit of waste or other waste offences a local authority or the Environment Agency on application to a court may seize a vehicle and its contents in accordance with the provisions of the Control of Pollution (Amendment) Act 1989 and the **Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991.** This power is effective where a vehicle is known to have been involved in the commission of an offence e.g fly-tipping, but there is insufficient information concerning who committed the offence. It can also be used to 'flush out' owners where it is unclear who is the registered keeper. This power is ineffective if there is no link between the vehicle and a waste offence.

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