

Policy for Managing Gypsy/Traveller Unauthorised Encampments

Introduction

In line with the Scottish Government Guidelines, the Council considers Gypsy/Travellers to be a minority ethnic community. The Council recognises Gypsy/Travellers right to nomadic life and respects the fact that Gypsy/Travellers may wish to maintain a travelling way of life as part of their cultural identity. It is acknowledged that there should be no discrimination against Gypsy/Travellers because of their way of life and culture.

This policy has been produced to ensure good day-to-day working relationships between Council Services and with the Police when dealing with unauthorised encampments. It takes into account the guidance and recommendations contained in both the Ninth Term Report of the Scottish Executive Advisory Committee on Scotland's Travelling People and the Guidelines for Managing Unauthorised Camping published by the Scottish Executive in December 2004. This policy also takes into account the Scottish Parliament Report "Where Gypsy/Travellers Live" (1st Report, 2013 (Session 4)). This policy applies to those who wish to be defined primarily by their ethnic origin. It does not include fairground/showpeople, occupational or New Age Travellers.

The Scottish Government Guidelines recommend that Local Authorities and the Police should have a written statement of their policies towards the treatment of Unauthorised Encampments. This statement should:-

- ensure that authorities and the police take a consistent, balanced and measured approach to unauthorised encampments.
- help authorities to demonstrate to others (including Gypsy/Travellers and the Courts and the Settled Community) that they have taken a consistent, balanced, measured approach and have properly reached decisions in line with the policy.
- provide a basis for explaining the policy to Gypsy/Travellers, complainants and members of the public.
- give the impetus for Local Authorities and the Police to agree joint policies for managing unauthorised encampments.

Redburn Travelling Person Site

There is one official site in North Ayrshire, located at Redburn, Irvine. The site has 16 pitches and North Ayrshire Council owns and manages the site.

The Irvine site opened in 1989. In recent years there has been a low turnover of tenants on the site. There is also low demand for any vacant pitches. A core of residents has been on the site for over 10 years and in some cases over 15 years. The traveller population residing in North Ayrshire traditionally camped on this site long before the official Redburn Site was created. The site

is managed by Housing Services and the Gypsy/Traveller Services Co-ordinator is based at the site office.

A major refurbishment of all 16 pitches and the amenity blocks was completed in April 2008. A new community facility and CCTV was completed in September 2006.

Each pitch contains a parking area sufficient for one residential and one averaged sized towing caravan along with one vehicle. An amenity block is provided for each pitch. Each amenity block contains a kitchen, bathroom and shower area. A small storage area at the side of the block is provided; this is also plumbed for a washing machine facility. Each of the units is secure and fitted with an electric wall heater.

Power cards can be bought from the Co-ordinators office during normal office hours and also at the Fullarton Concierge Station, that is open 24/7 every day of the year.

Security cameras are situated on site recording 24 hours a day.

There is a play area on site for younger children and a small multi-activity area for older children.

Attached to the Co-ordinators office are the community rooms that can be used for meetings and where a provision is also made for other services such as adult literacy, children's outreach and tutoring for secondary school children.

The Gypsy/Traveller Services Co-ordinator (GTSC)

The current GTSC is responsible for the smooth running of the Redburn Site and his duties include providing advice and assistance, dealing with voids, allocations and estate management issues.

The GTSC is a key member of the Gypsy Travellers Partners Group. The Partners Group is chaired by a representative from Education & Skills and they meet regularly to discuss services provided and matters relevant to the site residents. Other partners include representatives from Youth Services, Children Services, Pupil Support Services, Money Matters, Literacy Support, NHS Health Visitor, Police Scotland and Scottish Fire & Rescue Service.

Unauthorised Encampments

Legal Framework

The legal framework consists principally of:

- The European Convention on Human Rights
- The Human Rights Act 1998
- The Trespass (Scotland) Act 1865
- The Roads (Scotland) 1984
- The Criminal Justice and Public Order Act 1994
- The Equality Act 2010

A summary of the main legislation in this area is provided at Appendix 2.

Consistency of approach

The Council and the Police shall ensure that their response to unauthorised encampments shall be consistent and in line with the policy. Decisions shall be shown to have been correctly taken, in light of the particular and unique circumstances around each encampment, and take account of any wider duties the Council may have to Gypsy/Travellers in respect of issues of common humanity and welfare. All action will also be in line with the principles of better regulation namely proportionate, consistent, accountable, transparent and targeted.

Monitoring of Encampments and Initial Contact

It is anticipated much of the initial contact regarding unauthorised encampments will be through the Contact Centre. Reports regarding unauthorised encampments should be distinguished from complaints. A report will only advise of the existence of the unauthorised encampment whereas a complaint will also raise an issue with the conduct of the encampment or an unsuitable location. Once a report/complaint is received about an unauthorised encampment the Contact Centre shall take as many details about the location and size of the encampment as possible and pass these details onto Housing Services together with details of any complaints regarding the behaviour of the encampment. Thereafter, Housing Services will make any relevant departments aware of the report of an unauthorised encampment.

Housing Services will visit each unauthorised encampment at the earliest opportunity accompanied by the Local Authority Police Liaison Officer (LALO) or Community Police Officer to gather information about its location, size and the nature of the Gypsy/Traveller group, their needs and future intentions. This may help in building up the trust between the local authority and the Gypsy/Travellers and provide a starting point for enquires about the group's needs.

Housing Services will also arrange, if possible, to collect basic information on:

- The number of vehicles and the families involved (the police may be able to assist in gathering this information)
- Past and, if possible, future movement
- Anticipated length of stay
- Reason for Stay
- Any particular Health, Education, Welfare requirements or Environmental needs
- The ethnicity of the members of the unauthorised encampment (for equality monitoring purposes)

Housing Services will, in the course of this contact with the Gypsy/Travellers, attempt to negotiate and agree a departure date as a practical alternative to enforcement or eviction procedures.

They will report his findings to all services as required. After the initial visit, Housing Services will continue to monitor the encampment for the duration of the stay and will visit the encampment, as required.

Dependant on the circumstances, the police at any time, and separately from the Council, may wish to instigate their own contact with the unauthorised encampment.

Standards of Behaviour Expected From The Gypsy/Travellers

Housing Services will give the Gypsy/Travellers a Code of Conduct which sets out the standard of behaviour expected from them while they are present and irrespective of any action which may be taken to remove them from the site.

These standards will include, but are not limited to:

- Control of Animals
- Rubbish Disposal
- Avoiding and not causing noise, nuisance or damage to the site
- Not being involved in any criminal activity
- Non pollution of the environment with human or animal waste.

Services for the residents of Unauthorised Encampments

Housing Services provides advice and assistance to Gypsy/Travellers who are not ordinarily resident in North Ayrshire and are living in an unauthorised encampment. They will carry out a needs assessment and will offer assistance based on the personal circumstances of the Gypsy/Travellers. Housing will also provide the Gypsy/Travellers with details on the nearest civic amenity site and a leaflet which provides contact details for Health, Education and Housing. Gypsy/Travellers will also be advised of any availability on the permanent Redburn Site or details of how to join the waiting list if there are no available pitches.

It may also be possible to provide Unauthorised Encampments with large metal bins for the disposal of rubbish or to arrange collections of black bags however this will be decided on a case by case basis.

Unauthorised Encampment Working Group.

Housing Services will identify whether a camp requires input from other services. If this is the case, they will notify the relevant service, the LALO and the representative of the relevant service will visit the camp as soon as practical after the initial visit.

Individually named contact officer(s) shall be identified in each relevant service and these officers along with the police shall form the Unauthorised Encampment Working Group. The following services will be represented within the working group:

Housing Services
Police
Legal Services
Education
Social Services
Waste Management
Streetscene
Benefits
Trading Standards
Environmental Health
Contact Centre

The designated staff from each department within the working group will ensure that North Ayrshire Council is fulfilling its duties in the provision of services regarding Unauthorised Encampments.

In the event that encampments do not require input from other services within the working group, the details will be recorded and distributed to members on a weekly basis. This will keep members of the working group updated on Unauthorised Encampment activity and provide members of the working group with the basic information should the circumstances at any of the encampments change and other agency involvement is required.

Ownership of land

It should be established whether the land on which the Gypsy/Travellers are encamped is owned by the Council or by a private landowner. Alternatively, if the Gypsy/Travellers are encamped on a road, pavement, lay-by or verge, it should be established whether the road has been adopted by the Council. The Council's Estates Department, in conjunction with Legal services, will be able to assist with identifying ownership of the land in question upon receipt of information relating to the precise location of the encampment.

Land in Council Ownership

All decisions about what action to take about an unauthorised encampment on Council land should be in light of information gathered and should be in line with this policy; the decision should be reasonable in light of the evidence available; must be balanced (taking into account the needs of the Gypsy/Travellers and the settled community) and proportionate (taking into account the nature of the location and the needs/behaviour of the Gypsy/Travellers).

For example, evidence of nuisance and/or damage being caused by the encampment or threat to basic hygiene shall be weighed against evidence of the Gypsy/Travellers' need for somewhere to stay and in particular social, education, health or welfare needs revealed during enquires.

The Council will also require to adhere to the obligations imposed on it under the Children (Scotland) Act 1995, The Human Rights Act 1998 and the Equality Act 2010. The Council must also take into account the Scottish Executive Guidelines for Managing Unauthorised Camping by Gypsies/Travellers in Scotland.

The validity of complaints from members of the public should be checked and an assessment of the measures to contain or reduce nuisance should be carried out. Decisions shall be reasoned on the evidence available and in the light of the particular and unique circumstances around each encampment.

The Working Group shall meet, at the discretion of Housing Services, to discuss any particular identified issues regarding an unauthorised encampment or where a decision as to whether or not to seek to remove the encampment is required. If it is decided that a meeting is not required, consultation may take place via email.

All decisions must be fully recorded and the evidence on which the decision is made should also be recorded.

Deciding to Proceed With Eviction

The Council recognises Gypsy/Travellers right to a nomadic life and respects the fact that Gypsy/Travellers may wish to maintain a travelling way of life as part of their cultural identity. It is acknowledged that there should be no discrimination against Gypsy/Travellers because of their way of life and culture. In line with the Scottish Government Guidelines on Unauthorised Encampments, the Council recognises that the decision to proceed with eviction shall be a last resort and that the circumstances when removal will be deemed appropriate will be rare. The Council will not evict Gypsy/Travellers without due cause from land that it owns unless, for example, there is evidence of extreme public disorder to danger to health. However, there are some locations where an unauthorised encampment will not be acceptable under any circumstance. This might include:

- A Site of Special Scientific Interest
- A site where pollution could damage water courses/water supply
- An area with toxic waste, serious ground pollution or other environmental hazard
- A site which would cause a danger in respect of road safety
- Proximity to a railway line, where there may be a danger to individuals

Notwithstanding the above, a decision to evict Gypsy/Travellers from an unauthorised encampment may be taken where an encampment:

- creates a hazard to road safety or otherwise creates a health or safety hazard.

- is an intolerable nuisance to the general public by reason of its size, location, nature or duration.
- causes or is likely to prejudice the use of the land for its intended purpose or by a legitimate tenant or occupants.
- is too large for its location or is causing unacceptable impact on its environment, or would for some other reason be detrimental to the interest of the public if allowed to remain for an extended period.
- Fails to adhere to the Code of Conduct provided to the Unauthorised Encampment.

Where a decision is made to remove Gypsy/Travellers from unauthorised encampments on Council Land, following consultation with the Unauthorised Encampment Working Group Housing Services will instruct the Senior Manager Legal Services, or her nominee, to take steps, including legal proceedings, to move on the Unauthorised Encampment.

In the event of decree for eviction being granted, Sheriff Officers will be instructed to carry out the eviction (with police support, as necessary).

Appendix 1 shows the above process in the form of a flowchart.

Unauthorised encampments on Private Land

Where an unauthorised encampment is on private land Housing Services will provide the landowner with details of the camp, should they wish to proceed with an eviction. They will also liaise with the landowner, if requested, to provide information and assistance, where possible.

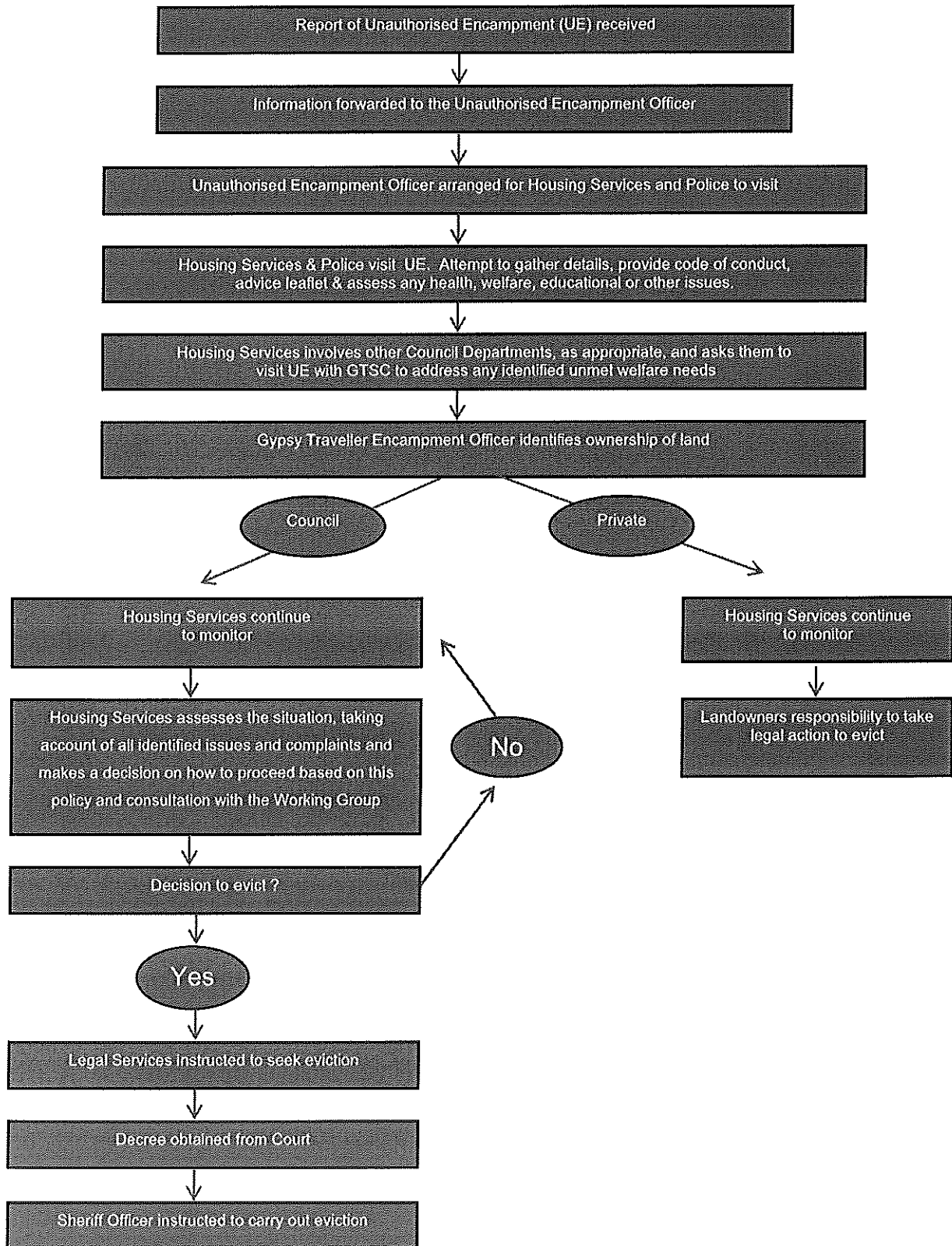
For the avoidance of doubt, the provisions of this policy relating to Monitoring of Encampments and Initial Contact, Standards of Behaviour Expected from the Gypsy/Travellers and Services for the Residents of Unauthorised Encampments apply to Unauthorised Encampments on private land as they do to land in Council Ownership.

Police Powers (regardless of whether it is in private or Council ownership)

Where problems caused by an unauthorised encampment have been proven sufficiently serious, it may be necessary for the police to exercise their powers under section 61 of the Criminal Justice and Public Order Act 1984 (the Act) but only if the landowner has taken reasonable steps to remove the Gypsy/Travellers by other means first. In terms of the Roads (Scotland) Act 1984 the police also have the power to require someone who has placed an obstruction in the road to remove it forthwith and, if the person fails to do so, they are committing an offence.

The police shall inform the council at the earliest opportunity if they intend to exercise the powers under section 61 of the Act and report to the working group meeting convened in respect of each unauthorised encampment. (This

form of action would only be taken in extreme circumstances or when all other options have proved to be unsuccessful).



Appendix 2 - Summary of Legislative Framework

The European Convention on Human Rights

The enjoyment of the rights and protection afforded by the articles of the European Convention on Human Rights should be enjoyed by all, without discrimination on the grounds of "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." (Article 14)

In particular, Article 8: Right to Respect for Private and Family Life states:

- 1) Everyone has the right to respect for his private and family life, his home and correspondence.

- 2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The Human Rights Act 1998

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

The Trespass (Scotland) Act 1865

The Trespass (Scotland) Act 1865 states:

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

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

The Roads (Scotland) Act 1984

The Roads (Scotland) Act 1984 creates offences of camping in a road or obstructing a road by the placing of an object in the road. The definition of "road" within the act includes the verge and footway (pavement).

The Children (Scotland) Act 1995

The Children (Scotland) Act 1995 creates duties on local authorities to safeguard and promote the welfare of children in their area.

The Criminal Justice and Public Order Act 1994

The Criminal Justice and Public Order Act 1994 deals with trespass and the removal of vehicles. Section 61 deals with police powers to remove trespassers on land and Section 62 provides supplementary powers of seizure and imposes criminal sanctions. Sections 61 and 62 apply to situations in which two or more "trespassers" are involved. Section 61 allows the police to direct trespassers to leave the land and to remove vehicles or property on the land where the senior police officer present at the scene has a reasonable belief that (a) two or more persons are present with the intention of staying there for a period of time, and (b) reasonable steps have been taken by, or on behalf of, the occupier to ask them to leave. The senior police officer must also have reasonable belief that either (a) the group have caused damage to the land or property, or threatened, abused or insulted the occupier or representatives of the occupier, or (b) the group have six or more vehicles between them on the land.

The Equality Act 2010

The Equality Act 2010 prohibits direct and indirect discrimination in relation to a protected characteristic. Direct discrimination is where someone treats another person less favourably because of a protected characteristic and indirect discrimination is where someone applies a provision, criteria or practice which applies to everyone but disadvantages a person (or group of people) by reason of a protected characteristic more than it would disadvantage another person (or group) that did not share the protected characteristic.

In terms of the Equality Act 2010 race is a protected characteristic and "race" includes colour, nationality and ethnic or national origins.

The Equality Act 2010 also introduced the public sector equality duty. In this regard, public authorities must have due regard to the need to:-

- a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of the persons who do not share it; and

- c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Section 149 of the act notes "compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act."