

Unauthorised Encampment Policy

Introduction

In line with the Scottish Government Guidelines, North Ayrshire Council considers Gypsy/Travellers to be a minority ethnic community. North Ayrshire 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. North Ayrshire Council acknowledges that there should be no discrimination against Gypsy/Travellers because of their way of life and culture.

This policy will ensure good day-to-day working relationships between North Ayrshire Council Services and with the Police when dealing with unauthorised encampments. It considers 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 considers the Scottish.

Parliament Report "Where Gypsy/Travellers Live" (first 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 Grove

There is one official site in North Ayrshire, located at Redburn Grove, Irvine. The site has sixteen 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. The traveller population residing in North Ayrshire traditionally camped on this site long before the official Redburn Site. Housing Services operate Redburn Grove and the Gypsy/Traveller Services Co-ordinator is based at the site office.

There was a major refurbishment of all sixteen pitches and the amenity blocks in April 2008, with the addition of a new community facility and CCTV in September 2006.

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

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 Coordinators office are the community rooms that can be utilised for meetings and where a provision 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 Grove. His duties are to provide advice and assistance, dealing with voids, allocations, and estate management issues.

The GTSC is a key member of the Gypsy Travellers Partners Group. The Group chairperson is 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, see Appendix 2

Consistency of approach

Monitoring of Encampments and Initial Contact

We anticipate the initial contact regarding unauthorised encampments will be through the Contact Centre. We will identify reports regarding unauthorised encampments 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. Upon receiving a report/complaint, regarding an unauthorised encampment the Contact Centre shall take 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 Health, Education, Welfare requirements or Environmental needs
- The ethnicity of the members of the unauthorised encampment (for equality monitoring purposes)

Housing Services will, during 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.

Depending 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.

These standards will include, but 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 conduct a needs assessment to help 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. We will inform any Gypsy/Travellers of any availability on the permanent Redburn Site or details of how to join the waiting list if there are no available pitches.

We will decide on an individual basis if it will be possible to provide Unauthorised Encampments with large metal bins for the disposal of rubbish or to arrange collections of refuse bags.

Unauthorised Encampment Working Group

Housing Services will identify whether an encampment 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.

Services will identify a named contact officer(s) and these officers along with the police shall form the Unauthorised Encampment Working Group. The working group will be: -

- 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.

If encampments do not require input from other services within the working group, members of the working group updated on a weekly basis. Unauthorised Encampment activity and provide members of the working group with the basic information. Should the circumstances at any of the encampments change, other agency involvement assistance, we will request as soon as possible.

Ownership of land

Establishment whether the encamped land on, is the responsibility of the Council or by a private landowner. Alternatively, if the encampment is on a road, pavement, lay-by, or verge, we will establish if North Ayrshire Council has adopted the road. 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 caused by the encampment or threat to basic hygiene can be used by the council as evidence of the Gypsy/Travellers need for somewhere to stay and social, education, health or welfare needs revealed during enquires.

The Council will also require adhering 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 consider the Scottish Executive Guidelines for Managing Unauthorised Camping by Gypsies/Travellers in Scotland.

Council staff will verify the validity of complaints from members of the public. Staff will assess the measures to contain or reduce nuisance. Decisions 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 identified issues regarding an unauthorised encampment, where a decision is determined to seek to remove the encampment. If there is no requirement for a meeting, consultation may take place via email.

Record all evidence.

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. 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 appropriate. 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 or danger to health. However, there are 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 another 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: -

- creates a hazard to road safety or otherwise creates a health or safety hazard.
- is an intolerable nuisance to the 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 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.

When it is determined 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.

When the Sheriff has ordered a decree for eviction, instructions to Sheriff Officers to conduct 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 consult with the landowner, if requested, to provide information and assistance, where possible.

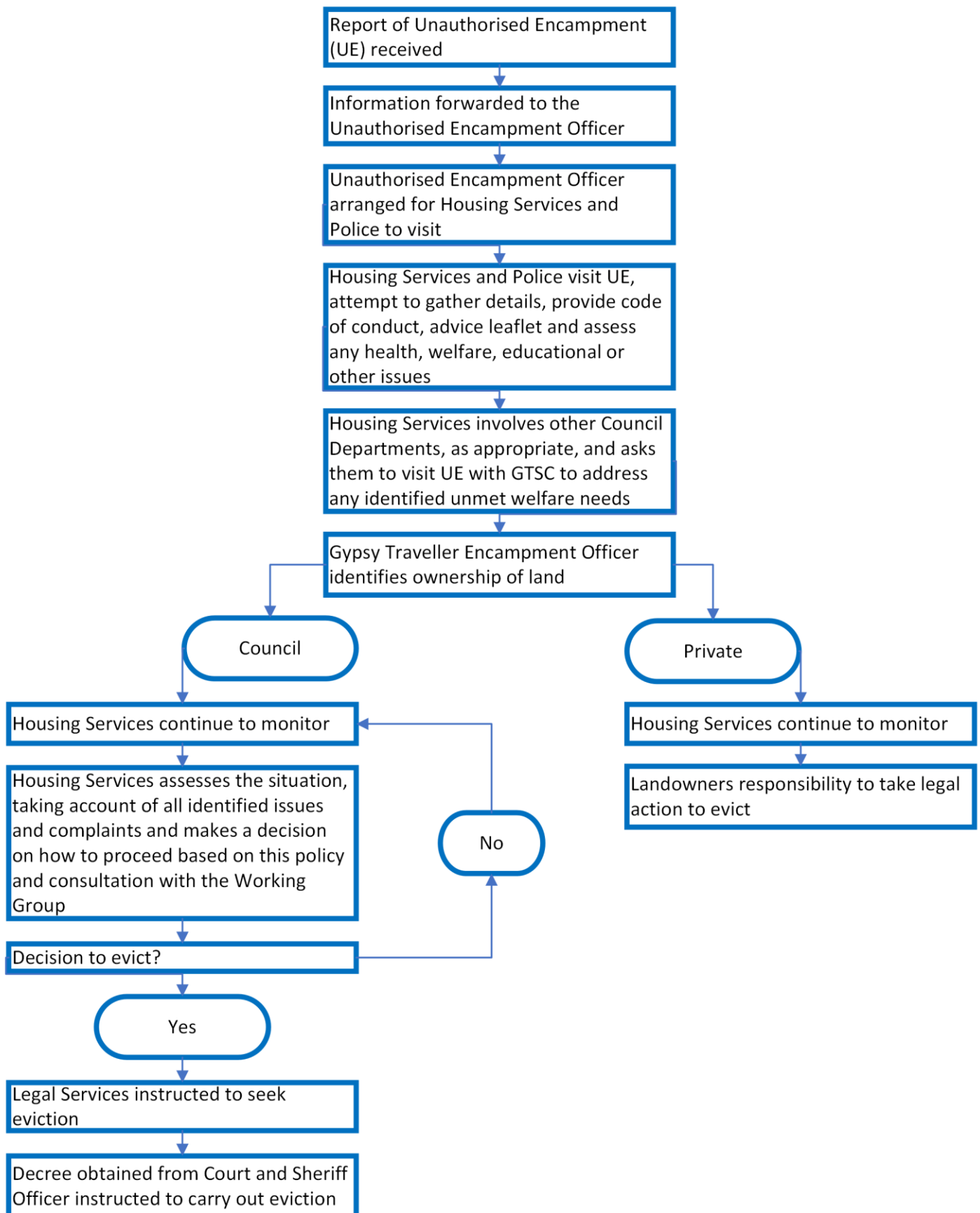
For the avoidance of doubt, the provisions of this policy relating to Monitoring of Encampments and Initial Contact, Standards of Behaviour Expected from the Gypsy/Travellers and Services for the Residents of Unauthorised Encampments apply to Unauthorised Encampments on private land as they do to land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

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

Where problems caused by an unauthorised encampment have sufficiently serious implications, 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 1



Appendix 1 Continued

- Report of Unauthorised Encampment (UE) received
- Information forwarded to the Unauthorised Encampment Officer
- Unauthorised Encampment Officer arranged for Housing Services and Police to visit
- Housing Services and Police visit UE, attempt to gather details, provide code of conduct, advice leaflet and assess any health, welfare, educational or other issues
- Housing Services involves other Council Departments, as appropriate, and asks them to visit UE with GTSC to address any identified unmet welfare needs
- Gypsy Traveller Encampment Officer identifies ownership of land

Council

- Housing Services continue to monitor
- Housing Services assesses the situation, taking account of all identified issues and complaints and makes a decision on how to proceed based on this policy and consultation with the Working Group
- Decision to evict? (If yes, follow steps below and if no, Housing Services will continue to monitor)
- Legal Services instructed to seek eviction
- Decree obtained from Court and Sheriff Officer instructed to carry out eviction

Private

- Housing Services continue to monitor
- Landowners responsibility to take legal action to evict

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)

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."