This note describes some law relating to Gypsies (Roma) and Travellers. It mainly covers issues relating to camp sites and trespass, including the Anti-Social Behaviour Act 2003. The issues arising when Travellers buy land and undertake unauthorised development upon it are covered in another note – Gypsies and Travellers: unauthorised development.

The Criminal Justice and Public Order Act 1994 removed the obligation upon local authorities to supply caravan sites and introduced strict provisions to allow local authorities or the police to move on trespassers. Many councils have been reluctant to use the 1994 Act provisions, partly because Government guidance required full attention to be paid to the welfare needs of all the trespassers. It is probably not compliant with the European Convention on Human Rights to evict trespassers who have nowhere to go.

The Labour Government pressured councils to make adequate provision for Gypsies, partly through the Housing Act 2004 and partly through Regional Spatial Strategies and Local Development Frameworks.

A letter to councils from Secretary of State Eric Pickles of 27 May 2010 states that “decisions on housing supply (including the provision of travellers sites) will rest with Local Planning Authorities without the framework of regional numbers and plans.” The Conservative Party would also create a new offence of “intentional trespass”, and give tougher “stop notice” enforcement powers to councils with authorised sites.

The Conservatives wanted to repeal the Human Rights Act so that the European Convention would no longer apply in British courts. National human rights legislation would replace it. The Coalition Government has announced that the Human Rights Act will be considered by a Commission.

The May 2010 spending cuts for the Homes and Communities Agency have ended the Gypsy and Traveller Programme grants for new sites, thus saving £30m in 2010/11.
1 Introduction

There are many aspects of the Travelling Community about which Parliament might be concerned, including problems that Travellers face in gaining access to education and social services. Unfortunately, most concern derives from illegal camping. Clearly that does not do justice to the Travelling Community. However, it does reflect serious problems in particular areas.

2 The present legal position

2.1 The Criminal Justice and Public Order Act 1994

The 1994 Act:
- Removed local authorities' obligation to provide caravan sites
- Allowed Gypsies to be moved on, even when sites were not available
- Gave local authorities and the police the power to remove trespassers
- Created an offence for failure to comply with the direction or re-entry
- Introduced a new offence of aggravated trespass for intimidation or obstruction

However, local authorities and police have often been reluctant to use these powers:
- Eviction requires many police and can result in violence, especially if whole families resist;

2.2 The European Convention on Human Rights

2.3 Difficulties faced by Gypsies

3 The Anti-Social Behaviour Act and the 2004 Government Guidance

3.1 The Anti Social Behaviour Act 2003

3.2 The guidance on managing unauthorised camping, 2004

4 Does current law allow greater action against illegal encampments?

5 The Housing Act 2004 and the Planning Circular 2006

6 Problems remained after the 2006 Circular

7 Conservative Party proposals, February 2010
• Government guidance required the welfare position of all the trespassers to be considered, presenting problems when there is a shifting population;

• Eviction might infringe the European Convention on Human Rights

The European Convention on Human Rights

Article 8

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

Under the Human Rights Act 1998 the European Convention can be used in British courts. Eviction of people with nowhere else to go infringes the Convention unless great care is taken over those who are evicted.

2.2 Difficulties faced by Gypsies

Some newspaper articles imply that evictions cannot take place at all, but that is not correct. In an adjournment debate on 19 May 2004, John Battle described how difficult the position of Travellers often is:

We cannot toughen up the law to move Travellers on if there is nowhere for them to go. Recently, in the neighbourhood of Wortley in my constituency, 12 caravans were parked on the Oldfield Road football pitches, which were moved off. They moved to Farnley park over the Easter weekend, making local football and cricket impossible. They were evicted and moved down to Hunslet, where they were evicted again and moved to another public park, Western Flats, in Wortley. They have been driven off the Western Flats and are now at Wortley recreational ground. They have received a notice to move on Friday.

Those 12 caravans belong to one family, who have lived in Leeds for generations. The family group includes an elderly man with Alzheimer's, a young child with pneumonia, a two-month-old baby who has never received appropriate medical attention because of the constant movement of the family, and a mother who recently collapsed and was in hospital for two days. Some of the children go to local schools in my constituency and are taken there every day by the Travellers education support unit. Since January, the caravans have been moved 50 times, so the children do not know where they are going home to after school. That is quite apart from the fact that the caravans are on sites without water or toilets, and are thus insanitary and quite inappropriate for families.

The endless round of court notices and eviction enforcements mean that families are pushed from pillar to post. Everybody, from settled neighbours to Travellers and their families becomes totally exasperated, and council officials and the local police are caught in the middle of many angry conflicts. The cause of the problem is the shortage
of sites or pitches on which the caravans can stop. In practice, 30 per cent of Travellers in Britain are hounded from one unauthorised place to another, with all the associated problems of unofficial camping, clean-up costs and no chance of proper education for the children. Furthermore, poor living conditions have a detrimental impact on the health of Traveller families, who have the lowest life expectancy and the highest child mortality rates of any group in Britain.  

3 The Anti-Social Behaviour Act and the 2004 Government Guidance

3.1 The Anti-Social Behaviour Act 2003

Parts of the Anti-Social Behaviour Act 2003 amended the 1994 Act to give the police powers to move on Gypsies or Travellers if there was a pitch on a relevant camp site (defined as one in the area of that local authority). In a sense the police already had similar powers. However, the new wording made it easier for them to satisfy the courts that the Gypsies would not lose out on their social security and education entitlements.

3.2 The guidance on managing unauthorised camping, 2004

On 1 March 2004, the Government issued Guidance on Managing Unauthorised Camping, to coincide with bringing s.60 of the Anti-Social Behaviour Act into force.  

It Guidance recommended that local authorities develop local policies for dealing with unauthorised camping:

The objectives of the policy are:

- To balance the rights and needs of resident communities with those of Gypsies and Travellers.
- To manage unauthorised encampments in an efficient and effective way taking account of the potential level of nuisance for local residents and the rights and responsibilities of Gypsies and Travellers.
- To work with partners in other authorities, the voluntary sector and the Police to address issues of social exclusion amongst Gypsy and Traveller communities.

The Guidance states that all local authorities should review the provision of sites for Gypsies and Travellers. Gypsies and Travellers should be involved in site planning and design. The provision of sites should be part of the policy of coping with unauthorised camping.

The following passage indicates the response considered appropriate by the Government in relation to unauthorised camping, although the full Guidance provides far more detail;

5.5 Wherever possible, local authorities and/or police should seek to prevent Gypsies and Travellers from establishing an encampment in an unacceptable location. Where this proves impossible, they should attempt to encourage the unauthorised campers to move to an authorised site where available. Identification of possible 'acceptable' sites could assist local authorities and the police in the management of unauthorised encampments in circumstances where there are no available pitches on authorised sites. If the unauthorised campers refuse to move from an unacceptable location, eviction processes (including appropriate welfare enquiries) should be commenced.
5.6 To be effective, such an approach requires a very swift response from the local authority and/or police. Ideally, initial contact should be made within 24 hours of the encampment being established.

A passage follows about the need to make welfare enquiries. The Guidance then considers the process if the local authority decides to go ahead with eviction. It describes the powers under the *Criminal Justice and Public Order Act 1994* and also the civil powers available to a landlord. He can obtain a possession order from civil courts requiring the removal of the trespassers from property, including land.

In other words, the Guidance seeks to strike a balance between the interests involved. It is not just a new procedure to allow easier eviction.

4 **Does current law allow greater action against illegal encampments?**

In 1997 Edward Garnier QC described how the law operated in his constituency when Gypsies set up an illegal encampment in a lane between fields. They caused considerable problems including drug dealing, noisy parties and dogs killing sheep, until the fields could no longer be used for grazing. He then argued that the 1994 Act could be used more often than it is.

Local authorities and the police are misleading themselves about the *Criminal Justice and Public Order Act 1994* and recent case law. Section 61 gives the police a power to direct trespassers to vacate land. That power arises if the police believe

"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 . . . behaviour towards the occupier . . . or

(b) that those persons have between them six or more vehicles on the land".

The police need only have reasonable grounds for believing the persons concerned to be trespassers… Section 77 enables a local authority to serve a direction requiring persons to vacate land, the failure to comply with which may also constitute a criminal offence. However, there are some important differences between section 77 and section 61. The power in section 77 arises if persons are residing in only one vehicle on land in an authority’s area. The requirement of at least six vehicles does not apply. It applies if vehicles are located on highway land, unoccupied land or occupied land without the consent of the occupier.

Even for an occupation of fewer than six vehicles, there is no requirement that any of the criminal conduct referred to in section 61 should have occurred for section 77 to apply. An offence is committed under section 77 when a person knowing of the direction fails to leave the land as soon as practicable…

Local authorities and police forces have placed reliance on the case of *R. v. Lincolnshire county council and Wealden district council ex parte Atkinson*, which was decided by Mr. Justice Sedley in 1996. They have also been influenced by the Department of the Environment circular 18/94. That case and that circular gave some police forces the false impression that the same principles enunciated by the judge in the Wealden case apply to orders issued by the police or local authorities under the 1994 Act. Some police forces think that inquiries about education, housing, social service needs and similar matters have to be made before a local authority direction
can be made, and that, before the police can invoke their powers under the Act, account should be taken of the personal circumstances of the travellers.

The judge in the Wealden case did not analyse section 61 of the 1994 Act in detail. His decision was based as much on the statutory duties placed on local authorities under the Children Act 1989 and the Housing Act 1985, as well as the obligation on local education authorities to provide education for all children of school age in their area. The Wealden judgment does not support the view that a local authority or chief constable owes a duty of care to trespassers who are the subject of action under section 61. The function of the police is to enforce the law. It is not their primary duty to take a view on social welfare. There is no legal basis for asserting that the police are under a legal duty to take social factors into account before acting under section 61. The annexe to the Home Office circular 45/94 does not suggest that the Wealden case is relevant, or that any such duty applies...  

A subsequent adjournment debate summed up the problem neatly, with the constituency member describing the extensive disruption caused by the unauthorised Gypsy encampments. The Minister pointed out that the site had been derelict for 25 years, described the legal options that had not been taken up and regretted that the council was making no provision for authorised sites in its district plan.

In a Westminster Hall Debate on 15 January 2002, the Minister (Angela Eagle) stressed that Travellers should be accorded the same human rights as others. She argued that human rights considerations did not prevent the use of law to prevent illegal trespass leading to antisocial or criminal behaviour.

5  The Housing Act 2004 and the Planning Circular 2006

The Housing Act 2004 s.225 requires that every local housing authority must, when undertaking a review of housing needs in their district under section 8 of the Housing Act 1985 (c. 68), carry out an assessment of the accommodation needs of Gypsies and Travellers residing in or resorting to their district. They must take this strategy into account when exercising their functions.

This fits in with the Government’s Planning Policy Statement 3; Housing. In particular:

Achieving a mix of housing

20. Key characteristics of a mixed community are a variety of housing, particularly in terms of tenure and price and a mix of different households such as families with children, single person households and older people.

21. Regional Spatial Strategies should set out the region’s approach to achieving a good mix of housing. Local Planning Authorities should plan for a mix of housing on the basis of the different types of households that are likely to require housing over the plan period. This will include having particular regard to:

- Current and future demographic trends and profiles.
- The accommodation requirements of specific groups, in particular, families with children, older and disabled people.

3  HC Deb 16 July 1997 cc 367-373
4  HC Deb 10 May 1999 cc 84-96
5  HC Deb 15 January 2002 cc 67-69 WH
– The diverse range of requirements across the area, including the need to accommodate Gypsies and Travellers.  

In other words, planning authorities have to take into account the needs of Gypsies and Travellers when preparing plans.  *Planning Circular 01/06: Planning for Gypsy and Traveller Caravan Sites* explained how the planning system would ensure adequate site provision.

### 6 Problems remained after the 2006 Circular

An adjournment debate in January 2008 raised doubts about reliance on site provision as a solution for unauthorised camping:

**Jim Sheridan (Paisley and Renfrewshire, North) (Lab):** In my experience, the problem is that when we provide camps for travelling people or Gypsies, they then trash the camps. If there is a camp they have to live in it, but they want to travel throughout the country. The legislation means that if a camp is provided, they have to go to it. In my experience, they trash the camp so that they can go wherever they want in the community.  

**Brian Donohoe** gave examples of the problem:

Brian Donohoe gave examples of the problem:

My hon. Friend the Member for Paisley and Renfrewshire, North (Jim Sheridan) has mentioned litter already, but another problem is the dumping of waste. For example, the local authority in my area gave Travellers Portaloos, but they were dumped in the skips that the authority had supplied for their rubbish and set alight. That is the sort of person that we are dealing with: I know that there are some good ones among them, but that story is typical of our experiences with them. Other problems include people on the beach park at Irvine being intimidated while out running or walking their dogs, and being told that they have no right to be there. Constituents of mine have been shot at by the travelling people, and the House would find it hard to believe the sort of debris—from building work being undertaken on their behalf—that has been left when Travellers leave a camp. Also, Travellers are guilty of selling items without having a trading licence, and we have sometimes found that their caravans have been illegally imported, with no duty paid.  

The Minister, Iain Wright reiterated Labour Government policy on site provision and included a passage on enforcement:

Our task group on site provision and enforcement—chaired by Sir Brian Briscoe, a former chief executive of the Local Government Association—has reviewed the operation of enforcement powers and taken evidence from local authorities and others involved in using the powers. My hon. Friend the Member for Central Ayrshire asked whether we need more legislation. In its final report, “The Road Ahead” published in December, the group concluded that the scope and nature of existing enforcement powers are sufficient, but that considerable improvements could be made to the way in which they are used. We are committed to ensuring that those improvements are made.  

In July 2009, a DCLG progress report called for further action at a local level:

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7. HC Deb 30 January 2008 c439  
8. HC Deb 30 January 2008 c440  
9. HC Deb 30 January 2008 c445
The current position on site delivery remains unsatisfactory. It is clear that local authorities need to increase the pace at which suitable locations are identified that can be used as Gypsy and Traveller sites. Although the Government recognises the difficulties that can arise, it considers that with strong leadership at the local level, authorities can make rapid progress in addressing what is, in numerical and land-use terms, a relatively small level of need. The identification of suitable locations for authorised sites will help to reduce the number of unauthorised developments and encampments can create tensions between Gypsies and Travellers and the settled population.10

7 Conservative Party proposals, February 2010

Shadow Planning Minister Bob Neill proposed a considerable change in the treatment of unauthorised camping:

The proposals will include plans to:

- Create a new criminal offence of intentional trespass. Trespassers who refuse to move after being asked to do so by a uniformed police officer will face arrest. This will allow both squatters and travellers occupying property without permission of the landowner to be removed quickly.

- Curtail the ability to apply for retrospective planning permission. This will stop the practice of people laying down concrete on weekends or bank holidays and then putting in a planning application.

- Scrap John Prescott's unfair Whitehall planning rules, which are compelling councils to build traveller camps on the Green Belt and compulsory purchase people's land to find sites.

- Give tougher ‘stop notice’ enforcement powers to councils with authorised sites, and support central funding for councils to build authorised sites – rather than it failing to local taxpayers.

- The Human Rights Act will be replaced with a British Bill of Rights to prevent 'human rights' lawyers sidestepping the planning system and demanding special treatment.

Neill added that whilst it's understandable that law-abiding citizens have to "jump through many hoops" to build in rural areas, "it's wrong that certain groups have been given a green light to bypass those rules and concrete over the Green Belt when no-one's looking".11

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10 DCLG, Progress Report on Gypsy and Traveller Policy, July 2009
11 Conservative Party Press Release, Ending exploitation of the planning system, 12 February 2010