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Response to	Powers for dealing with unauthorised development and encampments
Issued by	Ministry of Communities and Local Government
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Notes	If you have any queries on this response, please contact Jo Easton at jo.easton@magistrates-association.org.uk

Who we are:

The Magistrates Association (MA) is the independent membership body for the magistracy. We work to promote the sound administration of the law, including by supporting our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the magistracy, the courts and the broader justice system. With 15,000 members across England and Wales, we are a unique source of independent insight and information on the magistracy. Our response concerns those questions within the remit of the MA.

Question 1: What evidence is there of unauthorised development and encampments in your community, and what issues does this raise for the local community?

No comment.

Question 2: We would like to invite evidence of unauthorised encampments which have occurred in the last 2 years, as follows:

- a. the number of instances where trespassers have occupied land without authorisation, including the location and scale of the encampment.
- b. whether the land in a) required cleaning or repair once the encampment had left, and if so, what was the cost?
- c. how was each unauthorised encampment encouraged to leave, how long did it take, and was the local authority able to move them on; or did the police become involved?

No comment.

Question 3: Do you think that the existing powers made available to local authorities to remove unauthorised campers from land are effective?

Our members rarely have to authorise the enforcement, so it seems that existing powers are either adequate or for some reason infrequently used. If the latter, it would be important to identify why existing powers are not being used, before deciding whether any further powers are necessary.

The MA believes that the existing process where magistrates' courts can provide oversight over the enforcement of Section 77 powers is sufficient. Where a Local Authority is being empowered to enter and forcibly remove an encampment, there should be judicial oversight to ensure the action is proportionate as well as checking an appropriate assessment has been carried out on any possible negative impacts on children or vulnerable people present. It is important that there is oversight to ensure the operation has been planned to restrict any possible distress to children present as well as the fact mid to long-term proposals are in place in relation to children's access to schools and healthcare.

Question 4: Do you think local authorities could improve their use of existing powers?

No comment.

Question 5: What other powers may help local authorities deal with unauthorised encampments?

No comment.

Question 6: Do you consider that the current powers for police to direct trespassers to leave land are effective?

Failure to comply with a police direction is already a criminal offence, with a possible maximum sentence of three months custody, which should provide a strong deterrent. Again we see few cases, which would suggest that either failure to comply is not prosecuted or that the current powers are effective.

Question 7: Would any new or revised powers that enable police to direct trespassers to leave land make it easier to deal with unauthorised encampments?

No comment.

Question 8: Do you consider that the Government should consider criminalising unauthorised encampments, in addition to the offence of aggravated trespass? If so, how should a new offence differ, and what actions and circumstances should it apply to?

It would be for parliament to decide whether a new criminal offence was necessary in addition to the offence of aggravated trespass, although the MA would point out that anecdotally, magistrates are seeing this offence rarely. If the data shows that existing offences are rarely brought before courts, it would be important to establish why before introducing new offences. It may be that existing offences are acting as a sufficient deterrent, to move unauthorised encampments. It should be noted that the maximum sentence for the existing offence is a three-month custodial sentence, which is a strong deterrent. Or it may be that there are challenges for the police in evidencing or otherwise bringing a case. Any such challenges should be understood so that any new offences did not face similar barriers.

In relation to the question of whether unauthorised encampments should be criminalised, the MA does have some points to raise in relation to how such a new offence would be implemented in practice. Firstly, if any offence was not associated with specific behaviour but to the presence of a camp, then a court would have to make a judgement as to whether any camp was illegal in of itself. It is not clear how that would be evidenced without the police showing that the people in the camp knew it was illegal. This may require evidence that they had refused official requests to move, or that the presence of the camp had caused significant obstruction or distress. It would appear that these examples should already be covered by existing offences. In relation to enforcing offences, linking an offence to a specific behaviour ensures a court can respond to the individual circumstances.

Secondly, the MA is concerned that potentially criminalising everyone living in an unauthorised encampment is disproportionate. Unless any new offence was linked to evidence of an individual being in a position of authority over the encampment, it could cover everybody present, including children and vulnerable people. The Lammy Review highlighted existing disproportionality for people from Gypsy, Roma and Traveller communities, particularly children and young people. Any proposed new offence would have to include safeguards to ensure it did not risk unnecessarily criminalising a particular group of people.

It is also important that any criminal justice response to unauthorised encampments is not seen as discriminating against a minority group. The Lammy Review highlighted the importance of minority groups having confidence in criminal justice agencies. In addition, compliance with police or court orders correlates with confidence in the agencies giving those orders, so any policies which are aimed towards ensuring unauthorised encampments are moved should consider maximising compliance with police or other authorities' orders.

Question 9: What barriers are there to the greater use of injunctions by local authorities, where appropriate, and how might they be overcome?

No comment.

Question 10: Do you have any suggestions or examples of how local authorities, the police, the courts and communities can work together more successfully to improve community relations and address issues raised by unauthorised encampments?

No comment.

Question 11: Are there ways in which court processes might be modified in a proportionate way to ensure unauthorised encampments can be addressed more quickly?

There is an ongoing Reform Agenda to improve efficiencies in the courts service, including using digitisation, technology and a more flexible approach to courts infrastructures. All of the current steps being taken will offer opportunities to improve court processes – making them more accessible and efficient.

Question 12: In your view, what would the advantages and disadvantages be of extending the IPO process to open land?

No comment.

Question 13: Are you aware of any specific barriers which prevent the effective use of current planning enforcement powers?

No comment.

Question 14: If you are aware of any specific barriers to effective enforcement, are there any resourcing or administrative arrangements that can help overcome them?

No comment.

Question 15: Are you aware of any specific barriers which prevent the effective use of temporary stop notices? If so, do you have a view on how these barriers can be overcome?

No comment.

Question 16: How do you think the existing enforcement notice appeals process can be improved or streamlined?

No comment.

Question 17: How can Government make existing guidance more effective in informing and changing behaviour?

There is currently no reference to identifying children or vulnerable people present before any forced removal. The MA would suggest that the guidance should be updated to reflect existing guidance for other actions including enforcing search warrants, where assessments must be carried out to ensure actions are proportionate and adequate care is given to minimising any distress to any children or vulnerable people present.

It might also be helpful to include reference to the steps that need to be taken to identify mid or long-term impacts on children moved to another pitch, especially around access to education or health services.

Question 18: If future guidance was issued as statutory guidance, would this help in taking action against unauthorised development and encampments?

Putting guidance on a statutory basis would ensure consistency of practice across different local authorities and police forces. It might also improve transparency and therefore public confidence in the process.

It would be important for the different legal rights to be clearly set out, with a section focusing on the rights of children who may be affected by any action taken against unauthorised encampments.

Providing a checklist for officers dealing with unauthorised encampments, to ensure any children or vulnerable people in the encampments are identified and risk assessments are carried out to ensure any possible negative impacts are limited and all actions taken are proportionate, would also be beneficial.

Question 19: Are there any specific barriers to the provision of more authorised permanent and transit sites? If so, is there any action that the Government could take to help overcome those barriers?

No comment.

Question 20: What impact would extending local authority, police or land owner powers have on children and families and other groups with protected characteristics that public authorities must, in the exercise of its functions, have due regard to under their Public Sector Equality Duty?

Any extension of powers without sufficient scrutiny and oversight might risk possible impacts on children or other vulnerable individuals not being fully identified and assessed.

Question 21: Do you expect that extending the powers referred to above would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities? If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?

The MA would like to raise two specific risks in relation to removal of unauthorised encampments on children. Firstly, any removal must be carried out in a way that does not cause distress to any children

present. A careful risk assessment must therefore be completed before any removal actions where children may be present. Secondly, there are short to long-term risks in relation to forcibly moving children to another pitch as it could make accessing schools or GP surgeries difficult. In terms of education, children should not be moved to an unreasonable travel distance from their school. Alternative schools may be an option but detailed plans would have to be in place and agreed first. Similarly, any move that took children out of the area for their existing healthcare arrangements should only be done when alternatives are in place. This could be a particular risk for small children that are under the care of health visitors.

Question 22: Do you have any other comments to make on the issue of unauthorised development and encampments not specifically addressed by any of the questions above?

No comment.