

SCOTTISH GOVERNMENT RESPONSE TO THE QUESTIONS RAISED BY THE PUBLIC PETITIONS COMMITTEE - PETITION PE1321

Question 1: Will you remove, and if so when, the Trespass (Scotland) Act 1865 from all future guidance on the management of Gypsy/Traveller temporary and halt sites? If not, why not? What is the case for it to remain?

Scottish Government Answer: The Trespass (Scotland) Act 1865 is in force and is applicable to a variety of circumstances (not all of which, in general terms, relate to Gypsies/Travellers). We therefore do not intend to remove the Trespass (Scotland) Act 1865 from the Scottish Government Unauthorised Camping Guidelines or any future Gypsy/Traveller guidance.

The Trespass (Scotland) Act creates an offence of lodging in premises or occupying or encamping on land, being private property, without the permission of the owner or occupier of the premises or land. It also creates an offence of encamping or lighting a fire near a road, enclosed land, cultivated land or plantation without such permission.

The 1865 Act is currently cited in the Scottish Government Unauthorised Camping Guidelines for local authorities. This is the only Scottish Government guidance relevant to Gypsies/Travellers that the 1865 Act is cited in. However, it is also cited in the Association of Chief Police Officers (ACPOS) guidance for managing unauthorised camping.

The 1865 Act is described in the guidelines as legislation which is relevant to prosecution for unauthorised camping. The Roads (Scotland) Act 1984 is also cited as relevant legislation. However, the use of both Acts for prosecution purposes is only recommended for consideration in a limited set of circumstances:

- 1) Where a suitable alternative stopping place has been identified and the individuals have refused to re-locate within a reasonable time. (The Local Authority is normally responsible for identifying a 'suitable alternative' and to agree a 'reasonable time' with the individuals).
- 2) Where the use of a particular site or the excessive size of the encampment causes a road safety or public health hazard.
- 3) Where the same individuals have been repeatedly moved from the same site only to return, although it may be relevant for the Fiscal to consider what action might have been taken by the landowner to prevent such further access.

The Unauthorised Camping Guidelines states there is a presumption against prosecution and Procurators Fiscal have Crown Office Guidance which also advises this.

It is the responsibility of individual public authorities to take enforcement/eviction action. The Unauthorised Camping Guidelines state that all decisions to take legal action should uphold human rights and

withstand scrutiny. They also state that welfare needs should be taken into consideration prior to any decision to remove an encampment, and that decisions must be proportionate and necessary.

Question 2: What progress have you made towards your commitment to “review our guidance on site management for local authorities in consultation with Gypsies/Travellers, including children and young people in the Gypsy/Traveller community”?

Scottish Government Answer: We are currently in the early stages of scoping out the review of the site management guidance and what this will include. We intend to consult with the Gypsy/Traveller community as part of this review and would welcome the involvement of the Young Gypsy/Travellers’ Lives Project members.

The existing Site Management guidance was published in January 1998 by the former Secretary of State’s Advisory Committee on Scotland’s Travelling People. The guidance aimed to assist local authorities on various aspects of site management including; applying for pitches, allocation of pitches, repairs, maintenance, rents, a model tenancy agreement and liaison with relevant authorities.

The petition also asked that as part of reviewing our Site Management Guidance, whether the Scottish Government will remove the Trespass (Scotland) Act 1865 from all future guidance. The 1865 Act is only referenced in the Unauthorised Camping Guidelines and is not mentioned in any other Gypsy/Traveller site management guidance. We will not reference it in the Site Management Guidance.

Question 3: Does section 3 of the Trespass (Scotland) Act 1865 to move on 16 year old Gypsy/Travellers from transient/temporary/halt sites, contravene Article 30 of the UN Convention on the Rights of the Child?

Scottish Government Answer: The provision made by the 1865 Act does not in itself breach the rights that Article 30 of the UNCRC gives to children. However, it would be a matter of interpretation in the particular circumstances of each individual case whether such rights were denied to a child, through the manner in which the provision was used.

It is the responsibility of individual public authorities to take enforcement or eviction action. The Unauthorised Camping Guidelines state that all decisions to take legal action should uphold human rights and withstand scrutiny. They also state that welfare needs should be taken into consideration prior to any decision to remove an encampment, and that decisions must be proportionate and necessary.

Question 4: How often is the 1865 Act being applied in the context described by the petitioner?

Scottish Government Answer: This is a matter for local authorities and the police and the information requested is not held centrally by the Scottish Government.

The Committee may wish to note that the Act will also be used in circumstances that do not relate to camping by Gypsies/Travellers, for example, cases involving squatters.

Question 5: Does all Scottish legislation concerning the management of Gypsy/Traveller temporary and halt sites conform to the UN Convention on the Rights of the Child?

Scottish Government Answer: The Scottish Government guidelines for Managing Unauthorised Camping references legislation which may have the potential to impact on unauthorised camping. However, this list is not exhaustive.

The Scottish Government is committed to supporting and promoting children's rights and the UN Convention on the Rights of the Child. This is a key strand underpinning our activity to improve outcomes for all Scotland's children and young people. However, it would be a matter of interpretation in the particular circumstances of each individual case whether, through the way legislation was applied, rights under UNCRC were denied to a child.



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