

Gypsy Travellers

A Policing Strategy



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*“Why don't you just
move them on?”*

GYPSY TRAVELLERS: A Policing Strategy

‘Why don’t you just move them on?’

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The views expressed in this document are those of the author and not necessarily those of the author's force or the Home Office.

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Foreword

As a member of ACPO's Race and Community Relations Business Area and Lead on the Gypsy Traveller Portfolio Inspector Ian Taggart's work has been of great interest. There appears to be a developing understanding that this issue is important to all communities at present and this paper is, in that regard, timely.

The strategy produced is an authoritative position statement in relation to current legislation, policing strategies and the impact of those strategies on the Gypsy Traveller community. It covers the key issues of discrimination, legislation, current policing practice, the potential for partnership working and the implications for police training.

Close attention has been paid to current legislation and its potential impacts for service delivery to Gypsy Travellers. Disparities in service delivery are identified, particularly for the police service on a national scale and the recommendations, based on thorough and inclusive research methods, are designed to seek solutions to the clear problems outlined.

The document will be of invaluable assistance to all police forces and other public authorities. I have no hesitation in commending this document in its entirety to the police service on a national scale and congratulate Inspector Ian Taggart on this outstanding piece of work.

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Similarly several public authorities, both in the United Kingdom and Ireland, Gypsy Travellers and their support organisations provided advice regarding current practices.

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Executive summary

The Gypsy Traveller community remains one of the most problematical policing issues in the United Kingdom at present. Policing strategies towards this community vary throughout the United Kingdom leading to confusion not only within the Gypsy Traveller community but also within the police service itself. There is undoubtedly a need for a national strategy not only to standardise the police response but also to ensure a degree of certainty within the Gypsy Traveller community regarding the response they will receive from individual police forces' when moving from area to area.

This report attempts to review the existing and proposed legislation applicable to this community and existing good and bad practices in the management of Gypsy Traveller issues, in particular that of unauthorised encampment. Additionally, existing multi-agency management methods are examined and alternative methods suggested which would provide uniformity nationally.

General

- The term Gypsy Traveller is one that has been adopted by the Scottish Parliament following its recent inquiry into Gypsy Travellers and Public Sector Policies and includes Romany Gypsies and Irish, English, Welsh and Scottish Travellers. This terminology has been adopted throughout this report.

Race Discrimination

- At present Romany Gypsies and Irish Travellers have been recognised as racial groups in case law applicable to England and Wales. It is however very probable, when case law develops, that this recognition will be extended to all Gypsy Travellers throughout the mainland United Kingdom.
- Irish Travellers have been given statutory recognition that they are part of a racial group in Northern Ireland.
- The **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000** creates a general duty on a wide range of public authorities, including the police service, to eliminate unlawful racial discrimination; promote equality of opportunity, and promote good race relations between people of different racial groups.
- The Scottish Parliament Equal Opportunities Committee has recommended that all legislation and policies should be framed on the understanding that Gypsy Travellers have distinct characteristics and should therefore be regarded as an ethnic group.

- Given these developments it is prudent to frame current and proposed policies on the basis that Gypsy Travellers are a racial group.
- Statutory protection of Gypsy Travellers from racially motivated crimes is probably available in offences specified in the **Crime and Disorder Act 1998** and the **Public Order Act 1986** in the mainland United Kingdom.
- The community known as New Age Travellers are not recognised as an ethnic minority at present and, as a community, receive no protection under the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000**.

European law

- At present there have been few cases in the European Courts regarding Gypsy Traveller issues. However, the few that have been decided have commented, in their respective judgements, that there had been interference with the particular Gypsy Traveller's rights contained in the **European Convention on Human Rights** though there were no direct breaches of Convention rights.
- The main Convention rights affecting Gypsy Travellers are Article 8, the right to private and family life and Article 14, the right of prohibition of discrimination.
- The incorporation of the Convention into United Kingdom law by the **Human Rights Act 1998** will very probably increase challenges regarding breaches of Gypsy Traveller rights, particularly examination of the powers contained within sections 61 and 62 of the **Criminal Justice and Public Order Act 1994**.
- Forthcoming European legislation, Article 13 of the **Treaty of Amsterdam** and the **Council Directive 2000/43/EC**, will assist in the progress of anti-discrimination issues in the United Kingdom.

Unauthorised encampment law

- The main legislation containing police powers applicable to unauthorised encampment in the mainland United Kingdom is sections 61 and 62 of the **Criminal Justice and Public Order Act 1994**.
- There is no criminal law of trespass in Northern Ireland at present.
- Use of the police powers contained in the **Criminal Justice and Public Order Act 1994** is inconsistent throughout the United Kingdom.

- In Scotland there is a general presumption against prosecution regarding offences relating to unauthorised encampment by Gypsy Travellers, however this does not apply to the use of the powers contained within the relevant legislation.
- Use of the powers contained in section 61 of the **Criminal Justice and Public Order Act 1994** and other legislation may result in liability for civil wrongs arising under the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000** or the **Human Rights Act 1998** depending on the particular circumstances.

Current policing practice

- The main areas of concern regarding the Gypsy Traveller community affect many public authorities with several areas of joint responsibility. Many of these areas of concern are out with the remit of the police service.
- The majority of police policies relate solely to management of unauthorised encampment issues. These policies vary nationally as does the method of enforcement adopted by individual police forces.
- There is an apparent lack of confidence within the Gypsy Traveller community regarding the police service with a substantial number of Gypsy Travellers of the view they suffer prejudice and harassment from police officers.
- There is a developing requirement for more community liaison and community safety involvement with the Gypsy Traveller community to increase confidence and assist in addressing the areas of concern regarding this community.
- Several police forces have or are in the process of developing multi-agency management groups or partnerships to deal with Gypsy Traveller issues.
- Multi-agency management groups or partnerships dealing with Gypsy Traveller issues represent good practice and assist not only in strategic management but also local management of Gypsy Traveller issues.

Multi-agency management of Gypsy Traveller issues

- At present multi-agency working regarding Gypsy Traveller issues is fragmented throughout the United Kingdom. There is a need for a national framework to develop best practice nationally.
- All relevant and affected public authorities should be members of multi-agency groups. Most importantly Gypsy Travellers themselves should be active members of such groups.

- Whilst multi-agency working is recognised as good practice, at the time of writing this report there was a general lack of awareness regarding racial diversity issues within many public authorities. This will undoubtedly alter as training progresses however, the police service should recognise this and be aware of the potential for liability for civil wrongs regarding joint policies and practices arising from the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000** or the **Human Rights Act 1998**.
- By developing similar multi agency groups and protocols nationally there will be a development of best practice and a degree of expectation within the Gypsy Traveller community regarding the response they will receive from public authorities as they move from area to area.

Policing unauthorised encampments

- Unauthorised encampments remain the main area of conflict between the settled community and the Gypsy Traveller community.
- There is a need for specialised officers, either on a full-time or part-time basis to deal with Gypsy Traveller issues dependent on the number of Gypsy Travellers and frequency of unauthorised encampments in a particular police area.
- Each police force should have a written policy regarding unauthorised encampment agreed as part of the protocols formulated by local multi-agency groups.
- The initial response to unauthorised encampments should be one of negotiation followed by civil eviction if unsuccessful. Use of criminal sanctions should be a last resort and only following discussion with local prosecutors.
- The community known as New Age Travellers present different management issues to those presented by Gypsy Travellers however an initial response similar to that adopted to Gypsy Travellers should be considered appropriate in the first instance.
- It is essential where a policy of eviction exists there is also a policy of accommodation in place. Failure to do so will result in continued unauthorised encampment often in less acceptable locations.

Police training requirements

- Current racial awareness/diversity training does not equip officers for the specialist roles evolving regarding management of Gypsy Traveller issues.

- Increased knowledge is necessary particular in strategic roles within multi-agency frameworks.
- Dependant on the numbers or frequency of Gypsy Travellers visiting a particular area it may also be necessary to provide increased training to local operational officers similar to that provided for specialist officers.

Conclusion

- Throughout the country there is recognition that public authorities should form multi-agency groups to undertake the management of Gypsy Travellers issues. Unfortunately the response nationally is fragmented resulting in variable responses to these management issues.
- It is hoped the content of this report will assist in providing a focus on the main issues and problems being encountered nationally regarding the management of Gypsy Traveller issues and result in a national framework and uniform policies being developed.

1. Introduction

The main objective of this report is to identify a method of policing the Gypsy Traveller community that complies with existing and proposed legislation and is capable of being adopted nationally with minimal alteration for local circumstances.

Methodology

- Current policies from the majority of police forces in the United Kingdom and Ireland were examined to identify good practices in the management of Gypsy Traveller issues. A total of 52 police forces were contacted of whom 36 (69%) replied giving details of their respective policies. Of those police forces that replied 5 (14%) had no policies regarding the Gypsy Traveller community.
- Current and proposed legislation was examined and its actual or probable impact on the Gypsy Traveller community assessed. Areas examined included criminal, civil, race relations and European legislation and associated case law relative to policing issues.
- Following receipt of individual force policies selected telephone interviews were carried out on a number of police forces that appeared to have well-developed policies relative to the Gypsy Traveller community. A total of 9 (25%) telephone interviews were undertaken with police forces, 4 in England, 3 in Scotland, 1 in Northern Ireland and 1 in the Republic of Ireland.
- Where joint agency working was taking place, telephone interviews were carried out on selected local authority departments regarding their current policies relative to the Gypsy Traveller community. A total of 6 telephone interviews were undertaken with selected local authorities, 2 in England, 2 in Scotland, 1 in Northern Ireland and 1 in the Republic of Ireland.
- Following these telephone interviews selected site visits were carried out to examine working practices of both police forces and local authorities in the United Kingdom and Ireland. A total of 8 site visits were undertaken, 4 in Scotland, 2 in England, 1 in Northern Ireland and 1 in the Republic of Ireland.
- Informal discussions were undertaken with several Gypsy Travellers and representative organisations to identify good practices.
- An Internet discussion group was also established to discuss relevant issues with both the settled and Gypsy Traveller communities¹.

Following this research several key areas applicable to the policing and management of Gypsy Traveller issues were identified.

¹ <http://groups.msn.com/GypsyTravellers>

Key Areas

- General policing of the Gypsy Traveller community.
- Multi agency management of Gypsy Traveller issues.
- Policing of unauthorised encampments.
- Police training.

The aim of this report is to identify best practices in these key areas that can be adopted by all police forces nationally.

PART I

An overview of Gypsy Traveller law

2. Gypsy Travellers in the United Kingdom

In the United Kingdom there is a wide spectrum of Travellers and lifestyles, making it difficult to give a precise definition of exactly who is a Gypsy Traveller. Travellers themselves have difficulty in providing an appropriate name for their whole community. Within the Traveller community itself, at a macro-level the main distinction appears to be between Travellers and New Age Travellers whilst, at a micro-level the main distinction appears to be between Romany/Gypsy Travellers and Travellers¹.

a) Travellers in the United Kingdom

In the United Kingdom there are generally held to be five main groupings of Travellers –

- i) Gypsy Travellers whose membership is dictated by birth and, occasionally, by marriage. This minority ethnic group have strong cultural ties, extended families and clans and consist of sub groups of English, Welsh Irish and Scottish Travellers.
- ii) Gypsies (Roma) who originate from Europe and have obtained refugee status.
- iii) Show and Fairground Travellers who consider themselves a commercial/business community rather than an ethnic group. Membership of this group can be by birth, however, it is also possible for newcomers to become part of this group by joining this commercial/business community.
- iv) Bargees and other families living in boats.
- v) New Age Travellers who are a diverse grouping with varying beliefs and backgrounds who live a nomadic existence.

b) Classification of Gypsy Travellers

Gypsy Travellers can be classified as follows –

- i) English Travellers -

“The Romanies or ‘Romany Chals’ of England and South Wales...numbering over 50,000 – including house-dwelling families. They previously spoke a dialect of Romani but now speak a variety of English.”²

¹ Moving On: A survey of Travellers’ views, Lomax, Lancaster and Gray, 2000 p.16.

² On the Verge: The Gypsies of England – Kenrick and Bakewell, 1990 p.7.

ii) Welsh Travellers -

“Some 300 persons who are descendents of the Woods and other families who migrated from the South-west of England to Wales in 17th and 18th Centuries.”³

iii) Irish Travellers -

“...a nomadic group from Ireland...The first reliable report of their presence in England dates from 1850.”⁴

iv) Scottish Travellers -

“...a nomadic group formed in Scotland in the period 1500-1800 from intermarriage and social integration between local nomadic craftsmen and immigrant Gypsies, from France and Spain in particular.”⁵

There are Travellers who are members of more than one of the above sub groups through intermarriage, which can further obscure and complicate any clear definition of each grouping.

c) Patterns of travelling

The pattern of travelling also varies within these groupings from –

- i) Maintaining an entirely nomadic lifestyle.
- ii) Residing in settled housing for part of the year.
- iii) Residing in authorised local authority campsites.
- iv) Residing in private campsites.
- v) Residing in unauthorised campsites.
- vi) Maintaining an entirely settled lifestyle but retaining the identity of Traveller.

d) Ethnicity

At present only Romani Gypsies⁶ and Irish Travellers⁷ are recognised in law as racial groups in England and Wales and receive the full protection of the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000**. In Northern

³ ibid p.7.

⁴ ibid p.7.

⁵ ibid p.8.

⁶ Commission for Racial Equality v. Dutton (1989) 2 WLR 17.

⁷ CRE v Punch Retail, The Times 29th August 2000.

Ireland, Irish Travellers are classed as a racial group following enactment of the **Race Relations (Northern Ireland) Order 1997**.

It is now very probable that all Gypsy Travellers satisfy the relevant conditions detailed in the case **Mandla v. Dowell-Lee**⁸ to be classed as an ethnic minority enabling challenges to be made, regarding discriminatory actions towards this community, under the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000**. When case law develops it is probable that all Gypsy Travellers will be classed as a racial group.

At the time of compiling this report the Equal Opportunities Committee of the Scottish Parliament has recommended that all legislation and policies should be framed on the understanding Gypsy Travellers should be regarded as an ethnic group. Similarly the Commission for Racial Equality has also acknowledged that Gypsy Travellers should be recognised as an ethnic minority.

The use of the term Gypsy Traveller to describe traditional Travelling people mirrors the proposed recommendations of the Equal Opportunities Committee of the Scottish Parliament Inquiry into Gypsy Travellers and Public Sector Policies.⁹ This terminology has been adopted throughout this report to encompass all Travellers from the community who satisfy or very probably will satisfy the requirements to be classed as an ethnic minority/racial group under current race relations legislation, i.e. Gypsy Travellers and Romany Gypsies as detailed in (a) above.

⁸ (1983) 2 A.C. 548.

⁹ The Scottish Parliament Equal Opportunities Committee. 1st Report 2001 – Inquiry into Gypsy Travellers and Public Sector Policies Vol. 1 and 2.

3. Gypsy Travellers and race discrimination law

At present Gypsy Travellers are recognised as a racial group in Northern Ireland¹ and the Scottish Parliament Equal Opportunities Committee have recommended that all legislation and policies should be framed on the understanding that Gypsy Travellers should be regarded as an ethnic group, until such time as a court decision is made on recognition as a racial group². Given the likelihood, when case law develops, Gypsy Travellers will be classed as a racial group throughout the United Kingdom, race discrimination law will impact on the policing and management of Gypsy Traveller issues.

a) Race relations legislation in England, Scotland and Wales.

Race relations legislation applicable in England, Scotland and Wales is contained in the **Race Relations Act 1976** which was amended by the **Race Relations (Amendment) Act 2000** following the recommendations of the report of the Stephen Lawrence Inquiry.

The **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000** places a general duty on a wide range of public authorities to promote racial equality. This duty means the authorities specified in the legislation should have due regard to the need to:

- i) Eliminate unlawful racial discrimination.
- ii) Promote equality of opportunity, and
- iii) Promote good race relations between people of different racial groups.

Additionally specific duties are placed on public authorities already bound by the general duty. These specific duties will be imposed on individual public authorities by the **Race Relations Act (Statutory Duties) Order 2001** in England and Wales and the **Race Relations Act (Statutory Duties) (Scotland) Order 2002** in Scotland.

The police service is bound by the general duty and also the specific duties to publish a Race Equality Scheme and to monitor employment procedures and practices.

b) Racial Group

The **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000** defines a racial group as '*a group of persons defined by colour, race, nationality or ethnic or national origins*'³.

¹ The Race Relations (Northern Ireland) Order 1997, Article 5.

² The Scottish Parliament Equal Opportunities Committee. *1st Report 2001-Inquiry into Gypsy Travellers and Public Sector Policies Vol. 1 and 2*. Recommendation 2.

³ The Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000. Section 3(1).

Given the probability, when case law develops, that all Gypsy Travellers will be classed as a racial group throughout the mainland United Kingdom, it is prudent to frame present and future policies and strategies taking cognisance of this likely development.

The report of the Stephen Lawrence Inquiry⁴ recommended that all police services:

*'increase trust and confidence in policing amongst minority ethnic communities.'*⁵

The report of the Stephen Lawrence Inquiry also gave a definition of institutional racism as follows:

*"the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantage minority ethnic people."*⁶

This definition emphasises the outcomes of any actions rather than the intentions of such actions, focusing on the effect of institutional racism as a whole.

Given that Gypsy Travellers will probably gain recognition as a racial group and gain the full protection of the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000**, there is the potential for public authorities dealing with Gypsy Traveller issues to commit civil wrongs if they fail to comply with their general duty or any specific duties placed on them by this legislation.

All public authorities engaged in multi-agency groups or partnerships managing/dealing with Gypsy Traveller issues are individually responsible for meeting their general duty to promote race equality, and should seek agreement from their partners regarding meeting these duties. It is possible, in certain circumstances; liability may fall on different agencies within a multi-agency group if a member of the group commits a civil wrong by not complying with their individual general duty under this legislation⁷.

The police service frequently undertake such a supporting role in the management of unauthorised encampments of Gypsy Travellers where it is not uncommon for police officers to assist public authorities. When engaged in joint activities, which do not comply with another public authorities statutory race equality duties, as a partner, the police service may similarly breach their own individual general duty under this legislation.

⁴ The report of the Stephen Lawrence Inquiry, Sir William McPherson 1999.

⁵ Ibid Recommendation 1.

⁶ Ibid 6.34.

⁷ See - Code of Practice on the Duty to Promote Race Equality – Commission for Racial Equality - Partnership; para 2.11 to 2.13. (Consultation Draft).

This scenario may result in a support agency inadvertently committing civil wrongs under the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000**, whilst acting in a supporting role.

c) Race relations legislation and the travelling community in Northern Ireland

The Northern Ireland government introduced its own race relations legislation in the form of the **Race Relations (Northern Ireland) Order 1997**, which mirrored the **Race Relations Act 1976**.

The Race Relations (Northern Ireland) Order 1997 did however define Travellers as a specific “racial group” and made it unlawful to discriminate against them in employment and training, education, the provision of goods, facilities and services, the disposal and management of premises and in advertisements.

The Northern Ireland Act 1998 has also introduced a statutory duty on all public authorities to ensure that, consistent with its responsibilities, all functions are carried out with regard to-

- i) The need to promote equality of opportunity between persons of differing racial groups.
- ii) The desirability of promoting good relations between persons of different racial groups.

The definition of ‘racial group’ in the **1998 Act** is that specified in the **Race Relations (Northern Ireland) Order 1997**. There is therefore a requirement on each public authority to give due regard to promoting good relations between Travellers and the wider community in its Equality Scheme.

The Police Service of Northern Ireland is defined as a public authority in this legislation and as such, has the same statutory duties as other public authorities to promote equal opportunities.

d) Gypsy Travellers and racially motivated crime

Whilst generally race discrimination legislation provides civil remedies for discriminatory acts, in the mainland United Kingdom there is legislation that offers the possibility of statutory protection to Gypsy Travellers from racially motivated crimes depending on the particular circumstances.

i) The Crime and Disorder Act 1998

a) England and Wales

Section 28 states:

(1) An offence is racially aggravated for the purposes of Sections 29 to

32 below if –

- (a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on the victim's membership (or presumed membership) of a racial group; or*
- (b) the offence is motivated (wholly or partly) by hostility towards members of a racial group based on their membership of that group.*

The offences referred to in Sections 29 to 32 of the Act refer to, racially aggravated assaults, criminal damage, public order offences and harassment.

b) Scotland

In Scotland similar protection from racially aggravated harassment may also be found in Section 33 of the Act.

Additionally, in Scotland, Section 96 of the Act creates an aggravation of any offence, which is racially motivated:

(2): An offence is racially aggravated for the purpose of this section if-

- (a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim's membership (or presumed membership) of a racial group; or*
- (b) the offence is motivated (wholly or partly) by malice and ill-will towards members of a racial group based on their membership of that group.*

In all these offences it is the perception of the offender that the victim is a member of a racial group, irrespective of which racial group, which makes these offences racially motivated. This provides the possibility of including Gypsy Travellers, as the particular definition of the racial group is irrelevant.

ii) The Public Order Act 1986

This legislation also creates a number of offences, which involve racial hatred.

Section 17 defines racial hatred as:

'hatred against a group of persons in Great Britain defined by reference to colour, race, nationality (including citizenship), or ethnic or national origins.'

Section 18 addresses the use of words or behaviour or display of written material intended to stir up racial hatred.

Section 19 addresses publishing or distributing written material intended to stir up racial hatred.

Section 23 creates the offence of possession of racially inflammatory material.

Whilst Romani Gypsies and Irish Travellers clearly fall within the remit of Section 17 of the Act, it is probable that this section will also apply to other Gypsy Travellers.

As can be seen from all the above-mentioned legislation, depending on the particular circumstances, there may be statutory protection provided to all Gypsy Travellers from racially motivated offences.

4. Gypsy Travellers and European law

The incorporation of the **European Convention on Human Rights** into domestic law by the **Human Rights Act 1998** has resulted in increased challenges in United Kingdom courts on human rights grounds regarding many diverse issues.

a) The main Convention rights affecting Gypsy Travellers

All Convention rights are equally applicable to all residents of the United Kingdom however there are two that have particular relevance to the Gypsy Traveller community as a result of their nomadic lifestyle.

Article 8 refers to the right to respect for private and family life.

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 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 right and freedoms of others.*

Article 14 refers to the right of prohibition of discrimination.

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Prior to the incorporation of the European Convention of Human Rights into domestic law by the **Human Rights Act 1998**, there were few challenges to domestic judgements in the European Courts regarding Gypsy Traveller cases. Those that were challenged originated in English cases dealing with planning legislation and unauthorised encampment. In these cases it was decided there had been no breaches of Convention rights although there had been some interference with these rights.¹

All these cases had their origins prior to the enactment of the **Criminal Justice and Public Order Act 1994** and the subsequent application of the powers contained

¹ Buckley v. United Kingdom, Application No. 20348/92, (1997) 23 E.H.R.R.
Chapman v. United Kingdom, Application No. 27238/95.
Coster v. United Kingdom, Application No. 24876/94.
Beard v. United Kingdom, Application No. 24882/94.
Lee v. United Kingdom, Application No. 25289/94.
Jane Smith v. United Kingdom, Application No. 25154/9.
(But see – Varey v. UK, The Times, and 30 January 2001, which was settled out of court).

within Sections 61 and 62 of this legislation regarding criminal trespass and removal of vehicles respectively.

To date compatibility of Sections 61 and 62 of the **Criminal Justice and Public Order Act 1994** with respect to Convention rights have not been examined fully by courts, regarding Gypsy Travellers and unauthorised encampment.

b) The impact of the European Convention on Human Rights following enactment of the Human Rights Act 1998

The **Human Rights Act 1998** creates a general statutory requirement that all legislation, whether past or present, will be read and given effect in a way, which is compatible with the **European Convention on Human Rights**.

The provisions relative to public bodies are of particular importance. There is now an obligation on public authorities not to act in a way that is incompatible with Convention rights.

Section 6 (1) states:

‘It is unlawful for a public authority to act in a way which is incompatible with a Convention right.’

With the introduction of the **Human Rights Act 1998**, it is very probable there will be further challenges in domestic courts based on incompatibility with Convention rights in cases involving Gypsy Travellers. The challenges to date regarding unauthorised encampment have been confined to England.

In the case **R. v. Hillingdon LBC**², concerning a gypsy challenging a removal order under Section 77 of the **Criminal Justice and Public Order Act 1994** after his family had occupied a vacant plot on a designated gypsy caravan site without waiting for it to be allocated. It was argued the Council had failed to make sufficient enquiries regarding his family’s needs, that the decision was unreasonable and that Section 77 of the **1994 Act** was incompatible with the **Human Rights Act 1998**.

The application for judicial review was refused on the grounds that adequate enquiries had been made.

In the case **South Buckinghamshire D.C. v. Porter and Another**³, regarding a successful appeal against an injunction granted on planning grounds to evict gypsies from mobile homes sited on their own land. Reference was made in the judgement that to implement the ‘narrow interpretation’ of the facts displayed in a previous case could no longer be considered consistent with the court’s duty under Section 6(1) of the **Human Rights Act 1998**.

² (QBD (Admin Ct)) (2001) EWHC Admin 91.

³ (2001) EWCA Civ 1549 (12th October, 2001).

Courts have a duty to act in a way compatible with the Convention and it is suggested that it is preferable that civil eviction procedures are adopted to remove unauthorised encampments to ensure compliance with human rights and race relations legislation.

In the case **Fuller & Others v. CC of Dorset Police**⁴ concerning the eviction of New Age Travellers using the powers contained in Section 61 of the **Criminal Justice and Public Order Act 1994** from an unauthorised encampment, the court examined the compatibility of Section 61 with Convention rights and in particular Article 8 of the **European Convention on Human Rights**. In this case it was held the use of section 61 was compatible with Article 8 and justifiable under the terms contained in Article 8.2. It is worthy of note that it was not deemed necessary, at that time, to exercise these powers against an adjacent unauthorised encampment of Gypsy Travellers.

Given the potential for interference with or breach of Convention rights, particularly when implementing the powers contained within the **Criminal Justice and Public Order Act 1994**, it is very probable there will be further challenges in domestic courts regarding use of this legislation.

c) The impact of proposed European Community legislation

In the near future, important European legislation will be introduced in the United Kingdom affecting anti-discrimination law.

Council Directive 2000/43/EC (the Race Directive) was issued to implement the principle of equal treatment between persons irrespective of racial or ethnic origin and should be implemented by all the member states by 19 July 2003. This Directive will give effect, in United Kingdom law, to the provisions of Article 13 of the **Treaty of Amsterdam**, combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and will shift the burden of proof in certain cases.

The shift in the burden of proof, contained in **Council Directive 2000/43/EC**, represents a positive move forward in the promotion of anti-discrimination measures, which will give complainants easier access to courts and tribunals. Introduction of this legislation should overcome the restricted application of Article 14 of the **European Convention on Human Rights** which relates only to discrimination relative to Convention rights. The introduction of these measures will assist in progressing anti-discrimination issues by ensuring that sanctions for unlawful discrimination are effective and limit any exceptions further⁵.

⁴ (2001) EWHC Admin 1057 (12th December, 2001).

⁵ <http://www.cre.gov.uk/legaladv/art13.html>.

5. An overview of Gypsy Travellers and the law in Scotland

Gypsy Travellers, as a minority group within society, are subject to the same laws, both civil and criminal, as the settled community. There are however areas of the law where conflicts occur regarding the application of particular legislation and the recognition of their nomadic lifestyle. This is particularly the case in relation to unauthorised encampments.

a) Introduction

The lack of designated campsites for Gypsy Travellers throughout the country has frequently resulted in confrontation with the settled community and the police service, who are invariably one of the first agencies to become involved in disputes regarding unauthorised encampments.

Between 1977 and 2001 a policy of toleration and non-harassment of Travelling people existed in Scotland where there were insufficient campsites for Gypsy Travellers. This policy was designed to encourage local authorities to provide permanent campsites for Gypsy Travellers as a long-term solution to unauthorised encampments. During its existence the policy has been frequently misunderstood and criticised by both Gypsy Travellers and the settled community. In early 2001 the toleration policy ended as a result of the grant scheme to provide campsites being discontinued. This further confused the practices being adopted by public authorities regarding unauthorised encampment¹. Since termination of the toleration policy all local authorities have produced or are producing individual policies regarding unauthorised encampment by Gypsy Travellers.

b) The Crown Office and Procurator Fiscal Service

The Crown Office and Procurator Fiscal Service provides Scotland's independent prosecution service. It is a Department of the Scottish Executive, headed by the Lord Advocate, and is responsible for all criminal prosecutions in Scotland.

The Lord Advocate has issued instructions to Procurators Fiscal regarding the prosecution policy to be applied in relation to reports of alleged unauthorised encampment by Gypsy Travellers, which reinforce a policy of non-harassment.

Whilst these instructions were originally issued during the existence of the toleration policy referred to above, and have since been revised, this philosophy has continued following the termination of this policy and there is still a general presumption against prosecution of Gypsy Travellers regarding offences relating to unauthorised encampment.

Procurators Fiscal do however retain discretion in relation to prosecution and may take proceedings when it is in the public interest to do so, dependent on the circumstances of each particular case.

¹ Advisory Committee on Scotland's Travelling People - Ninth Term Report in Scotland 1998 –1999.

This policy restricts enforcement regarding unauthorised encampment limiting the powers of local police forces to report Gypsy Travellers for prosecution regarding unauthorised encampments. The general presumption against prosecution regarding unauthorised encampment on land does not extend to statute or common law crimes out with unauthorised encampment.

The police powers contained in the relevant legislation applicable to unauthorised encampment are not affected by this general presumption and use of these powers is an operational policing matter.

Additionally, and perhaps not anticipated, the general presumption against prosecution regarding unauthorised encampment limits the development of case law regarding Gypsy Travellers, particularly regarding interference with or breaches of Convention rights. However, the alternative of repeated eviction and prosecution is unacceptable, aggravating the social exclusion suffered by the Gypsy Traveller community.

Gypsy Travellers may therefore be subject to both Criminal and Civil law responses regarding unauthorised encampment dependent on the particular circumstances.

c) Criminal law

The most relevant legislation applicable to trespass and unauthorised encampment are-

- i) The **Trespass (Scotland) Act 1865**. Section 3. (See Appendix A for details).
- ii) The **Criminal Justice and Public Order Act 1994**. Section 61. (See Appendix B for details).
- iii) The **Public Order Act 1986** contains powers in Sections 14 and 14A, imposing conditions on public assemblies and prohibition of trespassory assemblies. This legislation has been utilised in the mainland United Kingdom in the past when there has been notification or awareness that large numbers of Gypsy Travellers intended camping at identified locations. (See Appendix B for details).

Additionally there are numerous other offences related to the circumstances that may occur during unauthorised encampment.

- iv) The **Criminal Law (Consolidation) Scotland Act, 1995**. –
Section 52 (1) creates the offence of vandalism.
- v) The **Refuse Disposal (Amenity) Act 1978**.

This Act is intended to regulate the dumping of rubbish and unwanted property.

- vi) The **Road Traffic Act 1988** includes several offences that have particular reference to Gypsy Travellers on roadside encampments including-

Section 22 – Leaving vehicles in a dangerous position.

- vii) The **Roads (Scotland) Act 1984** –

Section 129 – The offence of depositing anything on a road so as to cause an obstruction.

The above mentioned road traffic legislation provides scope for removal of vehicles comparable to those contained in Section 62 of the **Criminal Justice and Public Order Act 1994**.

- viii) **Common Law**

Several common law crimes are of importance regarding unauthorised encampments including Breach of the Peace and Malicious Mischief.

The above offences are not exhaustive but represent the more obvious offences applicable regarding unauthorised encampment.

d) Civil Law

- i) **Planning legislation**⁴

This is a wide area of civil law that has particular relevance to Gypsy Travellers, particularly planning matters relevant to the development of caravan sites.

- ii) **Recovery of heritable property**

A civil court action raised by a landowner to recover heritable property and implemented by Sheriff Officers.

- iii) **Civil law interdict**

Interdict is –

‘a remedy granted by a Court either against a wrong in the course of being done or against an apprehended violation of a party’s rights’⁵

Interdict can be used against Gypsy Travellers in two ways –

- (a) To prohibit the location of caravans etc. and

⁴ The Town and Country Planning (Scotland) Act 1997.

⁵ S.S. Robinson, *The Law of Interdict* (2nd ed.), p.1.

- (b) To prevent trespass.

Whilst civil remedies may appear to be of little importance to the police service whilst dealing with Gypsy Travellers, it will undoubtedly be the case that the execution of any civil remedy will usually require the presence of police officers to prevent public order offences occurring.

e) Future developments in Scotland

The Scottish Parliament Equal Opportunities Committee, between October 2000 and June 2001, carried out an inquiry into Gypsy Travellers and Public Sector Policies.

The Committee examined all aspects of Public Sector Policies towards Gypsy Travellers and made many recommendations, which represent positive developments towards social inclusion of the Gypsy Traveller community.⁶

The main recommendations, which affect Gypsy Traveller law are as follows:

Recommendation 2:

All legislation and policies should be framed on the understanding that Gypsy Travellers have distinct characteristics and should therefore be regarded as an ethnic group, until such time as a court decision is made on recognition as a racial group under the Race Relations Act 1976.

Recommendation 11:

National good practice guidance for local authorities and police forces on the management of unauthorised camping should be developed, based on a clearly articulated national policy taking into account the Scottish legislative context and in consultation with all stakeholders.....

Recommendation 34:

Racial diversity strategies and training materials for the police and other relevant bodies in the criminal justice system should include reference to Gypsy Travellers as a separate ethnic group.

The full recommendations following the inquiry represent a substantial move towards the social inclusion of Gypsy Travellers, if eventually implemented. At the time of compiling this report it was however unclear if all the recommendations would be accepted by the Scottish Executive.

⁶ The Scottish Parliament Equal Opportunities Committee. *1st Report 2001-Inquiry into Gypsy Travellers and Public Sector Policies Vol. 1 and 2.*

6. An overview of Gypsy Travellers and the law in England and Wales

In England and Wales Gypsy Travellers are subject to the same laws as the settled community. As in Scotland, the area where there is conflict relates to their nomadic existence and unauthorised encampment. Due to this nomadic lifestyle Gypsy Travellers are frequently subject to similar offences as those detailed in Scotland (see above), including criminal damage, refuse disposal, road traffic and trespass offences. A toleration policy has developed regarding unauthorised encampments, which, along with other good practice, is contained within the Department of the Environment and the Regions publication.¹

a) Unauthorised encampment

i) Introduction

The main legislation applicable to unauthorised encampment is the **Criminal Justice and Public Order Act 1994**. However use of this legislation has not been uniform throughout England and Wales with civil remedies frequently being used by Local Authorities in preference to the **1994 Act**.

There are several alternative procedures available to deal with unauthorised encampment dependent on individual circumstances including powers and offences contained within the Highway Acts available to Highway Authorities, local byelaws and planning legislation.

There are generally three main methods available to Local Authorities to deal with eviction from unauthorised encampment –

- a) Use of Order 24 (County Court Rules 1981), heard in a County Court.
- b) Use of Order 113 (Rules of the Supreme Court), heard in the Supreme Court.
- c) Use of the **1994 Act**, which involves a hearing in a Magistrates Court² if the persons involved fail to leave after direction to leave the land by the local authority.³

The Civil procedures are open to Local Authorities as landowners but the powers contained in the **1994 Act** apply to authorities as Local Authorities. It is however open to Local Authorities to evict unauthorised encampments from private land using the powers contained in the **1994 Act**.

Additionally, there is a common law power available to land owners to evict unauthorised trespassers from land. Though used infrequently this power is, it

¹ Managing Unauthorised Camping – A Good Practice Guide Ch.5.

² Section 78 of the Act.

³ Section 77 of the Act.

is suggested, not recommended given the scope for breaches of race relations legislation, Convention rights and the potential for public order problems.

ii) Police Powers

The **Criminal Justice and Public Order Act 1994** creates discretionary police powers to direct trespassers to leave land under Section 61 of the Act.

Additional powers are also provided in Section 62 of the Act, regarding seizure of vehicles from the land where the unauthorised encampment is located.

There are also powers contained in the **Public Order Act 1986**, regarding regulation⁴ and prohibition⁵ of assemblies, which can be enforced prior to or during the assembly if known when and where it is taking place.

(See Appendix B for more details on these legislative provisions).

b) The Criminal Justice and Public Order Act 1994

Following enactment of the **Criminal Justice and Public Order Act 1994**, the response to unauthorised encampment appeared quite clear. However, an accompanying Department of the Environment circular, **Gypsy Sites Policy and Unauthorised Camping**⁶ was less exact, recommending local authorities consider adopting a policy of toleration and a more humane response towards unauthorised encampment, identifying wider obligations which Local Authorities may have to the Travelling Community.

Following the introduction of the **1994 Act**, there were several cases, which gave an indication of how case law would develop regarding use of this legislation. In the cases **R. v. Lincolnshire CC Exp. Atkinson**⁷ and **R. v. Wealdon DC Ex p. Wales**⁸ the courts gave advice on the decision making process undertaken by Local Authorities, referring to the factors contained in the Department of Environment Circular,⁷ as relevant considerations when establishing the fairness of enforcing the statutory powers contained in the **1994 Act**.

These judgements reinforce the guidelines given in the Circular commenting on the types and timing of enquiries an authority may have to make to take account of 'considerations of common humanity' such as health and social needs prior to commencing with the eviction of Travellers.

Similarly in the case **R. v. The Commissioner of the Metropolis ex parte Small & Others** (not reported), it was held that any police officer considering enforcement of

⁴ Section 14 of the Act.

⁵ Section 14A of the Act.

⁶ Department of Environment Circular 18/94.

⁷ (QBD) (1996) 8 Admin. L.R. 529.

⁸ The Times 22nd September 1995.

Section 61 of the **1994 Act** must give consideration to principles of ‘common humanity’ prior to eviction. These are humanitarian and welfare considerations separate from those considered by local authorities, e.g. suitability of site, age of Gypsy Travellers, children attending local schools, etc.

In the case **R. v. Wolverhampton MBC Ex p. Dunne**⁹ the powers contained within Section 77 of the **1994 Act** were examined. It was held that any inquiries as to personal circumstances of the Travellers being evicted should be made before, and not after, an order has been made for someone to leave land.

The use of powers contained in the **1994 Act**, have been tempered by the guidelines contained in the Department of Environment Circular and subsequent case law, which has developed. Perhaps the uncertainty and to a degree the contradictions between each is responsible for the **1994 Act** not being used consistently throughout the country.

c) The Public Order Act 1986

There are further powers contained within the **Public Order Act 1986**, which have been utilised in the past where there has been notification or awareness that large numbers of Gypsy Travellers have intended encamping at identified locations.

The power to impose conditions on public assemblies is contained in Section 14 of the **1986 Act**. (See Appendix B for more details).

Following the introduction of the **Criminal Justice and Public Order Act 1994**, Section 70 of that Act introduced section 14A to the **Public Order Act 1986** creating powers to prohibit trespassory assemblies. (See Appendix B for more details).

The powers detailed above have been used in the past regarding large unauthorised encampments of Travellers on the grounds primarily of ‘*serious disruption to the life of the community*’.

d) Toleration policy

The Department of the Environment and the Regions publication¹⁰ details considerations that should be made when considering toleration of unauthorised encampments.

The current guidance¹¹ suggests in the absence of specific welfare needs considerations regarding eviction should include the following –

- i) The nature, suitability or obtrusiveness of the encampment.
- ii) The size of the group, their behaviour and the level of nuisance.

⁹ (QBD) (1997) 29 H.L.R. 745.

¹⁰ Managing Unauthorised Camping – A Good Practice Guide - Revision of Ch.5.

¹¹ *ibid* para. 5.8.

iii) The number, validity and seriousness of complaints.

When a decision is made not to evict, the period the encampment remains should be determined by the specific circumstances of the particular encampment and could include the following¹² –

- i) The educational needs of the children.
- ii) The recent birth of children.
- iii) Where Gypsy Travellers wish to stay for a short period, and they are unlikely to cause disruption or damage during their stay, a negotiated date of departure may be appropriate which if exceeded may trigger eviction.
- iv) Consideration should be made by authorities as to whether Gypsy Travellers should be referred to a more suitable nearby site.
- v) Other considerations include consultation with local planning authorities regarding the impact of particular unauthorised encampments.

It is necessary to keep encampments under review to monitor any changes in circumstances, e.g. increased levels of nuisance or deterioration in conditions that may lead to the start of eviction procedures.

Where a decision has been made to allow an encampment to remain for a short period of time local authorities should ensure that elected members, appropriate members of the public and other appropriate agencies are informed.

Where a decision to tolerate an encampment is taken consideration should also be given to providing temporary services such as skips, sacks and toilets.

Implementation of toleration policy's are at present fragmented nationally¹³.

¹² *ibid* paras 5.10 – 5.17.

¹³ The Management of Unauthorised Camping: Monitoring the Good Practice Guidance - p44.

7. An overview of Gypsy Travellers and the law in Northern Ireland

As in the rest of the United Kingdom, Travellers have been subject to the same laws as the settled community in Northern Ireland. Similarly, there has been a recognised social exclusion of Travellers due to changes in the rural areas of Northern Ireland to a large extent displacing the traditional Travellers from those areas into a more urban lifestyle. This movement was accompanied by increased discrimination and social exclusion of the Travelling community as their traditional lifestyle altered and their urbanisation increased. In recognition that Travellers are an extremely disadvantaged section of society in Northern Ireland and that their specific accommodation needs were not being met, the Government set up a Working Party in September 1996 to examine their particular accommodation needs¹.

In its deliberations the Working Party recognised there were different requirements within the Travelling community with some wishing to adopt a settled existence or travelling for part of the year.

Generally the Irish Travelling community can be sub-divided into two distinct groups:

- i) Trading Travellers who generally originate the Republic of Ireland and visit an area for relatively short periods of time before moving on. They tend to occupy open ground or car parks near towns.
- ii) Non-Trading Travellers who tend to be smaller groups travelling for short periods of the year and remain encamped for the rest of the year. They tend to occupy vacant land such as abandoned roads etc. There are a substantial number of these Travellers who do not travel but remain static on such sites.

There is little evidence of Travellers from other parts of the United Kingdom residing in Northern Ireland.

a) Unauthorised encampment

Generally unauthorised encampments in Northern Ireland can be classified as follows:

- i) Short stay encampments of approximately 2 to 3 weeks commonly occurring when Trading Travellers encamp.
- ii) Long stay encampments where Non-Trading Travellers remain for long periods of time only travelling occasionally.
- iii) Permanent unauthorised encampments where Non-Trading Travellers stay continuously.

¹ Working Party on Accommodation for Travellers – Department of the Environment for Northern Ireland.

- iv) Permanent unauthorised encampments where Trading and Non-Travellers Travellers have purchased land but not obtained appropriate planning permission.

The current legislative remedies for unauthorised encampment are:

- i) The **Roads (NI) Order 1993** where enforcement actions are available regarding unauthorised encampments which are established within the boundaries of public highways.
- ii) Car parking bye-laws provide remedies where an unauthorised encampment is located within a car park as scheduled in the **Off-Street Parking Bye-Laws (NI) 1996**.
- iii) Public Health legislation such as the **Public Health (Ireland) Act 1878** and the **Pollution Control and Local Government (Northern Ireland) Order 1978** provide remedies where there is a public health nuisance caused by a particular unauthorised encampment.
- iv) The **Planning (NI) Order 1991**, provides the Planning Service with the power to issue an enforcement notice on the owner and occupier of land where an unauthorised encampment is located.
- v) There is also the possibility of pursuing civil action for repossession of the particular land where an unauthorised encampment is located.

There is no criminal law of trespass in Northern Ireland at present.

The Working Party also recognised that the Department of the Environment Transport and the Regions Publication² represented good advice in dealing with many of the problems encountered and also detailed many instances of good practice in England and Wales.

b) The Working Party co-operation policy

As in Scotland, a similar toleration policy existed in Northern Ireland regarding unauthorised encampment, having been implemented there from 1987.

Following the Working Party recommendations this policy was re-named a co-operation policy and designed to permit Travellers to camp on a temporary basis. The policy was not intended as a substitute for permanent or transit site provision but as a humane requirement and necessary until adequate permanent provisions were in place.

The policy, where invoked, permitted Travellers to camp in unauthorised encampments subject to the following conditions-

² Managing Unauthorised Camping, a Good Practice Guide.

- i) That occupation does not constitute a measurable public health hazard or cause pollution to water supplies. District Councils should liaise with the landowner, support groups and Traveller families to ensure that services such as refuse collection etc. are in place to eliminate any public health hazards.
- ii) The occupation of the encampment does not create a traffic hazard.
- iii) The occupation of the encampment does not create a right to long-term use of the site. The situation should be reviewed at regular intervals not exceeding 3 months.
- iv) There is no current or immediate use for the land.
- v) The Travellers behave in a reasonable and orderly manner.

It was also recognised there could be exceptional cases where circumstances attached to a particular occupancy would require a different approach.

c) Policing issues

The Police Service of Northern Ireland faces difficulties when carrying out its duties which are unique and not comparable with other police forces in the United Kingdom. Despite these difficulties it is currently in the process of developing good working practices, regarding the management of Traveller issues.

The Police Service of Northern Ireland has or is adopting the following methods of managing Traveller issues:

- i) Adoption of a non-harassment policy towards Traveller communities regarding unauthorised encampment.
- ii) Undertaking a supporting role, where appropriate, to public authority officials who attend Traveller sites to prevent the possibility of public order offences occurring, particularly where a decision is made to evict an encampment.
- iii) In some areas local community liaison officers are attempting to build relationships with Traveller communities and with Traveller representatives where permanent encampments are located.
- iv) Additionally, at the time of writing this report, public authorities, including the Police Service of Northern Ireland, were in the process of forming multi-agency management groups to manage Traveller issues.

Whilst there is a non-harassment policy regarding unauthorised encampment, this policy extends only to unauthorised encampment. The Traveller community is policed in a similar manner to the settled community regarding other policing issues including the investigation of crime.

d) Future developments in Northern Ireland

Recognising the problems of social exclusion and discrimination being encountered by Travellers in Northern Ireland, the government identified that these problems and appropriate solutions should be addressed within its 'Promoting Social Inclusion' initiative. The terms of reference of the Working Group were to consider factors, which can cause Travellers to be at risk of social exclusion and develop an integrated strategy of policy and action to tackle them³.

The Working Group identified the need for 'joined up' policies and strategies to encourage and facilitate Travellers' participation in the social, economic and political life of the region. The strategic priorities are:

- i) Better and more appropriate services for Travellers.
- ii) Working in partnership with Travellers.
- iii) Accommodating nomadism.
- iv) Empowering Travellers.
- v) Promoting good relations between Travellers and the 'settled' community.

Given the scope of the strategy it represents a will to make an impact on the social inclusion of Travellers and address the discriminatory practices they suffer.

The main recommendation, which affects Gypsy Traveller law is:

Recommendation 28:

The Northern Ireland Office should fund a pilot scheme in the West Belfast area involving the appointment of a full-time Travellers' Legal Rights Worker. The Worker should be placed with and managed by an appropriate voluntary organisation. The key responsibilities of The Worker should include:

- *To work alongside the Traveller Support Workers (Recommendation 4) to raise awareness of legal rights among Travellers and to explain the procedures and practices of the Police and the criminal justice system;*
- *To liaise between the Traveller community and the Police over specific incidents or matters of concern and to encourage greater co-operation between both in attempting to resolve such issues;*
- *To advocate on behalf of local Travellers with the Police and other agencies within the criminal justice system to ensure that the particular issues and problems faced by the Traveller communities are represented to them and addressed in an appropriate manner.*

³ Consultation on the Final Report of the PSI Working Group on Travellers – New TSN.

At the time of writing this report all the recommendations of the Working Group were under consideration and it is uncertain when or how many of these recommendations will be implemented. All the recommendations represent a will to progress Travellers' social inclusion with those regarding accommodation providing a means to address the problem of unauthorised encampment and improve Travellers' living conditions.

8. Summary regarding Gypsy Travellers and the law

There are several areas of law which have particular relevance to Gypsy Travellers in the United Kingdom including race relations, European and domestic law.

a) Race relations

Race relations legislation represents an area of law, which, in the past has not been considered as being generally applicable to the Gypsy Traveller community. Recent developments however indicate that this may change as this area of law continues to develop.

- There is now a general duty on the police service to eliminate unlawful racial discrimination; promote equality of opportunity, and promote good race relations between people of different racial groups.
- At present Romani Gypsies and Irish Travellers are recognised as racial groups in England and Wales only.
- In Northern Ireland, Irish Travellers are recognised as a racial group.
- The Equal Opportunities Committee of the Scottish Parliament has recommended that all legislation and policies should be framed on the understanding that Gypsy Travellers should be regarded as an ethnic group, until such time as a court decision is made on recognition as a racial group under the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000**.
- The Commission for Racial Equality has acknowledged that Gypsy Travellers should be recognised as an ethnic minority.
- It is now probable, when case law develops, that all Gypsy Travellers will be classed as a racial group throughout the United Kingdom giving this community the protection contained within current race relations legislation.
- Where police forces engaged in multi-agency/partnership working it is possible that liability may fall on different agencies within such multi-agency/partnership groups. This liability may occur when a member of the group commits a civil wrong by not complying with their individual general duty imposed by the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000**.
- When introduced to United Kingdom law **Council Directive 2000/43/EC**, will shift the burden of proof in race discrimination cases in certain circumstances and assist in the progress of anti-discrimination issues.

- Statutory protection of Gypsy Travellers from racially motivated crimes is probably available in the **Crime and Disorder Act 1998** and the **Public Order Act 1986** in the mainland United Kingdom.
- The community known as New Age Travellers are not recognised as an ethnic minority at present.

b) European law

European law is a developing area of law in the United Kingdom impacting on human rights law relevant to Gypsy Travellers.

- The main Convention rights affecting Gypsy Travellers are Article 8, the right to private and family life and Article 14, the right of prohibition of discrimination.
- The incorporation of the Convention into United Kingdom law by the **Human Rights Act 1998** will very probably increase challenges regarding breaches of Gypsy Traveller rights particularly regarding eviction.

c) Domestic law

Gypsy Travellers are subject to the same laws as the settled community and should be policed accordingly. Unauthorised encampments however remain a problematical policing area where alternative approaches should be considered.

Given the lack of official campsites in the United Kingdom a non-harassment policy has evolved in several areas regarding unauthorised encampment¹. Implementation of this policy has been fragmented nationally with some areas adopting this policy and others resorting to legislative measures to deal with unauthorised encampments.

- Criminal law applies equally to the Gypsy Traveller community and the settled community.
- It is desirable, where possible, that non-harassment policies are adopted regarding unauthorised encampment unless there are sufficient appropriate official sites available in a particular area.
- The main legislation containing police powers applicable to unauthorised encampment in the mainland United Kingdom is sections 61 and 62 of the **Criminal Justice and Public Order Act 1994**. There are however

¹ See - Managing Unauthorised Camping – A Good Practice Guide, DETR.
Working Party on Accommodation for Travellers – Department of the Environment for Northern Ireland.
Advisory Committee on Scotland's Travelling People - Ninth Term Report in Scotland 1998 –1999.

several other pieces of legislation which can also be utilised, dependant on the circumstances.

- Use of these police powers can be problematical with the potential for interference with, or breaches of, Articles 8² and 14³ of the **European Convention on Human Rights**.
- Additionally improper use of these police powers may result in liability for civil wrongs arising from race relations and human rights legislation depending on the particular circumstances.
- Alternatively, use of civil eviction procedures should ensure that courts examine compatibility with race relations and human rights legislation prior to granting any eviction order.
- There is no criminal law of trespass in Northern Ireland at present.
- In Scotland there is a general presumption against prosecution regarding offences associated with unauthorised encampment on land. This presumption does not extend to statute or common law crimes out with unauthorised encampment or the use of police powers contained in the appropriate legislation that remain an operational police matter.

d) Conclusion

Given the diverse issues relevant to the Gypsy Traveller community there is undoubtedly a need for all public authorities and other interested parties to examine their respective statutory duties and liabilities towards this community. The duties placed on public authorities to provide services and to assist in the social inclusion of Gypsy Travellers apply to various public authority functions. It is desirable that these diverse duties and functions are not examined in isolation but as part of a multi-agency management group.

The police service has a role within such multi-agency management groups. At the inception of such groups close and careful examination of the desired group protocols will assist greatly in the equitable use of available legislation, and police powers contained within such legislation.

² Article 8: The right to respect for private and family life.

³ Article 14: Prohibition of Discrimination.

PART II

Policing the Gypsy Traveller community

9. Policing the Gypsy Traveller community at present

Throughout the United Kingdom, Gypsy Travellers are recognised as one of the most socially excluded minorities in society.

Recognition of this social exclusion has resulted in several initiatives such as the Advisory Committee on Scotland's Travelling People¹, the PSI Working Group on Travellers in Northern Ireland² and the recent Equal Opportunities Committee inquiry into Gypsy Travellers and Public Sector Policies³ held in Scotland. All these initiatives recognise the social exclusion and discrimination that this minority are subjected too and have made various recommendations to assist in the social inclusion of this community. It remains to be seen how many of these recommendations will be implemented.

a) Public authority issues

All the abovementioned initiatives identified the main areas of concern regarding the social exclusion of the Gypsy Traveller community.

These can generally be summarised as follows –

- i) Accommodation.
- ii) Education.
- iii) Health.
- iv) Policing and criminal justice.
- v) Relations between the settled community and Gypsy Traveller community.

Many of these areas of concern are either outwith the remit of the police service and relevant to other public authorities or of shared responsibility. Given the severe social problems encountered by this community, it is recognised as appropriate and good practice to engage in multi-agency management of these issues in partnership with the appropriate public authorities who have the resources, and in some areas such as housing, social work etc., a statutory duty, to provide services to this minority⁴, rather than examine each issue in isolation.

At the commencement of this research requests were made to 52 police forces throughout the United Kingdom and Ireland to obtain details of their current policies towards Gypsy Travellers. Of these police forces 36 (69%) replied. The majority of

¹ Advisory Committee on Scotland's Travelling People - Ninth Term Report in Scotland 1998 –1999.

² Consultation on the Final Report of the PSI Working Group on Travellers – New TSN.

³ The Scottish Parliament Equal Opportunities Committee. *1st Report 2001-Inquiry into Gypsy Travellers and Public Sector Policies Vol. 1 and 2.*

⁴ Advisory Committee on Scotland's Travelling People - Ninth Term Report in Scotland 1998 –1999. Managing Unauthorised Camping – A Good Practice Guide.

The Management of Unauthorised Camping: Monitoring the Good Practice Guidance. – Page 80.

policies obtained related solely to the policing of unauthorised encampments with a total of 5 (14%) of the police forces that replied acknowledging they had no policies regarding the Gypsy Traveller community in place.

A total of 17 (47%) of the police forces that replied provided details of multi-agency management groups involving public authorities, which were in various stages of development in their respective force area. These multi-agency management groups varied in composition and scope, with several managing issues in only small geographic areas of the particular police force concerned.

b) Current Policing

The police service is invariably the first point of contact when Gypsy Travellers arrive in an area, mainly in response to unauthorised encampments. Individual forces responses to unauthorised encampment vary nationally from policies of strict enforcement to those of toleration⁵.

Police contact with the Gypsy Traveller community generally relates to instances of unauthorised encampment or the investigation of crimes reported by the settled community. It is rare, when they are the victims of a crime, for the Gypsy Traveller community to report these instances to the police. There appears to be a general mistrust and lack of confidence within the Gypsy Traveller community towards the police service originating in policing methods previously adopted towards this community. In many instances the Gypsy Traveller community have been over policed with continual stop checks and site visits being undertaken by local police officers. In a recent survey of Gypsy Travellers views in Scotland approximately 40% of respondents stated they had suffered prejudice and harassment from police officers⁶. The Police Complaints Authority are similarly concerned regarding the increasing allegations of discriminatory treatment of Gypsy Travellers by police officers⁷.

A few forces have introduced inputs from Gypsy Travellers in local diversity awareness training courses in an effort to raise officer's awareness further and highlight the issues that affect this community.

It is essential that the police service police this community fairly in a non-discriminatory way.

Current diversity awareness training⁸ is designed only to raise officers' awareness of minorities in the community and does not equip operational officers with the skills and knowledge appropriate to the specialist roles that are necessary to police the Gypsy Traveller community.

⁵ The Management of Unauthorised Camping: Monitoring the Good Practice Guidance – Ch. 3.

⁶ Moving On: A survey of Travellers' views. – Page 61.

⁷ Annual Report and Accounts of the independent Police Complaints Authority – 1 April 2001 – 31 March 2002. page 65.

⁸ Scottish Police Diversity Awareness Training, Level 1 – Travelling People.

Several police forces have introduced or are in the process of introducing Gypsy Traveller Liaison Units where large Gypsy Traveller communities visit or reside in their respective areas of responsibility. Additionally, some police forces have identified officers to undertake community liaison roles at official campsites increasing the confidence of the Gypsy Traveller community towards the police service. These initiatives go some way to overcoming the shortcomings in necessary skills in operational officers and assist in increasing confidence within the Gypsy Traveller community. Generally however police contact with the Gypsy Traveller community is invariably in response to complaints from the settled community.

There is a need for community liaison officers or Gypsy Traveller liaison officers to make contact routinely with the Gypsy Traveller community. By doing so mutual confidence should be increased, assisting with the policing and social inclusion of this community.

c) Future developments

Recent initiatives have taken place in Scotland and Northern Ireland that have resulted in many recommendations designed to increase the social inclusion of the Gypsy Traveller communities in these areas and reduce discrimination towards that community. Several of these recommendations, if implemented, will have some effect on the general policing methods of this community in these areas of the United Kingdom.

i) Scotland

The Scottish Parliament Equal Opportunities Committee Inquiry into Gypsy Travellers and Public Sector Policies⁹ made many recommendations regarding the Gypsy Traveller community with the following having an impact on general policing of this community:

Recommendation 35:

Schemes should be developed to promote the confidence of Gypsy Travellers in the police, whether contact relates to experience as victims of crime, racial harassment or as suspected offenders:.....

Recommendation 36:

Policing practices and arrangements should continue to be reviewed and specific monitoring of relations between Police and Gypsy Travellers relations established. Guidance should be provided for use by the Police in working with Gypsy Travellers, as:

- *victims of crime, including racist incidents and harassment;*
- *when evicting Gypsy Travellers from unauthorised camps;*
- *to ensure that Gypsy Traveller communities are not over-policed.*

⁹ The Scottish Parliament Equal Opportunities Committee. *1st Report 2001-Inquiry into Gypsy Travellers and Public Sector Policies Vol. 1 and 2.*

ii) Northern Ireland

In Northern Ireland the Working Group formed under the ‘Promoting Social Inclusion’ initiative made many recommendations¹⁰ regarding the Gypsy Traveller community with the following having an impact on general policing of this community:

Recommendation 29:

The RUC (now the Police Service of Northern Ireland) should establish procedures for monitoring relations between themselves and the Traveller community. Such procedures should be agreed with the Police Ombudsman and should include:

- *Monitoring and developing a more rigorous accounting procedure for the activities of Police Officers to ensure that Travellers and Traveller communities are not routinely ‘over policed’ and that where Travellers wish to make complaints concerning the activities of individual officers, they can be easily identified;*
- *Monitoring complaints against the Police in respect of ethnicity and, in particular, publishing figures showing the number of complaints made, the number of informal resolutions and the outcome of formally investigated complaints by ethnic origin.*

Recommendation 30:

The RUC (now the Police Service of Northern Ireland) develop a written Code of Practice in consultation with the Police Ombudsman to be provided to all Police Officers regarding dealing with the Traveller community. Such a Code of Practice should include:

- *Guidance for Officers on their use in the eviction of Travellers from traditional stopping areas;*
- *Dealing with Travellers who are victims of crime;*
- *Dealing with racial crime and racist incidents against Travellers.*

It is unclear at the time of writing this report how many of the abovementioned recommendations will be implemented. Irrespective of their eventual implementation they represent good positive working practices that are worthy of consideration by individual police forces wishing to develop good policing practices towards the Gypsy Traveller community.

¹⁰ Consultation on the Final Report of the PSI Working Group on Travellers – New TSN.

d) Conclusion

Current policing practices in the United Kingdom towards the Gypsy Traveller community are fragmented at present with different philosophies being implemented nationally¹¹.

Future potential developments in policing the Gypsy Traveller community will undoubtedly increase community safety and liaison duties regarding this community. There is a need to raise awareness within the police service regarding Gypsy Traveller culture and increase confidence within the Gypsy Traveller community itself regarding the police service.

Given these developments and existing and future developments in race relations and human rights law, there is an increasing need for police officers with the specialist skills and knowledge to deal routinely with the Gypsy Traveller community.

Several police forces have introduced or are in the process of developing multi-agency management groups with other public authorities. Given the public authority issues regarding this community and the joint involvement and responsibilities of various authorities, including the police service, these issues should not be examined in isolation. Such multi-agency management groups and partnerships represent good practice and assist not only in the strategic management of the issues concerned but also local management, clarifying the roles and responsibilities of all members including joint working arrangements¹².

Multi-agency management groups and partnerships should be developed nationally.

¹¹ The Management of Unauthorised Camping: Monitoring the Good Practice Guidance – Ch. 3.

¹² Advisory Committee on Scotland's Travelling People - Ninth Term Report in Scotland 1998 –1999. Managing Unauthorised Camping – A Good Practice Guide. The Management of Unauthorised Camping: Monitoring the Good Practice Guidance. – Page 80.

10. Current police involvement in multi-agency management of Gypsy Traveller issues

At present multi-agency management of Gypsy Traveller issues in the United Kingdom is problematical, varying from no multi-agency management to very good proactive multi-agency groups. Police involvement in these multi-agency groups varies similarly.

Although in general the police services main involvement with the Gypsy Traveller community tends to be policing unauthorised encampments, there are other areas of policing that are developing nationally including community liaison and community safety functions relative to this community.

a) Police responses to Gypsy Traveller issues

The response to Gypsy Traveller issues and in particular unauthorised encampment by local police forces can generally be classified as proactive or reactive.

i) Proactive response

The characteristics of this response can be summarised as follows:

- a) Membership of a multi-agency management group whose membership includes all relevant public authority departments and Gypsy Traveller representatives.
- b) Agreed policies and protocols regarding unauthorised encampment.
- c) Awareness of local Gypsy Traveller issues including welfare requirements and movement patterns.
- d) An identified Gypsy Traveller Liaison officer.
- e) Continual assessment and development of policies.

Case Study 1

Force A is a small rural police force with several official campsites and occasional unauthorised campsites. There is a designated part time Gypsy Traveller liaison officer who is part of a multi-agency management group formed from local public authorities, which meets regularly, to develop and review joint policies. Additionally dialogue has been made with Gypsy Traveller representatives regarding management issues. Force A operates a non-harassment policy regarding unauthorised encampment.

Case Study 2

Force B is a medium sized police force with both rural and urban policing responsibilities. There is a designated part time Gypsy Traveller liaison officer

who is part of a multi-agency management group formed from local public authorities which meets occasionally to develop and review joint policies however no Gypsy Traveller representatives are members of this group. Additionally there are part time local liaison officers located in local command areas. Force B operates a non-harassment policy regarding unauthorised encampment.

ii) Reactive response.

The characteristics of this response can be summarised as follows:

- a) No membership or membership of a multi-agency group that is not representative of all relevant parties.
- b) Adoption of a reactive stance towards incidents.
- c) Restricted multi-agency working.
- d) Limited welfare considerations.
- e) Limited Awareness of local Gypsy Traveller issues including movement patterns.
- f) No review or assessment process regarding policies.

Case Study 3

Force C is a large force policing both rural and urban areas. In one large city, there is a dedicated Traveller Liaison Unit consisting of both public authority officers and a police officer. There are existing policies in place and membership of a multi-agency group with one of the public authorities being the major landowner in the area. There is one official campsite occupied mainly by Gypsy Travellers, the majority of whom are static there. Response to unauthorised encampment is reactive, frequently in response to the major land owning public authority. There is very restricted toleration of unauthorised encampment. Limited welfare assessments are undertaken frequently after which eviction occurs a short time later.

Case Study 4

Force D is a medium sized police force with both rural and urban policing responsibilities. The area is subject to seasonal visits of Gypsy Travellers who mainly encamp on public authority land. There are no local official campsites. The local authority frequently makes requests to local officers to evict Gypsy Travellers from unauthorised encampments using legislative powers. No welfare considerations are undertaken and local officers make frequent visits to encampments ensuring movement of the encampment. (At the time of this case study, Force D had no Gypsy Traveller management policies in place and there was a general ignorance of alternative management techniques.

However, this policy has been altered and it now operates a non-harassment policy adopting a proactive response similar to those in case studies 1 and 2 above and in accordance with the guidelines contained within the Advisory Committee on Scotland's Travelling People - Ninth Term Report in Scotland 1998 –1999.).

Case Study 5

Force E is a medium sized police force with both rural and urban policing responsibilities. There are several official Gypsy Traveller sites in the force area however these are generally occupied by static Gypsy Travellers leaving little availability for transient Gypsy Travellers resulting in frequent unauthorised encampments. Force E has no multi-agency management policy and has undertaken a lead agency role regarding unauthorised encampment with little or no assistance from other public authorities. Force E has increasingly moved unauthorised encampments resulting in less acceptable unauthorised encampments being established nearby. This policy has resulted in increasing use of police resources with an estimated cost for one police area in excess of £50,000 in the financial year when the study took place.

The above case studies are illustrative of the wide spectrum of responses by police forces throughout the United Kingdom. Some public authorities are in the process of developing proactive multi-agency management groups involving local police forces at present but, as can be seen, there is a need to develop a uniform national policy.

b) Conclusion

Given the current developments regarding Gypsy Traveller issues throughout the United Kingdom, it is suggested that a proactive model of management should be the preferred option. By adopting this model, the potential for the police service to breach or interfere with Convention rights or commit civil wrongs under human rights and race relations legislation would be minimised. Additionally, adoption of a national model of management would assist in providing a degree of certainty within the Gypsy Traveller community regarding how they will be managed when they move between different areas of the United Kingdom.

As can be seen from the case studies, the membership of multi-agency management groups is variable throughout the United Kingdom and dependent to a degree on the relevant issues in a particular area. It is fair to state however, that there is generally a requirement for increased membership by relevant public authorities in all areas particularly when strategic policies are being formulated with an urgent need for Gypsy Traveller representation to be included.

In the next chapter I have suggested a multi-agency model that is suitable for adoption nationally giving brief summaries of the roles of each member.

11. A suggested multi-agency response to Gypsy Traveller issues

Following the enactment of the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000**, it is unlawful for public authorities to be discriminatory and there is now an obligation on these authorities to make race equality a central part of their functions. Similarly with the enactment of the **Human Rights Act 1998**, examination of Convention rights are increasingly occurring regarding Gypsy Travellers. Given the various public authorities with statutory duties towards this community and the potential for more than one authority to work together on occasions, it is appropriate that multi-agency management groups are formed to deal with the management of Gypsy Traveller issues.

a) Multi-agency management

Throughout the United Kingdom there are many public authorities that have established multi-agency approaches to manage Gypsy Traveller issues in their areas of responsibility with varying agency membership and degrees of success. In England and Wales some of these partnerships are formed in accordance with the statutory requirements contained in the **Crime and Disorder Act 1998**. In Scotland and Northern Ireland similar partnerships have emerged or are evolving without particular statutory guidance.

The majority of police forces have policies regarding Gypsy Traveller issues and unauthorised encampment. However, there are a few that still have no defined policies in place. Given the nomadic lifestyle of Gypsy Travellers, it is desirable that there is similar management of these issues nationally, ensuring a degree of expectation in the Gypsy Traveller community of how they will be managed in each area they visit and also to develop good practices nationally.

b) Suggested multi-agency group membership

There is a need for numerous agencies to take part in the management of Gypsy Travellers issues. Below is the suggested minimum membership and brief responsibilities of a multi-agency management group suitable for individual police/regional authority areas.

1. Gypsy Traveller representatives

Role:

- a) Advise all members of the multi-agency group on local needs of Gypsy Travellers.
- b) Act as negotiators between transient Gypsy Travellers, the settled community and members of the multi-agency group.
- c) Promotion of Gypsy Traveller culture to improve understanding and relationships with the settled community.

It is preferable that local Gypsy Travellers themselves provide this representation however there are numerous national and local support groups who can ably represent Gypsy Travellers in the absence of local representatives (e.g. The Scottish Gypsy Travellers Association, Gypsy Council etc.).

There are many instances of good practice where negotiation and policy-making groups seek the views and opinions of the Gypsy Traveller community. However, equally, there are many instances where little or no dialogue takes place with policies being presented to Gypsy Travellers as opposed to involving them in the discussion and formulation process at an early stage.

It is essential that there is early consultation to ensure correct and appropriate policies are developed to address the needs of the Gypsy Traveller community.

2. Housing/Accommodation

Role:

- a) Assessment of accommodation needs for Gypsy Travellers including caravan sites and settled housing.
- b) Identification of appropriate locations for private, local authority and dedicated Gypsy Traveller sites.
- c) Identification of appropriate locations for transit/emergency stopping places.
- d) Analysis of Gypsy Traveller movement patterns in each area with particular emphasis on employment patterns.

It would seem appropriate that representatives from public authority Housing Departments, the managers of designated Gypsy Traveller sites, the owners of local caravan sites, both local authority and privately owned sites, or their representatives, should be part of the multi-agency group where relevant.

The awareness of all members of the multi-agency group should be raised regarding the statutory duties placed on local authorities by the various Housing Acts, regarding the provision of accommodation.

3. Planning

Role:

- a) To advise on planning issues relevant to the establishment of authorised sites.

- b) Identification of appropriate locations for transit/emergency stopping places causing minimum impact environmentally and to the existing settled community.
- c) Identification of particularly vulnerable areas where encampments cannot be tolerated.
- d) Advisors regarding planning matters relevant to Gypsy Travellers who may wish to establish accommodation on their own land.
- e) Advise on and identify appropriate locations where short term unauthorised encampments may be established.

The Planning representatives may also have a role to play advising on appropriate methods of protecting particularly vulnerable areas of land, which may be unable to sustain any encampment for particular reasons.

4. Highways

Role:

- a) Advise on safety aspects of roadside encampments.
- b) Identify particular lay-bys/disused stretches of roads, which may be suitable for transit sites or emergency stopping places.
- c) Identification of particular roadside areas where unauthorised encampments may be tolerated.
- d) Identification of particularly vulnerable roadside areas where unauthorised encampments cannot be tolerated.

Representation by the local Highways Department is essential to the group given the frequency of roadside encampments.

5. Environmental Health

Role:

- a) Assessment of the environmental impact of unauthorised encampments at a particular location.
- b) Provision of minimal services at identified transit/emergency stopping places e.g. refuse collection, water etc.
- c) Liaison with local settled community regarding public health issues resulting/perceived as a result of any unauthorised encampment.

- d) Liaison with Gypsy Travellers on any unauthorised encampment regarding public health issues, particularly any encampments located on hazardous sites.

Local Environmental Health officers are necessary to advise on public health implications regarding, in particular, unauthorised encampments and appropriate measures that can be taken to eliminate or minimise these issues.

6. Education

Role:

- a) Assessment of educational needs of Gypsy Travellers children in the particular area including pre-school, primary and secondary education.
- b) Assessment of educational needs of adult Gypsy Travellers with particular reference to training schemes relevant to Gypsy Travellers working practices.
- c) Where appropriate, provision of outreach teachers to encampments/sites or distance learning schemes.
- d) Examination of the role of local Community Education Departments relative to Gypsy Travellers.

The statutory duties of the Education Department should be identified and adhered to by the relevant authority. The awareness of all members of the multi-agency group should be raised regarding these statutory duties.

7. Health

Role:

- a) Ensure appropriate access to primary health care including outreach practitioners to complement the mainstream services.
- b) Ensure accessibility to local general practitioners within the particular Health Board area.
- c) Registration with an appropriate primary care practitioner to access immunisation programmes and health screening.
- d) Ensure accessibility to local dentists within the particular Health Board area.
- e) Provision of community care facilities to address the needs of the elderly, disabled and very young in the Gypsy Traveller community.
- f) Circulation of relevant information on health care to the Gypsy Traveller community.

Local Health authorities are central to any multi-agency management team. Given the low life expectancy and infant mortality rates within the Gypsy Traveller community, the importance of health issues should not be underestimated.

8. Social Services

Role:

- a) Provision of support to Gypsy Travellers resident in their particular area of responsibility.
- b) Provision of services relevant to families and children as well as the elderly and disabled within the Gypsy Traveller community.
- c) Liaise with appropriate Education and Health departments to identify joint responsibilities with these departments.

Local Social Service Departments should provide adequate support services and be consulted regarding the needs of Gypsy Travellers resident in their area of responsibility.

9. Police

Role:

- a) Represent the local police force in the group.
- b) Advise members of the group regarding national police policies particularly towards unauthorised encampments.
- c) Advise members of the group regarding the legislative powers available to the police and local policies regarding use of these powers.
- d) Inform members of the group of any issues reported to the local police force regarding particular encampments including any occurrences of anti-social behaviour.
- e) Liaise with representatives of the Criminal Justice and Legal Department agencies within the group.

The local police force should be consulted regarding all policing issues and in particular joint policies regarding policing of unauthorised encampments..

Police liaison officers should be present to assist and advise on policy formulation regarding any perceived or identified police support, which is necessary for other multi-agency members.

10. Criminal Justice

Role:

- a) The local prosecutor should identify the appropriate criminal law applicable in identified circumstances.
- b) To act as advisor to the local police force prior to the enforcement of any statutory powers regarding unauthorised encampments.
- c) If necessary to visit encampments prior to any action being instigated.

Protocols should be identified to enable immediate contact with the local prosecutor to obtain advice regarding enforcement of legislation.

11. Local Authority Legal Department

Role:

- a) To advise all members of the multi-agency group of their statutory duties.
- b) To ensure that all protocols developed within the multi-agency group are appropriate and lawful.
- c) To advise and ensure that any action proposed by a member of the group is lawful and the impact of that action on other members responsibilities and statutory duties.

The local authority Legal Departments membership is seen as essential given the potential for breaches or interference with rights contained in the **European Convention on Human Rights** and liabilities for civil wrongs by agencies regarding their respective general duties under the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000**.

12. Traveller support organisations

Role:

- a) Provision of support and advice to the local Gypsy Traveller communities.
- b) To communicate and publicise the intentions of formulated policies to the settled community.

There are many varied support organisations, which support and advise Gypsy Travellers. These organisations vary from area to area. Appropriate and relevant local organisations should be identified at an early stage and included in the multi-agency team as a means to communicate between the public authorities, Gypsy Travellers and the settled community. These support organisations may form part of other agencies such as Education.

Support organisations are also a viable and relevant means of achieving alternative representation for the Gypsy Traveller community within the multi-agency group.

13. Lead agency

Role:

- a) To act as the first point of contact within the multi-agency group from all members of the group and outside agencies.
- b) To activate the appropriate protocols to address particular issues.

It is essential that one of the abovementioned agencies be identified as a lead agency, which will implement agreed protocols to activate the involvement of the multi-agency group. As the majority of the relevant issues concern service provision to the Gypsy Traveller community this lead agency role is not appropriate for the local police force.

Given the main area of involvement for the multi-agency group is invariably unauthorised encampment and associated problems it would seem appropriate, but not essential, that the lead agency should be Housing or Environmental Health Authorities.

Additionally there is a role for the media who, whilst not members of the multi-agency group, can communicate policies and take an active role in minimising the perceptions of the settled community.

14. Media:

Role:

- a) To publicise the policies and proposals of the multi-agency group, particularly the settled community.
- b) To promote anti-discrimination within society in general and promote rights of Gypsy Travellers.

The local media should be consulted to progress awareness within the settled community of the issues affecting the Gypsy Traveller community.

The assistance available from the media should not be underestimated particularly the potential to minimise the settled communities perceptions and discrimination towards Gypsy Travellers.

At an early stage any multi-agency group should establish protocols regarding the actions of its members. The importance of establishing each member's statutory duties towards Gypsy Travellers and general duty to promote equality cannot be overstressed. Failure to identify these duties and any subsequent discriminatory

practices in implementing them may result in members of the group committing civil wrongs under race relations legislation.

Additionally the protocols formulated should identify the level of behaviour or actions by Gypsy Travellers, which are considered anti-social or unacceptable in particular areas. Where this behaviour occurs it should act as a recognised ‘trigger point’ for intervention by the appropriate public authority, which is recognisable to all members of the multi-agency group but more importantly, the Gypsy Traveller community. By effectively formulating a code of acceptable practice an expectation and realisation of acceptable behaviour should develop within the settled and Gypsy Traveller communities.

It is also appropriate to keep locally elected representatives informed of policies and any decisions made regarding non-harassment of unauthorised encampments. It is frequently the case that local elected representatives are subjected to complaints from the settled community and, by keeping them informed, it may be possible to minimise complaints and reassure local communities.

c) Conclusion

The above multi-agency response to Gypsy Travellers issues represents a suggested solution, which can be utilised in individual police areas with few alterations. Whilst it represents a substantial number of agencies, following the formulation of initial protocols there should be a requirement for the full agency to meet only periodically to amend policies and examine progress on the main issues. It is not prescriptive and there will undoubtedly be local circumstances, which require additional roles to be undertaken by members of the multi-agency group. Similarly the protocols within the multi-agency group would be developed locally to suit the requirements of individual areas.

The advantage of a uniform national framework is that some uniformity of policy can be formulated which will minimise the existing confusion regarding the appropriate method of managing Gypsy Traveller issues within public authorities.

Whilst the roles of several of the suggested members of the multi-agency group have been discussed in the Department of the Environment, Transport and Regions publication¹ and the Advisory Committee on Scotland’s Travelling People Ninth Term Report in Scotland, and their respective roles are recognised as good practice, in reality multi-agency approaches remain fragmented nationally with little uniformity between areas.

A further, and very important, advantage of a uniform national policy is that, given the nomadic lifestyle of Gypsy Travellers, a uniform method of policy making will increase the expectations and understanding of Gypsy Travellers as they move from area to area.

By adopting similar multi-agency groups it should be possible for each group to communicate nationally to further assist in the development of uniform policies and best practices regarding Gypsy Traveller issues.

¹ Managing Unauthorised Camping – A Good Practice Guide.

The introduction of multi-agency groups nationally would progress many of the issues, which have led to discriminatory practices in the past, hopefully eliminating such practices in future and ensuring best practices are adopted.

12. A suggested local approach to policing unauthorised encampments

a) Introduction

In each policing area, there are generally similar requirements regarding the management of Gypsy Traveller issues at a localised level. There may be infrequent visits of Gypsy Travellers to an area, seasonal visits annually or permanent residence in an area. All have to be managed appropriately and may involve unauthorised encampments of varying proportions. Many Gypsy Travellers camp at traditional stopping places on each occasion they visit a particular area, the majority of which are unauthorised encampments of varying sizes. It is essential that the pattern of movement and location of traditional stopping places be identified as accurately as possible to plan an appropriate response.

Responses to unauthorised encampments vary from immediate enforcement to non-harassment depending on the particular location of the encampment and/or individual policy adopted by the particular police force or public authority.

In Scotland there is also a general presumption against prosecution regarding unauthorised encampment by the Crown Office. Local Procurators Fiscal, however, retain discretion to prosecute depending on the particular circumstances of a case. Nevertheless, there are various powers contained in legislation, which are available, if appropriate to remove Gypsy Travellers and their vehicles from unauthorised encampments irrespective of the prosecution policy.

In the past reliance has been placed, in the mainland United Kingdom, on the provisions of Section 61 of the **Criminal Justice & Public Order Act 1994**, Removal of Trespassers, as a means of ensuring that Gypsy Travellers move on from unauthorised encampments. Additionally, where there are very large numbers of Gypsy Travellers, reliance has occasionally been placed on Section 14 and 14A of the **Public Order Act 1986**. In Scotland reliance is also additionally placed on Section 3 of the **Trespass (Scotland) Act 1865** and road traffic legislation. However, local Procurators Fiscal will only consider prosecuting these types of offences in extreme cases of nuisance or public danger resulting from a particular encampment.

Invariably the local police force is the first point of contact for both local residents and the appropriate public authority, when an unauthorised encampment is established. It should however always be borne in mind when dealing with Gypsy Travellers, there is a balance to be struck between the rights of the general public and those of the Gypsy Traveller community.

b) Future management of Gypsy Traveller encampments

Given the current developments in human rights and race relations law, in the future there will be an increased responsibility placed on public authorities to provide Gypsy Travellers with services such as health, education, housing etc. as equality legislation develops. Gaining access to these services can, at present, be problematical for Gypsy Travellers.

It is essential that future policies take cognisance of the **European Convention on Human Rights**, the **Human Rights Act 1998** and the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000**. Particularly the potential liabilities for members of any multi-agency management group for civil wrongs committed by members of the group following enactment of the **Human Rights Act 1998** and **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000**.

Additionally cognisance should be taken of the future implications of Article 13 of the **Treaty of Amsterdam** and **Council Directive 2000/43/EC** (the Race Directive) when they become law in the United Kingdom.

c) Police multi-agency involvement

A fuller discussion on the full membership and requirements of a multi-agency group has been given previously. The police commitment to this group locally is detailed below.

1. Gypsy Traveller Unit:

Where there are a substantial number of Gypsy Travellers visiting a police area it may be desirable to have a dedicated combined police/local authority unit dealing with policing/local authority issues involved in the management of Gypsy Travellers. The viability of such a unit will be dependent on the number of Gypsy Travellers in a particular area and the localised issues that arise. If such a unit is formed the roles detailed at 2 and 3 below could be part of its remit and in the case of the local liaison officer may be carried out by more than one officer dependent on the Gypsy Traveller population in the particular area.

2. Force liaison officer:

The main role of this officer would be to represent the local police force at a national level including ACPO/ACPOS working group membership to ensure best practices and policies are shared, and local policies developed accordingly. Membership of localised multi-agency management groups also encompasses this role, advising on local police policy and developing national practices. Additionally this officer will deal with Gypsy Traveller issues force wide, liaising with other police forces regarding uniform and consistent policing strategies. The Force Liaison Officer represents the first point of contact with the police force from members of the multi-agency group and he should liaise with other interested agencies to ensure compatibility of policies and strategies.

Guidance should be cascaded to a local level to ensure a uniform and consistent management policy, enforcement policy and response to local Gypsy Traveller issues are implemented.

3. Local liaison officer:

It is also desirable that a local officer in each policing area liaises with locally based Gypsy Travellers, public authorities and other relevant local service providers and agencies. Whether this officer undertakes this role on a full or a part-time basis will depend on the needs of the particular area concerned. Additional responsibilities also include ensuring local procedures are compliant with **European Convention on Human Rights** requirements.

4. Training implications:

There are several identified training needs attached to the posts detailed above from racial awareness/diversity issues to legislative awareness regarding race relations legislation, statutory duties of other public authorities and appropriate criminal legislation and its application to the Gypsy Traveller community.

d) Existing method of managing unauthorised Gypsy Traveller encampments

At the time of writing this report, the majority of police forces in the United Kingdom had policy documents regarding management of unauthorised encampments with a minority of those who replied, 5 (14%), having no policy documents. The majority of these policy documents rely on the same legislative powers of enforcement (The **Criminal Justice and Public Order Act 1994**, Section 61) however, use of these powers are variable between forces.

Individual police forces with policies adopted varying enforcement philosophies ranging from proactive non-harassment to reactive enforcement policies¹. Most adopted individual policies with little reference made to the policies adopted in neighbouring force areas, resulting in confusion within the Gypsy Traveller community regarding acceptable practices as they travel between these areas. In common with multi-agency management it is desirable that a uniform national policy is developed to deal with unauthorised encampments.

In the following section I have attempted to suggest a proactive non-harassment method of managing unauthorised Gypsy Traveller encampments.

e) Suggested method of managing unauthorised Gypsy Traveller encampments

The method of management of unauthorised encampments detailed below is a response to small/medium encampments, which represents the majority of unauthorised encampments nationally.

Where it is established there are very large numbers of Gypsy Travellers at an unauthorised encampment there may be a requirement to remove/restrict such

¹ The Management of Unauthorised Camping: Monitoring the Good Practice Guidance – Ch. 3.

encampments using the statutory powers contained in the **Public Order Act 1986** and/or the **Criminal Justice and Public Order Act 1994**. Such very large encampments occur infrequently and require an alternative method of management. Each large encampment should be managed depending on its individual circumstances.

Method:

1. Where an unauthorised encampment is discovered or reported, contact should be made by local police officers or local authority liaison officers to establish the number and type of Gypsy Travellers, length of stay at the particular stopping place and where they intend moving to at the end of their stay.
2. At an early stage a Command and Control incident should be created to ensure that a log of any incidents, contact and enquiries is maintained for the duration of the Gypsy Travellers stay at a particular encampment. The log will provide evidence regarding compliance with the **European Convention on Human Rights** and other legislation.
3. Where the contact or interview is in response to the report of a crime or offence either by local residents or Gypsy Travellers the enquiry should be dealt with according to normal local procedures.
4. The information obtained and notification of the unauthorised encampment should be forwarded to the local police liaison officer and/or local authority liaison officer.
5. Following receipt of this information the local police liaison officer or local authority liaison officer should contact the force liaison officer and/or the appropriate public authority liaison officer, and inform them of the unauthorised encampment. Details of location, number and type of Gypsy Travellers should be provided bearing in mind the constraints placed on disclosure of information made by the **Data Protection Act 1998**.
6. Local authority liaison officers should continue to make contact with the occupants of the unauthorised encampment at regular intervals to assess humanitarian and welfare needs of the Gypsy Travellers and monitor the general condition of the encampment.
7. Where necessary or appropriate, local police officers should accompany public authority representatives dealing with Gypsy Travellers when attending unauthorised encampments to ensure public order is maintained.
8. A policy of non-harassment towards Gypsy Travellers is a preferred option however, a balance has to be struck between the rights and concerns of local residents and landowners and the degree of nuisance or public danger occurring as a result of any particular encampment. When there are justifiable reasons the Gypsy Travellers should be requested to leave any unauthorised encampment.

9. In the event of the Gypsy Travellers not leaving such encampments following negotiation, the relevant local landowners should seek civil eviction in the case of private ground. In the case of local authority owned ground consideration should be given to civil eviction but also any available statutory powers. It is desirable that police officers be present when any eviction occurs to ensure no conflict occurs between the parties concerned and the correct procedures are carried out with minimal risk to all parties.
10. Prior to removal of any unauthorised encampment the relevant public authorities and also the particular police force concerned should undertake ‘considerations of common humanity’ regarding the occupants of the site.
11. On the mainland United Kingdom local police forces should only consider using the powers contained within Sections 61 and 62 of the **Criminal Justice & Public Order Act 1994** when negotiation and civil means have been exhausted or the particular encampment requires immediate removal on undue public nuisance or public safety grounds.
12. It should be borne in mind there is a general presumption against prosecution of Gypsy Travellers for unauthorised encampment by the Crown Office in Scotland. However, there are powers contained in the relevant legislation which can be applied, if appropriate, to evict Gypsy Travellers and their vehicles from encampments.
13. Any decision to evict an unauthorised encampment should only be implemented in accordance with the multi-agency group’s existing protocols or following consultation with all members of the multi-agency group, unless there are immediate overriding public nuisance or public safety reasons justifying such actions.

It is generally the case that the majority of the Gypsy Traveller community are law abiding, with a small minority who may take part in criminal or anti social behaviour, which unfortunately stereotypes the community as a whole. It is generally the behaviour of this minority which causes antagonism and resentment within the settled community. It is rare to discover evidence suggesting that the presence of Gypsy Travellers in particular areas result in measurable increases in recorded crime.

In an effort to alter and minimise such anti-social behaviour, if or when it occurs, consideration should be given, where available and appropriate, to applications for anti-social behaviour orders under Section 1 (England and Wales) and Section 19 (Scotland) of the **Crime and Disorder Act 1998**. The circumstances where such orders are appropriate are variable. However, identification of basic threshold levels of particular anti-social behaviour should be possible by each multi-agency group and protocols agreed locally regarding application for such orders.

A toleration or non-harassment policy as suggested above, towards unauthorised encampment, represents a holistic approach in areas where there are no appropriate official sites for Gypsy Travellers. In the very few areas with adequate official sites it may be appropriate to have a policy of eviction for unauthorised encampment where there are sufficient available pitches and the unauthorised encampment is a short

distance from the official site². If such unauthorised encampments justify a policy of eviction, local protocols should be established within multi-agency management groups and, it is suggested, the method detailed above in paragraphs 1 – 8, 10, 12 (applicable to Scotland only) and 13 should be adopted prior to exercise of the police powers contained within the **Criminal Justice and Public Order Act 1994**.

It is essential however, where there is a policy of eviction in place, there should also be a policy of accommodation for Gypsy Travellers in the particular area. To engage in repeated eviction without provision of available accommodation frequently results in public authorities developing a reactive stance resulting in unauthorised encampment in less suitable sites. Such singular policies of eviction become increasingly resource intensive, expensive and, by their nature, increase the social exclusion of Gypsy Travellers (See Case Study 5, Chapter 10). It is suggested however that the method detailed in full above is a preferred option in the greater majority of instances of unauthorised encampment.

e) Management of New Age Traveller encampments

The introduction of any non-harassment policy regarding Gypsy Travellers and unauthorised encampment will, by its nature, raise the expectations of non-harassment in other Traveller groups whose lifestyles result in unauthorised encampments. The main identifiable group of Travellers whose expectations of non-harassment will be raised are those known as New Age Travellers.

Travellers defined as New Age Travellers are not an ethnic minority at present and are therefore not recognised as such within the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000** or the **Race Relations (Northern Ireland) Order 1997**.

It is suggested however that the previously described method of managing unauthorised Gypsy Traveller encampments can, with the deletion of paragraph 12, be considered at least as a starting point regarding management of New Age Traveller encampments. Invariably where there is a Gypsy Traveller Liaison Officer in a particular area, that person will also be the first point of contact regarding any unauthorised encampment irrespective of the identity or ethnic status of the Travellers concerned. The alternative lifestyle adopted by New Age Travellers presents different considerations from a management perspective. Whilst the majority of New Age Travellers are law abiding, many of the problems that have occurred within this minority in the past do not manifest themselves in the Gypsy Traveller community e.g. raves, drug culture etc.

On the mainland United Kingdom the relevant sections contained within the **Criminal Justice & Public Order Act 1994** and the **Public Order Act 1986** apply fully to this minority community in relation to unauthorised encampment, collective trespass etc.

² *First Progress Report of the Committee to monitor and co-ordinate the implementation of the recommendations of the Task Force on the Travelling Community.* - In the Republic of Ireland, legislation was enacted permitting removal of unauthorised encampments only within a 1mile radius of official sites. (The Housing (Traveller Accommodation) Act 1998. Section 32).

It is suggested that, given the expectation created by non-harassment policies, the initial response to encampments of New Age Travellers should be as detailed at **d)** above. Each encampment should be assessed separately and managed appropriately depending on the particular issues encountered.

13. Police training requirements

a) Introduction

Throughout the United Kingdom various schemes are being utilised and implemented to raise police officers' racial awareness. These schemes are designed to raise racial awareness as opposed to providing officers with the in-depth knowledge required when dealing with multi-agencies in the field of race relations.

Given the potential for breaches or interference with Convention rights and the possibility of committing civil wrongs when dealing with Gypsy Travellers, there is a requirement for increased training both for Force and Local Liaison Officers.

b) Training requirements

Current awareness of Gypsy Traveller, culture, history and applicable legislation available to assist in the management of this community remains poor nationally, despite current racial awareness and diversity training schemes. Knowledge of these issues will undoubtedly increase as training progresses however there is a need for officers engaged in specialised roles policing the Gypsy Traveller community to receive additional training.

1. Force liaison officer

Each Force Liaison Officer will require additional training in the following areas:

- a) Increased knowledge of the rights contained in the **European Convention on Human Rights** with reference to those particularly relevant to Gypsy Travellers and unauthorised encampments. i.e. Articles 8 and 14.
- b) Additional training in the current applicable legislation and case law indicating the duties expected of public authorities and police authorities regarding unauthorised encampments e.g. 'considerations of common humanity.'
- c) Awareness of the statutory duties placed on public authorities that are members of the multi-agency group e.g. Housing, Education, Social Work, etc.
- d) Increased knowledge of the duties placed on the police by the **Race Relations Act 1976** as amended by the **Race Relations (Amendment) Act 2000** and the **Race Relations (Northern Ireland) Order 1997** where applicable.
- e) An overview of Gypsy Traveller culture similar to that detailed below for Local Liaison Officers.

- f) Increased knowledge of other nomadic minorities who may live in unauthorised encampments e.g. New Age Travellers.

2. Local liaison officer

The Local Liaison Officer will have either a full or part-time responsibility for this role dependent on the number of Gypsy Travellers in a particular area.

Each Local Liaison Officer will require a general awareness of the areas of training required by the Force Liaison Officer however not to the same degree.

Local Liaison Officers will require training in the following areas:

- a) A general awareness of Gypsy Travellers' culture and history is essential when dealing with Gypsy Travellers dealing with Gypsy Travellers on a daily basis.
- b) Awareness of local Gypsy Traveller culture, habits and customs. It is often the case that Gypsy Travellers frequent an area for particular forms of work or social events.
- c) A general knowledge of local Gypsy Traveller groups and representatives.
- d) A knowledge of local service providers for Gypsy Travellers, their contact numbers and representatives.

3. Local police officers

Whilst current diversity awareness training nationally goes some way to heightening police officers' awareness, as in society in general, awareness of the culture and history of white ethnic minorities, particularly Gypsy Travellers, requires to be reinforced. The Police Complaints Authority commented :

*'Our members have noted a growing number of examples during the year of allegations of discriminatory treatment of travellers. We are dismayed that police officers, on and off duty, continue to use offensive language and stereotypes. Such behaviour is incompatible with ethical and respectful policing and evidence of it should invariably result in formal misconduct action.'*¹

In areas where there are large numbers of Gypsy Travellers there may be a requirement to provide operational officers with additional training similar to that detailed for local liaison officers.

¹ Annual Report and Accounts of the independent Police Complaints Authority – 1 April 2001 – 31 March 2002. page 65.

Given the nature of the information required by local officers it is suggested that consideration could be given to providing this general training by distance learning techniques or to a degree by aide memoire.

The training needs indicated above represent a minimum. They are not prescriptive and may require local alteration dependent on the particular circumstances encountered in different police areas.

Appendix A

Trespass offences relevant to Scotland

1. The Trespass (Scotland) Act 1865.

Section 3 creates the following offence:

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 hereinafter provided. (Section 3, as amended by Schedule 1Pt. VI, Statute Law (Repeals) Act, 1973 and Schedule 9, Roads (Scotland) Act, 1984).

2. The Criminal Justice and Public Order Act 1994.

Section 61 creates the offence of collective trespass. (See Appendix B for full details).

3. The Public Order Act 1986.

Sections 14 and 14A impose conditions on assemblies and prohibit trespassory assemblies respectively. (See Appendix B for full details).

Appendix B

Trespass offences relevant to England and Wales

1) The Criminal Justice and Public Order Act 1994

a) Powers to remove trespassers on land

Section 61 creates the following offence of collective trespass:

S. 61 – (1) If the senior police officer present at the scene reasonably believes 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, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or

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

he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

(2) Where the persons in question are reasonably believed by the senior police officer to be persons who were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions specified in subsection (1) are satisfied after those persons became trespassers before he can exercise the power conferred by that subsection.

(3) A direction under subsection (1) above, if not communicated to the persons referred to in subsection (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.

(4) If a person knowing that a direction under subsection (1) above has been given which applies to him -

(a) fails to leave the land as soon as reasonably practicable, or

(b) having left again enters the land as a trespasser within the period of three months beginning with the day on which the direction was given,

he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale, or both.

(5) A constable in uniform who reasonably suspects that a person is committing an offence under this section may arrest him without a warrant.

(6) In proceedings for an offence under this section it is a defence for the accused to show -

(a) that he was not trespassing on the land, or

- (b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser.

(7) In its application in England and Wales to common land this section has effect as if in the preceding subsections of it -

- (a) references to trespassing or trespassers were references to acts and persons doing acts which constitute either a trespass as against the occupier or an infringement of the commoners' rights; and
- (b) references to "the occupier" included the commoners or any of them or, in the case of common land to which the public has access, the local authority as well as any commoner.

(8) Subsection (7) above does not -

- (a) require action by more than one occupier; or
- (b) constitute persons trespassers as against any commoner or the local authority if they are permitted to be there by the other occupier.

(9) In this section -

"common land" means common land as defined in section 22 of the [1965 c. 64.] Commons Registration Act 1965;

"commoner" means a person with rights of common as defined in section 22 of the [1965 c. 64.] Commons Registration Act 1965;

"land" does not include -

- (a) buildings other than -
 - (i) agricultural buildings within the meaning of, in England and Wales, paragraphs 3 to 8 of Schedule 5 to the [1988 c. 41.] Local Government Finance Act 1988 or, in Scotland, section 7(2) of the [1956 c. 60.] Valuation and Rating (Scotland) Act 1956, or
 - (ii) scheduled monuments within the meaning of the [1979 c. 46.] Ancient Monuments and Archaeological Areas Act 1979;
- (b) land forming part of -
 - (i) a highway unless it falls within the classifications in section 54 of the [1981 c. 69.] Wildlife and Countryside Act 1981 (footpath, bridleway or byway open to all traffic or road used as a public path) or is a cycle track under the [1980 c. 66.] Highways Act 1980 or the [1984 c. 38.] Cycle Tracks Act 1984; or

(ii) a road within the meaning of the [1984 c. 54.] Roads (Scotland) Act 1984 unless it falls within the definitions in section 151(2)(a)(ii) or (b) (footpaths and cycle tracks) of that Act or is a bridleway within the meaning of section 47 of the [1967 c. 86.] Countryside (Scotland) Act 1967;

"the local authority", in relation to common land, means any local authority which has powers in relation to the land under section 9 of the Commons Registration Act 1965;

"occupier" (and in subsection (8) "the other occupier") means -

- (a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him; and
- (b) in Scotland, the person lawfully entitled to natural possession of the land;

"property", in relation to damage to property on land, means -

- (a) in England and Wales, property within the meaning of section 10(1) of the [1971 c. 48.] Criminal Damage Act 1971; and
- (b) in Scotland, either -
 - (i) heritable property other than land; or
 - (ii) corporeal moveable property,

and "damage" includes the deposit of any substance capable of polluting the land;

"trespass" means, in the application of this section -

- (a) in England and Wales, subject to the extensions effected by subsection (7) above, trespass as against the occupier of the land;
- (b) in Scotland, entering, or as the case may be remaining on, land without lawful authority and without the occupier's consent; and

"trespassing" and "trespasser" shall be construed accordingly;

"vehicle" includes -

- (a) any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and
- (b) a caravan as defined in section 29(1) of the [1960 c. 62.] Caravan Sites and Control of Development Act 1960;

and a person may be regarded for the purposes of this section as having a purpose of residing in a place notwithstanding that he has a home elsewhere.

b) Supplementary powers of seizure

Section 62 creates the following powers:

S. 62 - (1) If a direction has been given under section 61 and a constable reasonably suspects that any person to whom the direction applies has, without reasonable excuse-

- (a) failed to remove any vehicle on the land which appears to the constable to belong to him or to be in his possession or under his control; or
- (b) entered the land as a trespasser with a vehicle within the period of three months beginning with the day on which the direction was given, the constable may seize and remove that vehicle.

(2) In this section, "trespasser" and "vehicle" have the same meaning as in section 61.

2. The Public Order Act 1986

Sections 14 and 14A impose conditions on assemblies and prohibit trespassory assemblies respectively.

a) Imposing conditions on public assemblies

Section 14 - (1) If the senior police officer, having regard to the time or place at which and the circumstance in which any public assembly is being held or is intended to be held, reasonably believes that –

- (a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or
- (b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act they have a right not to do,

he may give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.

(2) In subsection (1) 'the senior police officer' means –

- (a) in relation to an assembly being held, the most senior in rank of the police officers present at the scene, and

(b) in relation to an assembly intended to be held, the chief officer of police.

(3) A direction given by a chief officer of police by virtue of subsection (2)(b) shall be given in writing.

(4) A person who organises a public assembly and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(5) A person who takes part in a public assembly and knowingly fails to comply with a condition imposed under this section is guilty of an offence, but it is a defence for him to prove that the failure arose from circumstances beyond his control.

(6) A person who incites another to commit an offence under subsection (5) is guilty of an offence.

(7) A constable in uniform may arrest without warrant anyone he reasonably suspects is committing an offence under subsection (4), (5) or (6).

(8) A person guilty of an offence under subsection (4) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

(9) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(10) A person guilty of an offence under subsection (6) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both, notwithstanding section 45(3) of the Magistrates' Courts Act 1980.

b) Prohibiting trespassory assemblies

Section 14A - (1) If at any time the chief officer of police reasonably believes that an assembly is intended to be held in any district at a place on land to which the public has no right of access or only a limited right of access and that the assembly –

(a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's right of access, and

(b) may result - (i) in serious disruption to the life of the community, or (ii) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument,

he may apply to the council of the district for an order prohibiting for a specified period the holding of all trespassory assemblies in the district or a part of it, as

specified.

(2) On receiving such an application, a council may -

- (a) in England and Wales, with the consent of the Secretary of State make an order either in the terms of the application or with such modifications as may be approved by the Secretary of State; or
- (b) in Scotland, make an order in the terms of the application.

(3) Subsection (1) does not apply in the City of London or the metropolitan police district.

(4) If at any time the Commissioner of Police for the City of London or the Commissioner of Police of the Metropolis reasonably believes that an assembly is intended to be held at a place on land to which the public has no right of access or only a limited right of access in his police area and that the assembly -

- (a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's right of access, and
- (b) may result - (i) in serious disruption to the life of the community, or (ii) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument,

he may with the consent of the Secretary of State make an order prohibiting for a specified period the holding of all trespassory assemblies in the area or a part of it, as specified.

(5) An order prohibiting the holding of trespassory assemblies operates to prohibit any assembly which -

- (a) is held on land to which the public has no right of access or only a limited right of access, and
- (b) takes place in the prohibited circumstances, that is to say, without the permission of the occupier of the land or so as to exceed the limits of any permission of his or the limits of the public's right of access.

(6) No order under this section shall prohibit the holding of assemblies for a period exceeding 4 days or in an area exceeding an area represented by a circle with a radius of 5 miles from a specified centre.

(7) An order made under this section may be revoked or varied by a subsequent order made in the same way, that is, in accordance with subsection (1) and (2) or subsection (4), as the case may be.

(8) Any order under this section shall, if not made in writing, be recorded in writing as

soon as practicable after being made.

(9) In this section and sections 14B and 14C –

"assembly" means an assembly of 20 or more persons;

"land" means land in the open air; "occupier" means - (a) in England and Wales, the person entitled to possession of the land by virtue of an estate or interest held by him; or (b) in Scotland, the person lawfully entitled to natural possession of the land, and in subsections (1) and (4) includes the person reasonably believed by the authority applying for or making the order to be the occupier;

"public" includes a section of the public; and

"specified" means specified in an order under this section.

(10) In relation to Scotland, the references in subsection (1) above to a district and to the council of the district shall be construed –

(a) as respects applications before 1st April 1996, as references to the area of a regional or islands authority and to the authority in question; and

(b) as respects applications on and after that date, as references to a local government area and to the council for that area.

(11) In relation to Wales, the references in subsection (1) above to a district and to the council of the district shall be construed, as respects applications on and after 1st April 1996, as references to a county or county borough and to the council for that county or county borough.

"limited", in relation to a right of access by the public to land, means that their use of it is restricted to use for a particular purpose (as in the case of a highway or road) or is subject to other restrictions

c) Interpretation

Section 16. In this part –

“the City of London” means the City as defined for the purposes of the Acts relating to City of London police;

“the metropolitan police district” means that district as defined in section 76 of the London Government Act 1963;

“Public assembly” means an assembly of 20 or more persons in a public place which is wholly or partly open to the air;

“public place” means-

(a) any highway, or in Scotland any road within the meaning of

the Roads (Scotland) Act 1984, and

(b) any place to which at the material time the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission;

“public procession” means a procession in a public place.

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