

Removal of Unauthorised Encampments from Council owned Land

Legal Duties of Local Authority

Gypsies and Travellers are a recognised ethnic group in the Race Relations Act 1976 (as amended 2000)

Local authorities have a statutory duty to promote race equality.

Consideration must also be given to The Human Rights Act 1998.

Background

Traditionally the Council has followed Part 55 of the Civil Procedure Rules in the County Court when dealing with unauthorised encampments. The attached flow chart (appendix 1) shows the process to be followed in summary it is as follows:-

When encampment arrives operational services attend to serve 24 hours' notice to leave and undertake a welfare assessment to see if there are any medical or other reasons why the encampment needs to remain in that location. If it does, depending on where the encampment is located a period of toleration may be considered.

If the encampment needs to be moved on quickly then an appointment would be made at the County Court to issue the papers and obtain a court date. The fee is £335. The papers would then be served on the travellers giving 2 clear days' notice of the Court date.

On the court date an order for possession would be requested. Generally the Travellers do not attend however on occasion they have attended when one of their group has been heavily pregnant and another elderly gentleman required to remain in the area to attend a specialist medical appointment. The Court then permitted a two week extension.

If the Court does grant the possession order forthwith this is then served on the Travellers and if they then do not leave a warrant is issued for the Court Bailiff to seek vacant possession.

'New' process followed

The most recent Borough Encampment was addressed using the Magistrates Court route under Section 78 of the Criminal Justice and Public Order Act 1994 – see flow chart (appendix 2) attached. As will be noted a number of the steps are the same as the County Court route, however there is no fee payable.

Once the S77 Notice (24 hour notice to leave) has been served and the encampment has not moved on an application is made to the Magistrates Court for an order requiring the removal of any vehicle

or other property from the land and any person residing in it. The Court will be asked to hear the application on the first available date (usually within one or two days) whilst there is no requirement to give two clear working days' notice of the court date, 'sufficient' notice must be given.

The relevant officer will need to take the oath and satisfy the court that the relevant notice and application have been served on the encampment.

If the Magistrates' Court grants the Order to the Council then the Council can on 24 hours' notice enter the land to execute the Order by entering the land and taking in relation to any vehicle or property to be removed in pursuance of the order such steps for securing entry and rendering it suitable for removal. This would mean either Council officers attending themselves to effect removal or instructing a private bailiff company which may incur expense.

It is also an offence if any person obstructs any person in the exercise of such power punishable by fine (on conviction). (App 3 & 4)

Other options:-

Police Powers under Criminal Justice and Public Order Act

Under Section 61 of the CJPOA if a senior police officer believes that two or more persons are trespassing on land and have caused damage to land or property or used threatening, abusive or insulting words or behaviour towards an employee or agent or have six or more vehicles on the land then he may direct those persons to leave and remove their vehicles or other property. (App 5)

Injunction

Another Local authority was successful in obtaining an injunction using its powers under S222 Local Government Act 1972 in relation to a specific area of land. However it needed a considerable amount of evidence (9 lever arch folders) that the encampments were having a detrimental effect on the inhabitants. They had experienced 110 unauthorised encampments in 15 months, up to 280 people, 69 caravans and dogs and horses. The Council had spent over £25k in clean-up costs.

An injunction in itself will not stop an unauthorised encampment. If an encampment sets up in breach of an injunction then an application for breach would need to be made to the County Court. Evidence of breach needs to be proved to the criminal standard of proof and even if a relatively quick return date can be obtained there is no guarantee it will be dealt with on that date or even before the encampment has moved on.

PSPO

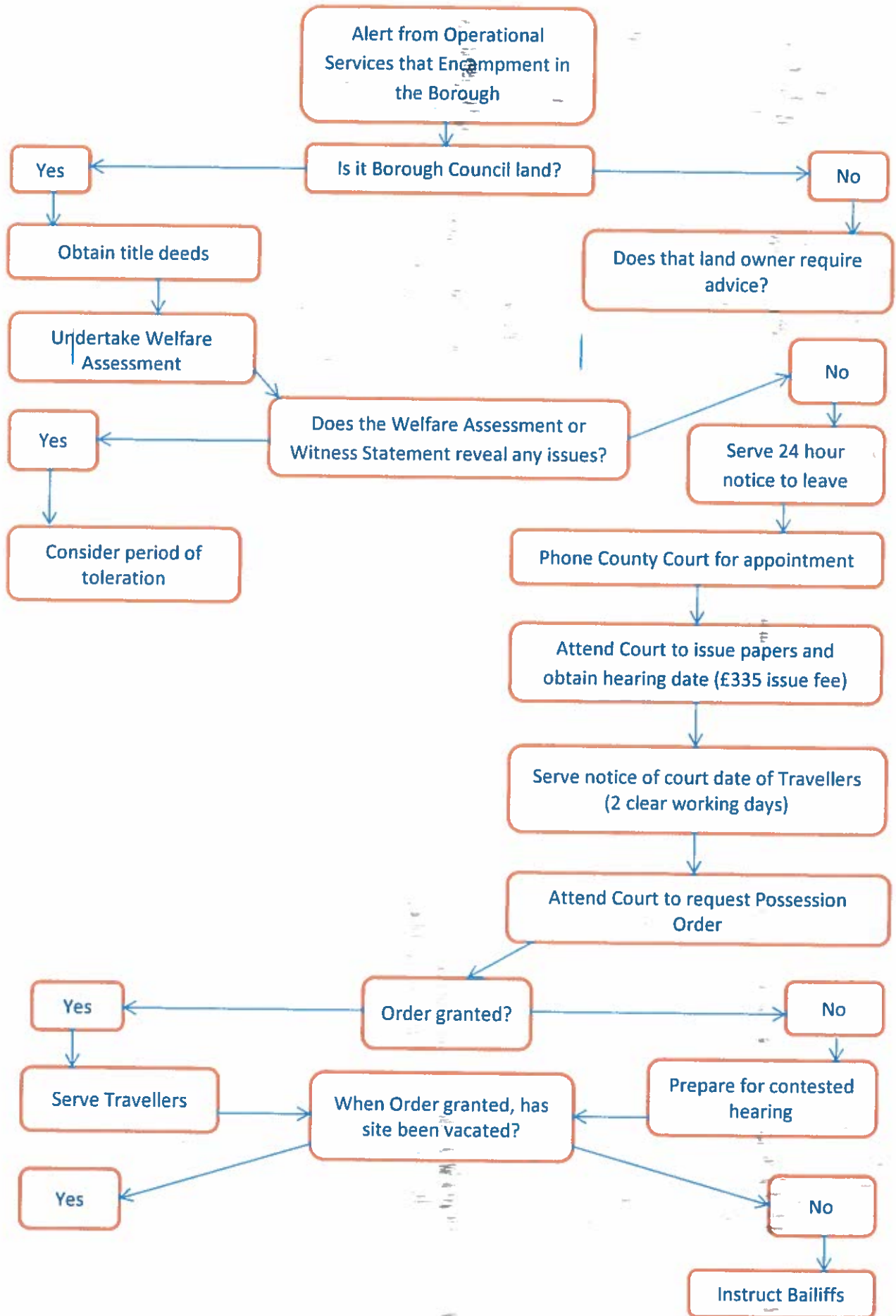
These have previously been considered in terms of prohibiting the setting up of unauthorised encampments. The Equality Commission has expressed concerns about Local Authorities using such orders. They may be in conflict of the Local Authorities duty to facilitate the Gypsy and Traveller way

of life (as set out in the Race Relations Legislation) as PSPO's are enforced as criminal offence, therefore the encampments presence on land could lead to criminal action.

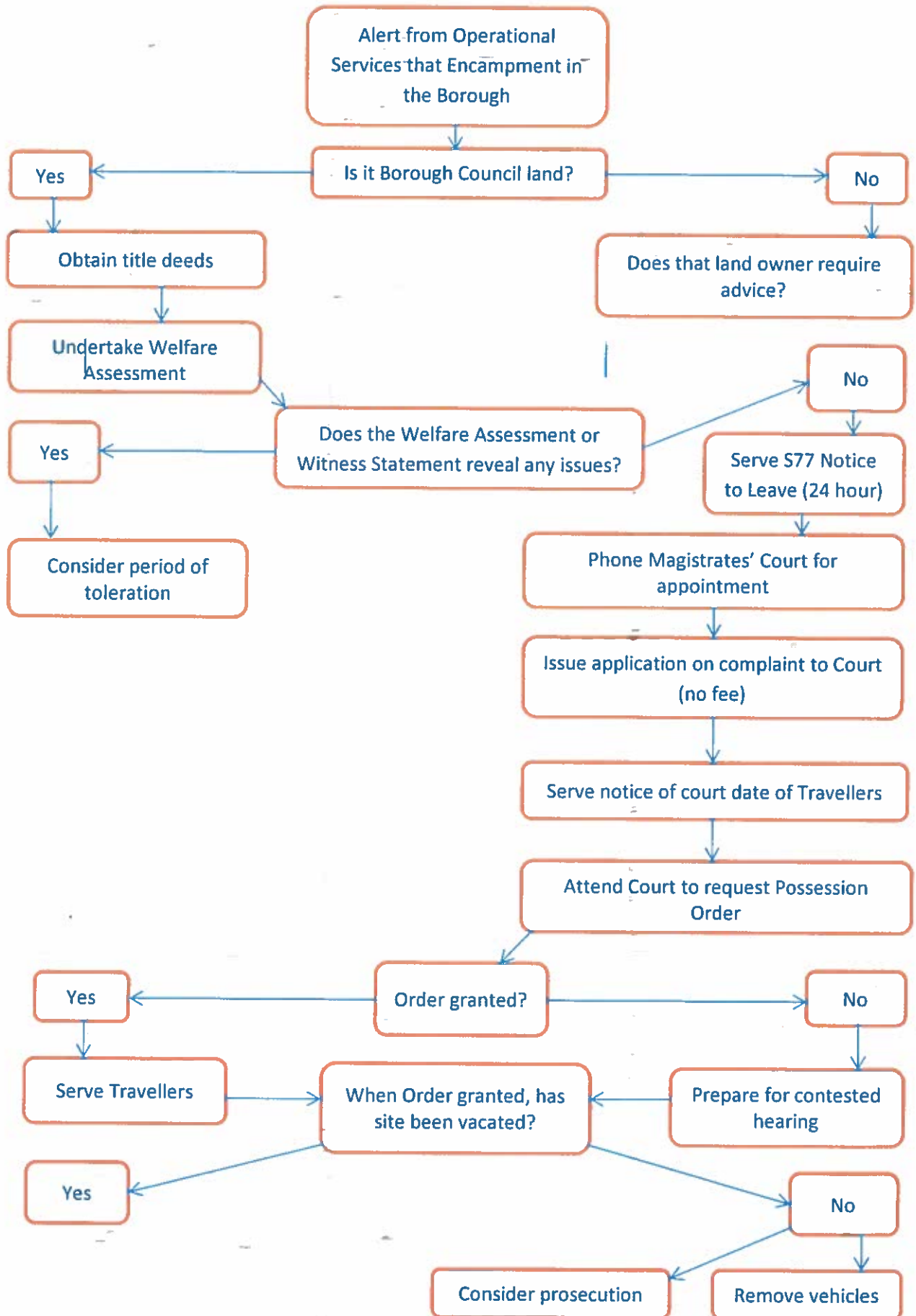
The Constitution

Under appendix 4 – Delegations (Miscellaneous) the Head of Business Improvement, Central Services and Partnerships has authority to secure the eviction of trespassers from Council land. (App 6)

FLOW CHART FOR UNAUTHORISED ENCAMPMENTS – COUNTY COURT ROUTE



FLOW CHART FOR UNAUTHORISED ENCAMPMENTS – MAGISTRATES’ COURT ROUTE





Criminal Justice and Public Order Act 1994

1994 CHAPTER 33

PART V

PUBLIC ORDER: COLLECTIVE TRESPASS OR NUISANCE ON LAND

Powers to remove unauthorised campers

77 Power of local authority to direct unauthorised campers to leave land.

- (1) If it appears to a local authority that persons are for the time being residing in a vehicle or vehicles within that authority's area—
 - (a) on any land forming part of a highway;
 - (b) on any other unoccupied land; or
 - (c) on any occupied land without the consent of the occupier,the authority may give a direction that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they have with them on the land.
- (2) Notice of a direction under subsection (1) must be served on the persons to whom the direction applies, but it shall be sufficient for this purpose for the direction to specify the land and (except where the direction applies to only one person) to be addressed to all occupants of the vehicles on the land; without naming them.
- (3) If a person knowing that a direction under subsection (1) above has been given which applies to him—
 - (a) fails, as soon as practicable, to leave the land or remove from the land any vehicle or other property which is the subject of the direction, or
 - (b) having removed any such vehicle or property again enters the land with a vehicle within the period of three months beginning with the day on which the direction was given,

Changes to legislation: Criminal Justice and Public Order Act 1994, Section 77 is up to date with all changes known to be in force on or before 19 August 2017. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A direction under subsection (1) operates to require persons who re-enter the land within the said period with vehicles or other property to leave and remove the vehicles or other property as it operates in relation to the persons and vehicles or other property on the land when the direction was given.

(5) In proceedings for an offence under this section it is a defence for the accused to show that his failure to leave or to remove the vehicle or other property as soon as practicable or his re-entry with a vehicle was due to illness, mechanical breakdown or other immediate emergency.

(6) In this section—

“land” means land in the open air;

“local authority” means—

(a) in Greater London, a London borough or the Common Council of the City of London;

(b) in England outside Greater London, a county council, a district council or the Council of the Isles of Scilly;

(c) in Wales, a county council or a county borough council;

“occupier” means a person entitled to possession of the land by virtue of an estate or interest held by him;

“vehicle” includes—

(a) any vehicle, whether or not it is in a fit state for use on roads, and includes any 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 ^{M1}Caravan Sites and Control of Development Act 1960;

and a person may be regarded for the purposes of this section as residing on any land notwithstanding that he has a home elsewhere.

(7) Until 1st April 1996, in this section “local authority” means, in Wales, a county council or a district council.

Annotations:

Marginal Citations

M1 1960 c. 62.



Criminal Justice and Public Order Act 1994

1994 CHAPTER 33

PART V

PUBLIC ORDER: COLLECTIVE TRESPASS OR NUISANCE ON LAND

Powers to remove unauthorised campers

78 Orders for removal of persons and their vehicles unlawfully on land.

- (1) A magistrates' court may, on a complaint made by a local authority, if satisfied that persons and vehicles in which they are residing are present on land within that authority's area in contravention of a direction given under section 77, make an order requiring the removal of any vehicle or other property which is so present on the land and any person residing in it.
- (2) An order under this section may authorise the local authority to take such steps as are reasonably necessary to ensure that the order is complied with and, in particular, may authorise the authority, by its officers and servants—
 - (a) to enter upon the land specified in the order; and
 - (b) to take, in relation to any vehicle or property to be removed in pursuance of the order, such steps for securing entry and rendering it suitable for removal as may be so specified.
- (3) The local authority shall not enter upon any occupied land unless they have given to the owner and occupier at least 24 hours notice of their intention to do so, or unless after reasonable inquiries they are unable to ascertain their names and addresses.
- (4) A person who wilfully obstructs any person in the exercise of any power conferred on him by an order under this section commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Changes to legislation: Criminal Justice and Public Order Act 1994, Section 78 is up to date with all changes known to be in force on or before 19 August 2017. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) Where a complaint is made under this section, a summons issued by the court requiring the person or persons to whom it is directed to appear before the court to answer to the complaint may be directed—
- (a) to the occupant of a particular vehicle on the land in question; or
 - (b) to all occupants of vehicles on the land in question, without naming him or them.
- (6) Section 55(2) of the ^{MI}Magistrates' Courts Act 1980 (warrant for arrest of defendant failing to appear) does not apply to proceedings on a complaint made under this section.
- (7) Section 77(6) of this Act applies also for the interpretation of this section.

Annotations:

Marginal Citations

MI 1980 c. 43.



Criminal Justice and Public Order Act 1994

1994 CHAPTER 33

PART V

PUBLIC ORDER: COLLECTIVE TRESPASS OR NUISANCE ON LAND

Powers to remove trespassers on land

61 Power to remove trespassers on land.

- (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.

Changes to legislation: Criminal Justice and Public Order Act 1994, Section 61 is up to date with all changes known to be in force on or before 22 August 2017. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations (See end of Document for details)

(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.

[^{F1}(4A) Where, as respects Scotland, the reason why these persons have become trespassers is that they have ceased to be entitled to exercise access rights by virtue of—

- (a) their having formed the common purpose mentioned in subsection (1) above; or
- (b) one or more of the conditions specified in paragraphs (a) and (b) of that subsection having been satisfied,

the circumstances constituting that reason shall be treated, for the purposes of subsection (4) above, as having also occurred after these persons became trespassers.

(4B) In subsection (4A) above “access rights” has the meaning given by the Land Reform (Scotland) Act 2003 (asp 2).]

[^{F2}(5)

(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—

[^{F3}“common land” means—

- (a) land registered as common land in a register of common land kept under Part 1 of the Commons Act 2006; and
- (b) land to which Part 1 of that Act does not apply and which is subject to rights of common as defined in that Act;]

“commoner” means a person with rights of common as defined in section 22 of the ^{M1}Commons Registration Act 1965;

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“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 ^{M2}Local Government Finance Act 1988 or, in Scotland, section 7(2) of the ^{M3}Valuation and Rating (Scotland) Act 1956, or
 - (ii) scheduled monuments within the meaning of the ^{M4}Ancient Monuments and Archaeological Areas Act 1979;
- (b) land forming part of—
 - (i) a highway unless [^{F4}it is a footpath, bridleway or byway open to all traffic within the meaning of Part III of the Wildlife and Countryside Act 1981, is a restricted byway within the meaning of Part II of the Countryside and Rights of Way Act 2000] or is a cycle track under the ^{M5}Highways Act 1980 or the ^{M6}Cycle Tracks Act 1984; or
 - (ii) a road within the meaning of the ^{M7}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 ^{M8}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 ^{M9}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 ^{M10}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.

SPECIFIC FUNCTIONS

MISCELLANEOUS

	FUNCTION	EXERCISED BY
(1)	Appointment of Chief Executive	Full Council
(2)	Appointment of Executive Directors	Chief Officers Appointments, Review and Appeals Committee
(3)	Appointment of staff below level of Executive Director and above Grade 12	Chief Officers Appointments, Review and Appeals Committee
(4)	Appointment of staff in Grade 12 and below	Chief Executive or appropriate Executive Director
(5)	Acceptance of tenders subject to financial provision having been made	Cabinet or Chief Executive or Executive Director in accordance with Financial Regulations and Contract Rules
(6)	Dealing with matters as items of urgency (i.e. non-agenda items) unless two or more Members disagree (by standing and voting against such motion)	All Committees
(7)	To determine matters in respect of Internal Audit and risk	Audit & Risk Committee
(8)	Seeking planning permission	Cabinet
(9)	Determination of bus fare allowance payable to employees	Executive Director (Resources and Support Services)
(10)	Action (including briefs to Counsel) which the Chief Executive or Head of Business Improvement, Central Services and Partnerships considers necessary to protect or defend the Council where complaints are made or action brought or threatened against it including compromises and including payments of money including those arising from Ombudsman or other complaints and the withdrawal of action in the interests of the Council	Chief Executive or Head of Business Improvement, Central Services and Partnerships
(11)	To issue a formal caution as an alternative to prosecution	Head of Business Improvement, Central Services and Partnerships
(12)	To authorise the issue of a Closure Notice and take all other action in respect of premises associated with persistent disorder or nuisance	Chief Executive or Head of Business Improvement, Central Services and Partnerships
(12)	To authorise proceedings for an Anti-social Behaviour Order and to respond to consultation in respect of anti-social behaviour	Chief Executive or Head of Business Improvement, Central Services and Partnerships

(14)	To authorise proceedings for breach of an Anti-social Behaviour Order	Chief Executive or Head of Business Improvement, Central Services and Partnerships
(15)	To give a consent under Section 31 of the Anti-social Behaviour act 2003 to an authorise to disperse groups and remove persons under 16 to their place of residence	Chief Executive
(16)	Closure of noisy premises under the Anti-social Behaviour Act 2003	Chief Executive (including the power to designate officers for the purpose) or appropriately qualified and appointed Environmental Health Officers
(17)	Action to secure the eviction of trespassers from Council land	Head of Business Improvement, Central Services and Partnerships
(18)	To procure goods and services within existing agreed budget provisions and in accordance with Standing Orders	Chief Executive and all Executive Directors or Head of Business Improvement, Central Services and Partnerships
(19)	To carry on tendering and negotiation procedures in accordance with the Council's Rules	Chief Executive or appropriate Executive Directors or Head of Business Improvement, Central Services and Partnerships
(20)	To accept any tender ** This is currently under review	Cabinet
(21)	Implementation of national wage and salary awards	Chief Executive
(22)	To make appointments to all committees other than the Cabinet to give effect to the rules of political balance	Chief Executive in consultation with the Leader of the appropriate political group
(23)	To approve small grants in accordance with the Terms of Reference (98/07)	Grants Assessment Panel
(23)	To act on behalf of the Council in any matters relating to applications for grant funding	Chief Executive and all members of Executive Management Team