

**A JOINT PROTOCOL FOR  
MANAGING UNAUTHORISED  
ENCAMPMENTS WITHIN THE  
BIRMINGHAM CITY COUNCIL  
BOUNDARY**



**November 2016**

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# **Managing Unauthorised Encampments**

## **A Joint Protocol between West Midlands Police and Birmingham City Council**

Birmingham City Council and West Midlands Police first agreed a joint protocol in relation to the management of unauthorised encampments in 2000. The protocol sets out the procedures to be adopted by both agencies, and a procedure for formal review of the protocol. This was to ensure that the protocol remained current, and reflected relevant changes in legislation and national policy thereby ensuring that the West Midlands Police and Birmingham City Council provide a fair, balanced and appropriate service. Each subsequent edition is numbered and carries the month and year of publication.

The joint protocol was created in the recognition that where people are camped on unauthorised sites as trespassers and/or cause nuisance, or indulge in anti-social or criminal behaviour, they should be subject to the force of law in the same way as those who behave in that manner from the settled community. Birmingham City Council and West Midlands Police both recognise the role that each has to play and will comply with the good practice guide, *'Managing Unauthorised Camping'* (and subsequent amendments, including *'Dealing with illegal and unauthorised encampments'*, March 2015), published by the Department for Communities and Local Government (DCLG).

Appropriate enforcement of the law involves a significant degree of discretion as well as tolerance. Each encampment must be individually considered on its merits, before a decision in relation to a police response is made. Guidance, in this document, for these decisions should be considered; however blanket or prejudged decisions should not be made.

In the absence of specific welfare needs, a major consideration should be whether an encampment is interfering with the lawful rights of others. All breaches of the law should be investigated by the police in an appropriate manner. Similarly persons encamped are entitled to a life free from the fear of crime, harassment and intimidation and all reports of incidents against those people will be proactively investigated.

Both the West Midlands Police and Birmingham City Council are committed to ensuring that the issue of persons illegally camped is dealt with in the most professional manner, taking into account the needs of all individuals concerned, and ensuring wherever practicable that their actions are reasonable and proportionate to any offence being committed.

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## 1. Introduction

- 1.1. The issue of illegal encampments is emotive and highly politicised. In the event of an encampment being established, local residents, politicians and landowners may seek to influence the actions of the Police and the Local Authority. As of January 2015, there were 20,123 traveller caravans in England, 13% of which were on unauthorised land (either owned by travellers without planning permission or unauthorised encampments on land not owned by travellers). *[Count of Traveller Caravans, January 2015 England - Department for Communities and Local Government]*
- 1.2. Following consultation between West Midlands Police and Birmingham City Council, this joint protocol was agreed which contains guidance for dealing with illegal encampments and which incorporates guidance from both the DCLG and the Association of Chief Police Officers (ACPO).

A multi-agency approach can be very effective particularly in areas where encampments are a regular occurrence. This protocol is to be applied consistently across Birmingham to ensure a rationalised multi-agency response and appropriate management of unauthorised encampments.

- 1.3. Birmingham City Council and West Midlands Police recognise the importance of effective communication when managing what are potentially very sensitive issues. Effective communication is vital with those individuals and their families being required to move, as well as local residents and other interested parties. Effective communication and liaison should be maintained between the Council Enforcement officer (CEO) and the Neighbourhood Policing Unit (NPU).
- 1.4. Increasing trust and confidence in the police amongst minority ethnic groups is a priority to all police officers. The Equality Act 2010 makes it unlawful for public bodies such as Local Authorities and police forces to discriminate on the grounds of, amongst other things, ethnic origin. Case law has held that because of their shared history, geographical origin, distinct customs and language Romany Gypsies and Irish Travellers are distinct ethnic groups. This means that treating people in a particular way, solely because they come from a Traveller community is unlawful and it is important that all of the measures explained in this protocol are considered on an individual case-by case manner.

To facilitate effective communication this Protocol will be available on West Midlands Police and Birmingham City Council Internet web sites. A hard copy can also be obtained from Birmingham City Council and it can be provided in an accessible format on request.

## 2. Safeguarding considerations and contacts

- 2.1. A child is anyone under the age of 18. It is very important that action is taken straight away if it appears that a child may be abused or neglected.
- 2.2. A vulnerable adult is someone over the age of 18 'who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself or unable to protect him or herself against significant harm or exploitation.' It is very important that action is taken straight away if it appears that a vulnerable adult may be abused or neglected.

**If there are concerns that a child or vulnerable adult is at immediate risk the Police should be alerted on 999.  
The non-emergency number is 101.**

If the risk is not immediate, concerns should be reported to:

Birmingham Multi Agency Safeguarding Hub	0121 303 1888 (children) 0121 303 1234 (adults) 0121 675 4806 (out of hours)
Education / Schooling needs Birmingham City Council Schools Admission & Pupil Placements Phil Denley (Traveller Teacher)	0121 464 0825 / 7215 07885 234942
Birmingham Housing Needs Advice	0121 303 0444
Birmingham Social Services	Dependent upon Service (Speak to CEO)

## 3. Equality and discrimination

- 3.1. The Equality Act 2010 gives public authorities a general duty to eliminate unlawful discrimination and harassment, promote equality of opportunity, and foster good relations between those who share a protected characteristic and those who do not when carrying out their functions. This duty covers all racial groups, including Gypsies and Irish Travellers who are recognised ethnic groups.
- 3.2. This protocol is not a policy on Gypsies or Travellers; rather it is a protocol on the agreed response to reports of persons residing as trespassers on land. It is, however, recognised that many unauthorised encampments will contain Gypsies or Travellers.
- 3.3. Local Authorities and Police must always be able to show that they have properly considered the equalities implications of their policies/protocols and actions in relation to unauthorised encampments. They must be able to demonstrate that their policies/protocols and actions are proportionate bearing in mind all the circumstances of the case.

#### **4. Initial actions on report of an unauthorised encampment**

- 4.1. In considering any unauthorised encampment a balance must be maintained between the rights of those encamped, of landowners and those lawfully entitled to use the land, and the local community. Each encampment must be considered on its own merits with police officers and Local Authority staff acting in a neutral, objective and open way. West Midlands Police officers will not proactively seek out encampments, but will wait until a landowner or the local authority contacts them.
- 4.2. The Council and West Midlands Police will assess if it is possible to undertake a joint initial visit but this won't always be possible or practicable and either agency may visit independently, the outcome of the visit communicated between the agencies to promote effective management of the unauthorised encampment.
- 4.3. The purpose of the initial visit is to make contact with the people on site, and undertake an assessment of the impact of its location, as well as the behaviour displayed by the occupants. The occupants should be spoken to in order to establish their identities and location of last site, and to ascertain their views on desired duration of stay as well as any pressing welfare needs.
- 4.4. Officers should identify any offences disclosed or apparent e.g. criminal damage caused to gain entry to land, obstruction of any footpaths or other highways, flytipping, any other anti-social behaviour.
- 4.5. Officers should discuss with those present what constitutes unacceptable conduct. They may consider it appropriate to give them a copy of the recommended Code of Conduct, attached at Appendix 1.
- 4.6. All of this information should be recorded and, where appropriate, shared between Birmingham City Council and the local neighbourhood policing Inspector for the area concerned.
- 4.7. Officers should assess whether the location of the encampment, behaviour of residents or needs of the landowner justifies an eviction using police powers.
- 4.8. The reason for directing encamped persons to move should be clearly communicated. The content of any notice of intended action should be thoroughly explained. In the absence of specific welfare needs, the following may be considered:
  - The nature, suitability or obtrusiveness of the encampment.
  - The size of the group, their behaviour and level of any nuisance.
  - The number, validity and seriousness of any complaints.
  - The level of damage caused by the occupiers.

#### **5. If the decision is not to evict immediately**

- 5.1. Where Encampments do not give rise to complaints of nuisance, immediate action may not need to be considered, however, a mutually acceptable date for leaving the site should be agreed. Some persons will indicate their unwillingness to enter into or honour agreements about their leaving date. It is important that these people understand that while there is no statutory obligation to provide information in order to make assessment, or to agree to a leaving date, it is in their interest to cooperate.

Non-cooperation often stems from a mistrust of the motives of those involved, based on previous negative encounters.

5.2. When the decision is not to evict immediately, the reason for this decision should be recorded and will be determined by the specific circumstances of the site and any specific needs of those camping, which may include:

- The educational needs of any children,
- The need for immediate medical treatment.

Where those camped indicate that it is their intention to stay in an area for a short period, and they are unlikely to cause disruption or damage during their stay, a departure date should be agreed with the stipulation that staying beyond the stated date may trigger proceedings for eviction.

5.3. Encampments are to be kept under review and should be subject to regular visits; complaints should be monitored and logged by the Local Authority and the Police. Changed or deteriorating circumstances and/or behaviour is likely to lead to the initiation of eviction proceedings. Examples of 'change' include:

- Increased levels of nuisance or environmental damage,
- Expansion of the initial encampment group by the arrival of further people and caravans/mobile homes,
- Anti-social or criminal activity.

5.4. Local planning authorities may also wish to consider that, by allowing camps to remain on an unauthorised site for a short period, public amenity or existing use of land or buildings may be unacceptably affected, meriting protection of the public interest. Depending on the circumstances however the effects of unauthorised use, for short periods may not be considered unacceptable. In this context the local authority should consider the length of time specified in Part 5 of Schedule 2 to the 1995 General Permitted Development Order (caravans staying on land without requiring specific planning permission).

5.5. Where it has been decided that, for the time being, an encampment is not to be evicted Local Authorities should ensure that other relevant bodies are informed either via telephone or email via the CEO. This will include:

- Elected members and relevant ward members
- The public, especially complainants,
- Local education service and health and welfare agencies.

5.6. Where an encampment is to be allowed to stay for a period of time, the Local Authority may offer temporary services such as the provision of rubbish collection sacks.

5.7. The Local Authority is empowered to initiate eviction proceedings in court in relation to illegal encampments on Council owned land, and will usually use Part 55 of the Civil Procedure Rules or Section 77 of the Criminal Justice and Public Order Act 1994 (CJPOA).

## **6. Health service available**

- 6.1. The Council Enforcement Officer on visiting a site may find that the occupiers are in need of health care in which case they will be informed of any sites / facilities that exist at the time to provide for their health needs. This information will be presented to the occupiers as part of the Code of Conduct (Appendix 1) which will be served on them in writing.
- 6.2. The officer undertaking the needs assessment will not be a trained medical professional and as such will be unable to give in depth medical advice. Reference will be made to those facilities noted on the Code of Conduct or to the nearest known A&E Department.

## **7. Education service available**

- 7.1. The Council Enforcement Officer on visiting a site may find that the occupiers have children of school age who are in need of an education placement either through discussion with the occupiers or through his/her own judgement. In either case he/she will inform the Traveller Teacher for referral / information.
- 7.2. A visit will then be made within the next two working days in order to assess the needs of the children present and find them appropriate school places.

## **8. General strategy for dealing with unauthorised encampments**

- 8.1. The types of land upon which unauthorised encampments may be established are Local Authority owned land, land adjoining this and privately owned land.
- 8.2. The approach for dealing with unauthorised encampments will depend both on whether the land is public owned land and on the use to which the land is put. Where land is Local Authority owned and is land to which the public have access and where the presence of unauthorised encampments would seriously disrupt the ability of the settled community to make use of facilities then a swifter approach will be taken to effect removal using available powers.
- 8.3. Section 9 details the strategy employed where encampments are on Local Authority Land.
- 8.4. Section 10 details the strategy employed where encampments are on privately owned land.

## **9. Illegal encampments on land owned by Birmingham City Council**

- 9.1. It is jointly agreed that the Local Authority will be the lead agency where Unauthorised Encampments are established on council owned land, and as lead agency will coordinate information and gather appropriate evidence to provide a recommendation for further action. The lead agency for effecting removal will depend upon the nature of the site in question and the circumstances present on the site. Due to the historic nature of many encampments within the City being established on parks or green / public open spaces there is a likelihood that many such encampments will result in a request for West Midlands Police attendance and consideration of the use of Police powers, subject to the circumstances meeting the appropriate tests (see section 11 on 'Police Powers'). It should be noted that the Police powers under Section 61 CJPOA cannot be used on Highways land.



- 9.2. West Midlands Police will not proactively seek out encampments but will wait until the Local Authority or affected residents contact them. Once a report has been received by the Council Enforcement Officer (CEO), close liaison will be maintained with the encamped persons to ensure the appropriate support and assistance is provided. All reports received by the Local Authority and West Midlands Police will be properly logged.
- 9.3. Where notifications of new encampments are passed to the Local Authority before 4pm on a working day, every effort will be made by the CEO to visit the site that day. Reports made after 4 pm will result in a site visit on the following working day. The CEO will provide regular information to West Midlands Police directly to the relevant Neighbourhood Policing Unit (NPU).
- 9.4. The Local Authority CEO will visit the site, possibly in conjunction with a representative from the land owning department, with a view to determining whether the site in question constitutes a 'park or green / public open space' and if so, whether circumstances exist for a request to be made to West Midlands Police to intervene / provide support.
- 9.5. The CEO will make enquiries of the encamped persons relating to education, health, housing and social needs which will be notified by the CEO to the NPU, giving consideration to the following:
- Location
  - Date of Arrival
  - Number of Caravans
  - Family Names (where known) and Estimated Numbers
  - Dangerous Dogs
  - Livestock Present
  - Humanitarian Considerations
  - Council Proposed Action
  - Possible Eviction Date

Where a special humanitarian or welfare issue is identified, the relevant department will be notified.

- 9.6. Where it is decided that the land occupied and circumstances surrounding said occupancy (including any information obtained as part of the welfare enquiries) are such as to warrant a request to be made to West Midlands Police to use their powers then the CEO will serve a 'Notice to Vacate Land' (Appendix 2) with no timescale specified, this being a proof of evidence that the City Council as landowner are recognising the illegal occupancy of the land and are requesting that occupancy to cease and will be requesting WMP intervention. The procedure and specifics for requesting West Midlands Police intervention is detailed in section 11.
- 9.7. Where circumstances do not warrant the making of a request to West Midlands Police, or the Police deem circumstances are such that currently there is no justification for the use of Police powers, then the CEO will serve a 'Notice to Vacate Land (2 day)' or a 'Notice to Vacate Land (7 day)' (Appendix 3 and 4 respectively) on

all persons camped on the land stating that the land is to be vacated within the following timescales:

- Two days where the land is considered to constitute an urban park or green / public open space;
- Two days where the land constitutes a non-through highway which provides access to premises (residential or business) where the presence of the encamped persons is interfering with legitimate access, and / or where crime, disorder or nuisances (all in the broad sense) are arising or have arisen;
- Seven days for any other site;
- On another agreed date depending upon circumstances (a record of any such *agreements* shall be retained within BCC) e.g. extensions to facilitate hospital visit where there is continued good behaviour and respect for the site.

The CEO will also issue a copy of the Local Authority's 'code of conduct' (Appendix 1) by which the occupiers will be expected to regulate their behaviour whilst occupying the site.

- 9.8. If the land has not been vacated at the elapse of the relevant period, the CEO may instruct Bailiffs to remove the encamped persons from the land, generally with effect from the next working day. On the specified day of eviction, the CEO may request Police assistance to prevent a breach of the peace if the circumstances suggest a breach of the peace is likely. When possible the CEO should give the local NPU advanced notice that an eviction is planned.
- 9.9. It should also be noted that it is prudent to visit the site on the day prior to the eviction which, where a notice would elapse on Friday, Saturday or Sunday, may mean the following Monday to provide for an eviction on the Tuesday. In these circumstances the CEO should liaise with the Police to see if there are sufficient grounds to warrant an eviction over the weekend. Consideration will need to be had to section 11 on 'Police Powers'. It should be noted that Birmingham City Council do not operate a CEO at evenings or weekends (see paragraph 9.15).
- 9.10. If the CEO believes, because of previous experiences with the persons concerned or through accurate intelligence, that it is the intention of the unauthorised occupiers not to comply with the Notice to Vacate Land, he may refer the matter directly to the Court for the issue of a 'Possession Order' under part 55 of the Civil Procedure Rules. The grounds for such may include:
- Previous history or experience of the persons concerned,
  - The encamped persons make legal representation through a Solicitor,
  - The encamped persons refuse to leave the land peacefully.
  - Sites which are frequently used by the public e.g. Public Open Spaces such as parks
  - Sites with a history of regular occupation by unauthorised campers
- 9.11. On application by the CEO, the Court may issue an order for possession of the land. This procedure has historically taken approximately 8-10 working days.
- 9.12. Where a group returns to land that they have previously occupied in the last 6 years and they have been subject to Court action by Birmingham City Council, then the Local Authority will apply to the Court for an 'Order of Restitution' to obtain repossession of the land. This procedure has normally taken in the region of 5 days.

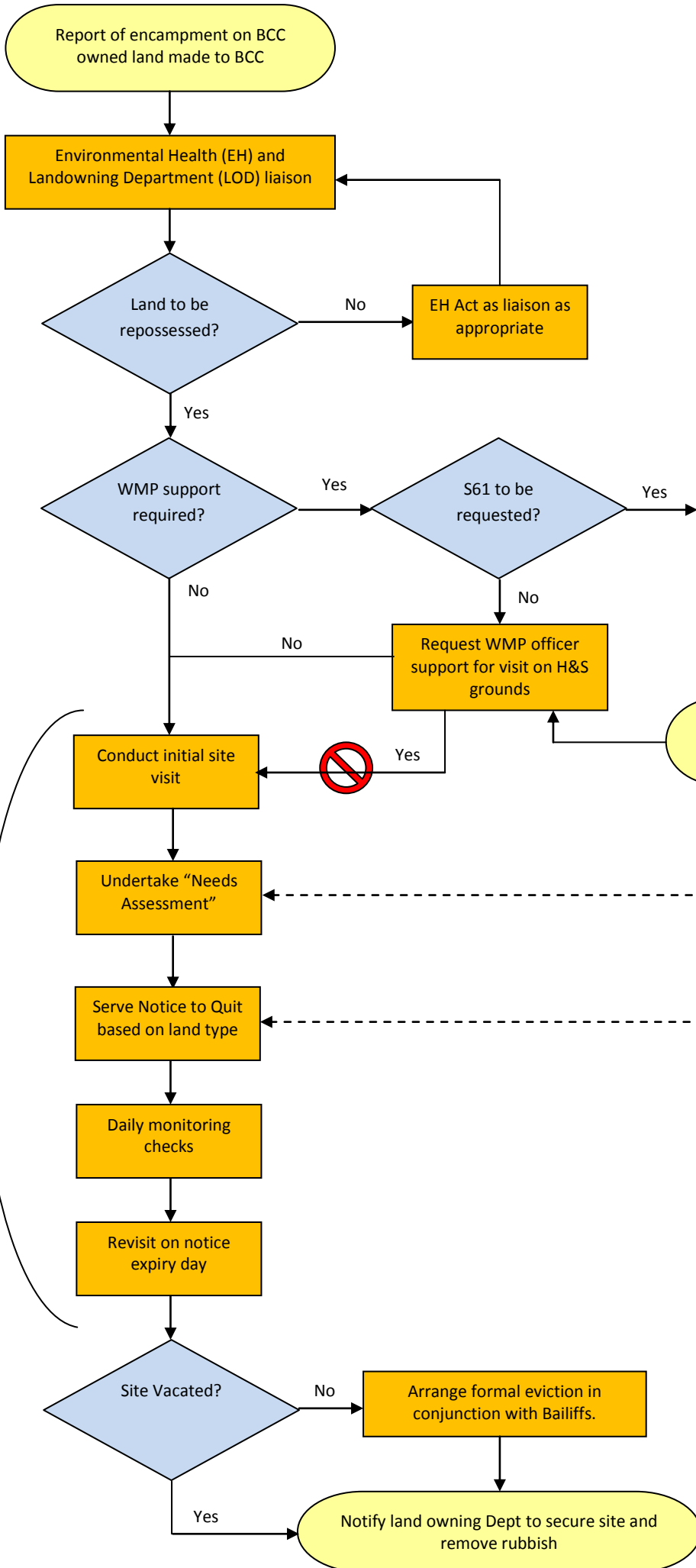
It is necessary to satisfy the Court that there is a 'nexus' between the original group and the persons now occupying the land.

- 9.13. In all instances Birmingham City Council and West Midlands Police will endeavour to support lead action taken by the other party.
- 9.14. The flowcharts (1 and 2) on the following pages explain the general procedure to be followed when dealing with encampments on Local Authority owned land.

#### Dealing with unauthorised encampments at the weekend

- 9.15. On occasion an encampment may be established on BCC land over the course of the weekend. Under normal circumstances the initial visit will not take place until the next working day. Under certain circumstances however it may be necessary for WMP to seek the eviction of the trespassers over the weekend due to issues relating to crime and / or disorder and where it is felt that it is not reasonable for there to be a delay in commencing proceedings.
- 9.16. As noted in paragraph 9.9 BCC does not operate a CEO over the weekend periods. However, where the land under illegal occupation is 'parks land' then the Duty Officer for Parks will be available to direct staff in such cases in order to issue the land owner's instructions requiring the trespassers vacate the site. This visit will always be done in conjunction with officers from WMP.
- 9.17. In these circumstances WMP will assist the Duty Officer for Parks to complete the welfare assessment.
- 9.18. The Duty Officer for Parks may be contacted via the Contact Centre on 0121 454 7810.

# FLOWCHART 1



  
**Health & Safety Consideration**  
 Do not undertake site visit without WMP support

**Criteria for WMP involvement**

1. Unauthorised campers have caused damage to the land or property on the land, **and / or**
2. Campers have used threatening, abusive or insulting words or behaviour **and / or**
3. There are six or more vehicles on the land

**GO TO FLOWCHART 2**

**FROM FLOWCHART 2**  
 S61 not served

**Items for Consideration**

1. Health requirements
2. Educational needs
3. Social reasons for visit

See Para X.X

**Effective Time Periods**

A – Urban park or green / public open space (incl school grounds): **2 days**

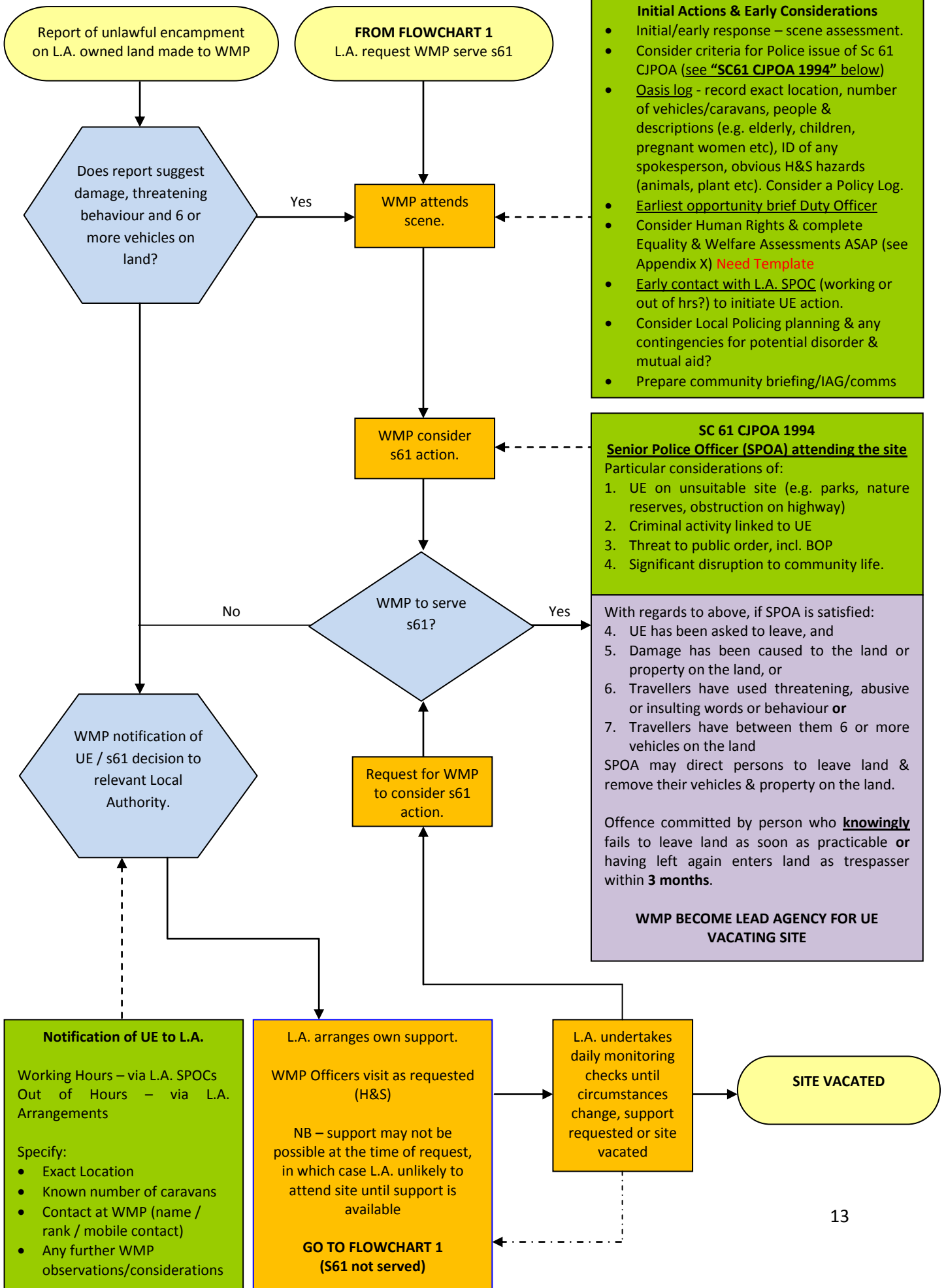
B – Non-through highway which permits access to premises and/or where crime, disorder or nuisances (broad sense) have arisen: **2 days**

C – Other BCC land: **7 days**

D – Any time agreed between agencies / BCC and the encamped persons

BCC Field Operation aspects

**FLOWCHART 2**



**Initial Actions & Early Considerations**

- Initial/early response – scene assessment.
- Consider criteria for Police issue of Sc 61 CJPOA (see **“SC61 CJPOA 1994”** below)
- **Oasis log** - record exact location, number of vehicles/caravans, people & descriptions (e.g. elderly, children, pregnant women etc), ID of any spokesperson, obvious H&S hazards (animals, plant etc). Consider a Policy Log.
- **Earliest opportunity brief Duty Officer**
- Consider Human Rights & complete Equality & Welfare Assessments ASAP (see Appendix X) **Need Template**
- **Early contact with L.A. SPOC** (working or out of hrs?) to initiate UE action.
- Consider Local Policing planning & any contingencies for potential disorder & mutual aid?
- Prepare community briefing/IAG/comms

**SC 61 CJPOA 1994 Senior Police Officer (SPOA) attending the site**  
 Particular considerations of:

1. UE on unsuitable site (e.g. parks, nature reserves, obstruction on highway)
2. Criminal activity linked to UE
3. Threat to public order, incl. BOP
4. Significant disruption to community life.

With regards to above, if SPOA is satisfied:

4. UE has been asked to leave, and
5. Damage has been caused to the land or property on the land, or
6. Travellers have used threatening, abusive or insulting words or behaviour **or**
7. Travellers have between them 6 or more vehicles on the land

SPOA may direct persons to leave land & remove their vehicles & property on the land.

Offence committed by person who **knowingly** fails to leave land as soon as practicable **or** having left again enters land as trespasser within **3 months**.

**WMP BECOME LEAD AGENCY FOR UE VACATING SITE**

**Notification of UE to L.A.**

Working Hours – via L.A. SPOCs  
 Out of Hours – via L.A. Arrangements

Specify:

- Exact Location
- Known number of caravans
- Contact at WMP (name / rank / mobile contact)
- Any further WMP observations/considerations

L.A. arranges own support.  
 WMP Officers visit as requested (H&S)

NB – support may not be possible at the time of request, in which case L.A. unlikely to attend site until support is available

**GO TO FLOWCHART 1 (S61 not served)**

L.A. undertakes daily monitoring checks until circumstances change, support requested or site vacated

**SITE VACATED**

## **10. Illegal encampments on privately owned land in Birmingham**

- 10.1. West Midlands Police officers will not proactively seek out encampments but will wait until a landowner, affected resident or the Local Authority contacts them. Once NPUs do become aware of encampments they will notify their existence to the owner of the land concerned and the Regulation and Enforcement Division for the information of the 'Council Enforcement Officer' (CEO).
- 10.2. The circumstances where it may be appropriate for the Police to exercise powers under section 61 Criminal Justice and Public Order Act 1994 (CJPOA) are contained within a 'Summary of the Law'.
- 10.3. If it is not appropriate for the Police to use their powers under Sec 61 the owner of the land should be advised as to the reasons why; such reasons may include:
- The persons have no intention to take up residence,
  - Insufficient number of vehicles,
  - Humanitarian grounds,
  - No instances of damage, nuisance or apparent criminal activity

The owner of the land can be directed to seek the issue of Court proceedings to secure possession of the land or seek the services of a reputable firm of bailiffs.

- 10.4. The Local Authority will not remove persons or property from private land. The Police may be called upon to assist either the County Court Bailiffs or the High Court Sheriff (with regard to a potential breach of the peace) in the event of an order resulting from a private application.

## **11. Police powers: Criminal Justice and Public Order Act 1994**

- 11.1. If it is appropriate for the Police to take the lead in enforcing removal, sections 61 and 62 of the CJPOA 1994 will be applied. In all instances there will be early consultation / involvement with the Local Authority. Each Birmingham NPU will be required to act in accordance with this protocol.
- 11.2. The senior officer present should consider their powers under sections 61 and 62 of the Criminal Justice and Public Order Act 1994, taking all the circumstances into account with particular note of whether the following circumstances exist:
- There is a threat to public order, or
  - There is obstruction of the highway, or
  - When crime is, or has been, committed which can be linked to the illegal encampment.
- 11.3. Having regard to the criteria above, the decision to invoke Police powers will be made by the senior Police officer present, who must be satisfied that the illegal occupiers have;
- Been requested to leave, and
  - That damage has been sustained to the property, or

- That the persons have used threatening, abusive or insulting words or behaviour towards the occupier or owner of the land, a member of his/her family or their employee or agent, or
  - There are six or more vehicles on the land.
- 11.4. On each occasion, prior to invoking Police powers consideration must be given to humanitarian and welfare issues. Depending on the urgency of the particular circumstances the Local Authority will carry out enquiries in this regard. Such considerations should not cause an obstructive delay. However, the Local Authority may make an evaluation where issues such as a critical illness or treatment at hospital are valid reasons for not moving the persons present. Factors such as children attending school will not, generally, be regarded as being sufficient grounds for a delay.
- 11.5. Consideration may be given to the use of powers contained in alternative legislation e.g. wilful obstruction of the highway (Section 137 Highways Act 1980).

## **12. General Police action in relation to illegal encampments**

- 12.1. An OASIS incident log will be created in every instance and the Duty Officer will be informed. The incident log should include the following information:
- Date the occupiers arrived at the location,
  - How the persons entered the land,
  - Number of caravans and vehicles present and their registration numbers,
  - The exact location of the encampment,
  - Details of livestock (horses etc) and dogs present,
  - What steps, if any, have been taken locally to request that they leave,
  - The identify of the land owner and if they have been informed,
  - What steps are being taken to secure the remainder of the property while they are present,
  - Whether there is anything especially valuable, sensitive or dangerous on the site (toxic waste, powers or gas installations etc),
  - Information of any immediate health or welfare needs, especially that of children and elderly people.
  - What steps will be taken to secure the premises once they leave,
  - All calls from the public and/or complaints concerning the conduct of the persons (including incidents of verbal-abuse and anti-social behaviour) will be recorded on the MDIS log, in order to create a 'running' and complete record,
  - The CEOs contact details & any updates and developments reported by the CEO
- 12.2. Once the Local Authority (in respect of Council owned land) or the owner (in respect of privately owned land) has asked the occupiers to leave documentary evidence (a statement or copy notice) must be obtained, to be kept at the appropriate NPU.
- 12.3. A Police officer not below the rank of Inspector should attend the location to become the senior decision making officer present in order to serve a notice under Section 61 (see example given at Appendix 8). This will be the relevant constituency Inspector, or if out of hours/unavailable the Duty Inspector.

- 12.4. Police officers will have discretion on usage of the body worn devices (BWD). Using a BWD is NOT a use of force, but officers may be expected to explain why they have or have not used their BWD. **BWV DEVICES WILL ONLY BE USED BY THOSE OFFICERS AND STAFF WHO HAVE BEEN FULLY TRAINED AND AUTHORISED IN THEIR USE AND WHO ARE WEARING OVERT POLICE UNIFORM AT THE TIME OF OPERATIONAL USE.** Officers will be aware of the legal implications of wearing BWV with due regard to Principle 1 of the Data Protection Act, Sc 64A of the Police & Criminal Evidence Act 1984, Criminal Procedure and Investigations Act 1996 (CPIA), Freedom of Information Act 2000 (FOIA), Articles 6 & 8 Human Rights Act (HRA) and Regulation of Investigatory Powers Act 2000 (RIPA).
- 12.5. Inform any person who has expressed welfare needs that their situation is being considered. The police should liaise with the Local Authority and consider what options are available to alleviate any social/medical needs of the trespassers. Records of this process should be contained within police and Local Authority logs.
- 12.6. When giving 'notice to leave' a reasonable time must be allowed. Those encamped should be consulted and logistical difficulties should be taken into account. It is not usually appropriate to require those encamped to leave in the middle of the night; the notice should specify that they should leave as soon as reasonably practicable, how long this will be will depend on the individual circumstances, as a guide 24 hours should be sufficient.
- 12.7. Once notices have been served, solicitors representing the occupiers may become involved. Their involvement should not usually delay the police operation; a detailed log of all communications should be kept.
- 12.8. On the day of the operation, consideration should be given to sending Officers to the site at an early stage to monitor any movements and ascertain the occupiers intentions.
- 12.9. Consideration should be given to video recording the operational briefing.
- 12.10. Ensure vehicles that have tow and/or lift capability are available and that provision has been made for the secure storage of recovered or seized vehicles.
- 12.11. Liaise with the Local Authority (in the case of Council owned land) or the owner (in the case of privately owned land) to ensure that the site can be made secure once removal has been effected.
- 12.12. WMP Resources to consider:
- Duty OSU (0800 x 0000hrs, requires duty FIM authority)
  - On call OSU PSU (24 hours notice required, via DMM/Force Ops)
  - Recovery Vehicles (Elvis)
  - Proactive RPU
  - EGT Officers (Force Control Room)
  - Air Ops
  - P40 Recovery Truck (24 hr notice)
  - NHT Reassurance Patrols
  - Corporate Communications Overview (KIN)



### 13. Summary of the Law

#### **Section 61: Direction to Leave Land and Power to Arrest**

Direction to leave land: If the senior Police Officer (any rank) present at the scene reasonably believes that two or more persons are trespassing on land (other than the highway) and they are present there with the common purpose of residing there for any period, and that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and either:

- 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
- that those persons have between them six or more vehicles on the land,

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

Where the senior Police Officer believes the persons were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions were satisfied after those persons became trespassers before he/she can direct them to leave.

Communications: a direction to leave may be communicated by any Constable at the scene. Although the Act does not specify it for Section 61, Section 63 states that persons shall be treated as having had a direction communicated to them if reasonable steps have been taken to bring it to their attention. The same process should apply to Section 61 although this has not been tested at law. No requirement for an officer to be in uniform, the direction can be written or verbal.

Offence failing to comply with direction or returning to land: if a person knowing that such direction has been given which applies to her/him

- fails to leave the land as soon as reasonably practicable, or
- 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/she commits an offence.

Penalty: summary offence, maximum penalty three months imprisonment and/or a fine.

Power: a Constable in uniform who reasonably suspects that a person is committing an offence under this Section may arrest him/her without a warrant.

Defence: that he/she was not trespassing on that land, or that he/she had 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.

## **Section 61: Practical Considerations:**

- The Act confers powers on the police, not a duty. It is a matter of discretion for the Police whether to exercise their powers or not. Each case must be looked at on its merits with the safety of the community and the potential for disorder or disruption to the life as major guiding factors.
- The discovery of an unauthorised encampment should lead to discussions between the Police, the Local Authority, and the occupier of the land, to determine the action to be taken. The law provides for a range of responses according to the seriousness of the nuisance. It may be appropriate for the landowner to apply for an order for re-possession. In other cases the Local Authority can use its powers under the Criminal Justice and Public Order Act (Section 77) but in circumstances where there are aggravating factors of crime, obstruction of the highway, or disorder, the Police may exercise powers given under Section 61.
- Exercise of the power under Section 61 does not require the landowner to have applied for an order for re-possession nor should it be used as a last resort.

There are occasions where immediate or prompt exercise of the power will be the most appropriate response. This requires the occupier, or his agent, to have taken reasonable steps to ask the trespassers to leave. The law does not define reasonable steps but Police Officers must be satisfied that action has been taken by the landowner, or his agent, to ensure that trespassers have been made aware of the request to leave. A verbal request accompanied by the serving of a notice to quit is 'good practice'. A Police officer must not act as agent for the landowner.

- The senior Police officer considering the use of Section 61 to deal with trespassers, in an area where such incursions may have become a local issue or a regular problem, will need to be aware of plans that may have been made by the local Community Safety Partnership to tackle the problem under the provisions of the Crime and Disorder Act (1998).
- Landowners may find it difficult to understand why the Police will not exercise powers contained within Section 61 immediately and at their request. Care needs to be taken by the officer in charge of the incident to ensure that, if the power is not to be exercised, adequate reasons are communicated to the owner of the land or other interested parties.
- When considering the issue of a direction to leave an established site (a site that may have been occupied for some time) the officer in charge should consider whether there has been a sudden escalation of trouble or other aggravating factors. Exercise of the power may result in further trespass nearby and it may be felt that a trespass on one site is less damaging to the community than a trespass on a more sensitive site nearby. A decision to allow a site to remain will need to be discussed with the owner of the land and other interested parties, including the trespassers. The local community should not, however, be expected to tolerate crime and disorder arising from encampments on any such site.
- A reason for non-exercise of the power may be a lack of Police resources to deal with a large incursion or concerns over the safety of officers. These are real concerns and may properly justify not exercising the power at once. The decision not to exercise the power under Section 61 should be referred to the officer in charge of the LPU for his/her

endorsement. This is not a requirement of the legislation but reflects Government concerns that the Police should, wherever appropriate, make use of the available enforcement legislation.

- Power under Section 61 is not unfettered; it must be exercised reasonably and the standard of reasonableness will vary according to the situation. The use of Section 61 is not restricted by the compulsory need for Local Authorities to consider welfare issues. Where the Local Authority use their powers under Section 77 they do have a duty to consider welfare implications (“The Wealden Case”). It was the intention of Parliament to separate the powers granted under Section 61 from those granted under Section 77. Local Authorities have other responsibilities under housing and education legislation as well as child care and social service considerations. These are not Police responsibilities. The duty of the Police is to enforce the criminal law; prevent crime, and maintain order. Case law however, (ex parte - Small 1998) confirms that the police MUST pay due regard to humanitarian issues prior to using Section 61. There should not be a lengthy delay in carrying out enquiries; people who have moved onto land only a short time before will not need the same consideration as people who have been settled on land for a considerable period of time and who may have children attending local schools.
- ‘Gypsies’ and ‘Irish Travellers’ are recognised as racial groups for the purposes of public order and anti-discrimination legislation. This means that Racially Aggravated public order/assault offences contrary to the Crime and Disorder Act or the Race Relations Act may be committed against them. The standard of behaviour expected from those trespassing should be the same as that expected from the settled community and officers will need to be aware of the responsibilities placed upon them to provide the same standard of service as would be expected to those living in settled communities. This applies to all groups of people who should not, for example, be subjected to their vehicles being stopped and searched without good reason or required to produce their documents just because they are recognisably from unauthorised encampments.
- It is suggested that a ‘direction to leave the land’, where practical, should be given both verbally and in writing. Providing uncooperative trespassers or a large gathering with both verbal and individual notices may however, be impossible (see Appendix 8 for an example of a notice). Although the issue of a documentary notice is not a statutory requirement it is good practice. When issuing a direction, the use of video evidence gathering facilities should be used to record both the verbal direction and the service of notices.

## **Section 62: Power to seize vehicles**

If a direction to leave the land has been given and a Constable reasonably suspects that any person to whom the direction applies has, without reasonable excuse either:

- 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
- 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 the vehicle.

## **Section 62: Practical Considerations & Definitions**

Consideration may need to be given to the state of the persons vehicles before any direction to leave is given. Directing unfit vehicles onto the public highway is inappropriate and officers planning enforcement action under Section 61 will need to make practical arrangements for the removal of unfit vehicles to a safe place. This should be agreed with the Local Authority.

Vehicle: includes caravans, living vans, and vehicles, 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 or attached to such a vehicle or caravan.

Note: as the definition of vehicles includes caravans and living vans, the seizure of such vehicles may render the owner and others homeless; welfare considerations need to be anticipated and catered for. The involvement of Local Authority Social Services in the planning stage is an important consideration.

'Damage': the Act does not define damage but makes reference to the Criminal Damage Act 1971 when defining property. A common sense approach is therefore necessary when defining damage to the land or to property on the land. It has included churned-up ground caused by heavy vehicles; diesel spillages; animal and human excrement; destroyed fencing and spoiled crops. The dumping of litter and rubbish by unauthorised campers is often the most frequent nuisance factor associated with illegal trespass. This may fall within the legal category of damage dependent on the severity of the situation; each case will need to be judged on its merits. Other legislation may be considered.

Land: does not include –

- buildings other than agricultural buildings or scheduled monuments,
- a highway unless 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 Highways Act 1980 or the Cycle Tracks Act 1984.

Common Land: The legislation also applies to common land where persons act in a way in which is either a trespass against the occupier (any commoner or the local authority) or an infringement of the commoners' rights.

Residing: A person may be regarded as having a purpose of residing in a place notwithstanding that she/he has a home elsewhere.

## **Civil Injunctions and Criminal Behaviour Orders**

The Anti-social Behaviour, Crime and Policing Act 2014 reformed ASB powers for Police and partners. Applications can now be made for Civil Injunctions and Criminal Behaviour Orders.

Civil Injunctions replaced Anti-social Behaviour Orders (ASBOs) and provide a civil power to stop people engaging in (and prevent any escalation of) ASB. They are issued on the balance of probabilities to applicants from various partner agencies where it is 'just and convenient to grant it to prevent ASB.' Injunctions can include both prohibitions and requirements to address behavioural issues.

Criminal Behaviour Orders replaced CRASBOs and are issued after conviction to tackle individuals who commit crime and persistent ASB. They are issued where the courts are satisfied that the defendant engaged in behaviour which has caused (or likely to cause) harassment, alarm or distress and making the order will help prevent further behaviour. CPS apply for these orders on request of the Police or Local Authority.

Where appropriate, consideration should be given to the use of Civil Injunctions or Criminal Behaviour Orders to protect relevant individuals from ASB.

For more on the legislation, visit:

<http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>

## **CODE OF CONDUCT FOR UNAUTHORISED CAMPERS IN BIRMINGHAM**

You have been served with a notice, which requires you to move from this Council owned land. To ensure those members of both the settled and travelling communities can live together in a peaceful and unprejudiced way we expect you to comply with this Code of Conduct whilst you are in occupation of this land. We expect you to treat the land you have occupied with respect, and that you respect the rights and freedoms of other people who also wish to use the area.

Behaviour that may result in your early eviction from a site includes the following:

- Camping upon any land designated as a public amenity, such as parks, recreation areas, school fields and similar locations (not an exhaustive list).
- Interfering with the rights and freedoms of other members of the public, including interrupting the operation of legitimate businesses.
- Forcing entry to land, by causing damage to any fixtures, fittings or landscaping (including planted areas). This includes digging away of earthwork defences, which have been placed at landowner's expense to prevent trespass.
- Causing any other damage to the land itself, or property on it. Particular care should be taken not to cause damage to those features provided as public amenities.
- Driving vehicles along any footpath, or other highway not specifically designed for road vehicles. This practice is not only unlawful but is also highly dangerous.
- Parking vehicles or caravans on any road, footpath or other highway that causes an obstruction to other people wanting to pass by. This includes parking immediately next to footpaths.
- Dumping or tipping rubbish, waste materials or trade waste such as tree cuttings, rubble, etc. It is your responsibility to keep the site clean and tidy. Council Officers can direct you to Civic Amenity Sites (Council tips) where you will be able to pay to dispose of trade waste.
- Use of the area as a toilet. You must not deposit or leave human waste openly in public areas.
- Abuse, intimidation or harassment of any person who is lawfully using the area.
- Excessive noise or other forms of anti-social behaviour.
- Animals that are not kept under control or that attack persons lawfully on the land, or nearby.
- Interference with electrical, water or gas supplies. Any person(s) found abstracting electricity, or wasting quantities of water may be subject of criminal proceedings.

These codes are the same standards of behaviour that are expected of the settled community. Both Birmingham City Council and West Midlands Police are committed to ensuring that all policing issues that affect you are balanced; however behaviour that is deemed unacceptable within society will not be tolerated.

## **WELFARE ADVICE FOR UNAUTHORISED CAMPERS IN BIRMINGHAM**

1. If you have any health / welfare issues you may seek assistance at any of the following sites:
  - Boots the Chemists on the High Street in Birmingham city centre provide a walk-in centre managed by Heart of Birmingham Teaching PCT covering a range of health services (Tel: 0121 255 4500)
  - If you are registered with a doctor then you can visit any of the following sites for medical advice / intervention:
    - Summerfield GP and Urgent Care Centre, 134 Heath Street, Winson Green, Birmingham, B18 7AL
    - Finch Road Surgery, 2 Finch Road, Lozells, Birmingham, B19 1HS
    - Greet General Practice and Urgent Care Centre, 50 Percy Road, Sparkhill, Birmingham, B11 3ND
2. If you have educational needs for your children you can contact the West Midlands Consortium for the Education of Travelling Children on 01902 714646.

APPENDIX 2 – Notice to Rapidly Vacate Land



REDACTED FOR OFFICIAL USE ONLY



APPENDIX 3 – Notice to Vacate Land (2 Days)



REDACTED FOR OFFICIAL USE ONLY

APPENDIX 4 – Notice to Vacate Land (7 Days)



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APPENDIX 5 – Section 61 Direction

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