



## **Police, Crime, Sentencing and Courts Bill**

### **Part 4 – Unauthorised Encampments**

**House of Lords**

**Briefing**

**December 2021**

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## Introduction

1. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system. It is the UK section of the International Commission of Jurists. Our vision is of fair, accessible and efficient legal processes in which the individual's rights are protected and which reflect the country's international reputation for upholding and promoting the rule of law.
2. Further to our previous briefings on the Police, Crime, Sentencing and Courts Bill (the "Bill"),<sup>1</sup> **JUSTICE reiterates its concerns with Part 4 and, in particular, the role given to private citizens in triggering a criminal offence and the increased police powers to respond to 'unauthorised encampments'**. The Bill would create a new offence of residing or intending to reside on land with a vehicle where it causes, or is likely to cause "*significant disruption, damage, or distress*". It would also increase the existing period of time in which trespassers directed from land would be unable to return from three to 12 months, and grant private landowners' significant powers to trigger a criminal offence with respect to what is ordinarily a civil dispute.
3. These measures would target and discriminate against Gypsy, Roma and Traveller ("**GRT**") people, constituting a sweeping criminalisation of their way of life and likely breaching their rights to privacy and the home pursuant to Article 8 European Convention on Human Rights ("**ECHR**"), and the public sector equality duty. Furthermore, we note that the police and the National Police Chiefs' Council ("**NPCC**") do not support these additional offences and police powers, recognising that they will be discriminatory and ineffective to prevent unauthorised encampments.<sup>2</sup>
4. **JUSTICE urges the House of Lords to remove the Part 4's abovementioned offending provisions, in the interests of ensuring the UK meets its domestic and international human rights obligations.** In the alternative, we urge Peers to vote in favour of the below amendments, which seek to mitigate some of the Bill's most damaging aspects. For more information on JUSTICE's position and concerns, we refer to our

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<sup>1</sup> JUSTICE, '[Briefings on the Police, Crime, Sentencing and Courts Bill](#)', (May – December 2021).

<sup>2</sup> Home Office (NPCC Response), '[Strengthening police powers to tackle unauthorised encampments – Government consultation](#)', 2019, p.8 and 10.

previous briefings.<sup>3</sup> We also refer Peers to the briefing of Friends, Families & Travellers for further analysis of the provision and additional suggested amendments.<sup>4</sup>

## Unauthorised Encampments – Part 4, Clauses 63 – 65

5. Clause 63 of the Bill would create a new criminal offence of residing or intending to reside on land without consent of the occupier, in or with a vehicle.<sup>5</sup> This criminalises trespass when setting up an unauthorised encampment. Existing powers under sections 61-62E of the Criminal Justice and Public Order Act 1994 (“**CJPO**”) provide that the landowner must make a request to the police for the trespasser’s removal. Depending on the number of vehicles on the site, there are additional duties for the landowner to take reasonable steps to ask them to leave, as well as for police officers to work with the local authority to provide a suitable pitch for the caravans within the area. Currently, an offence only occurs where an individual disobeys a direction of the police. In addition, the Bill would increase the existing period of time in which trespassers directed from land would be unable to return from three to 12 months.
6. **JUSTICE urges peers to vote for Amendments 55A, 55B and 56A to remove clauses 63 to 65 from the Bill:**

**Amendment 55A**

Leave out Clause 63

**Amendment 55B**

Leave out Clause 64

**Amendment 56A**

Leave out Clause 65

7. In the alternative, should the removal of Part 4 not succeed, JUSTICE endorses the following amendments which would mitigate some of its most damaging aspects.

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<sup>3</sup> JUSTICE, '[Briefings on the Police, Crime, Sentencing and Courts Bill](#)', (May – October 2021).

<sup>4</sup> Friends, Families & Travellers, '[House of Lords briefing: Part 4 Police, Crime, Sentencing and Courts Bill and Gypsies and Travellers](#)', (October 2021); Friends, Families & Travellers, '[Amendments to Part 4 Police, Crime, Sentencing and Courts Bill: Encampments](#)', (October 2021).

<sup>5</sup> Vehicle is defined in the Bill as including “(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 Caravan Sites and Control of Development Act 1960.” This meaning is clearly drafted to specifically target caravans and other such vehicles, whether mobile or not, in a way that appears discriminatory to GRT people.

## **Amendment 55ZA**

Page 59, line 11, at end insert—

“(1A) The occupier, a representative of the occupier or a constable may only make a request under subsection (1)(d) if they have ascertained from the local authority within whose area the land is situated—

(a) that there is a suitable pitch for P’s caravan or caravans and P’s other vehicles and property on a relevant caravan site, or

(b) that, within 48 hours of their receiving notice of P’s presence on the land, a suitable pitch for P’s caravan or caravans and P’s other vehicles and property will become available within a negotiated stopping site in the local authority’s area, and that in either case P has been informed of the availability of such a site.

(1B) If there are no relevant caravan sites, or there will not within 48 hours of their receiving notice of P’s presence on the land be a negotiated stopping site within the local authority’s area, and P remains on the land in question for more than 48 hours, the local authority must compensate the owner or occupier of the land for all loss and damage suffered by them as a consequence of P’s entering upon and remaining on the land.

(1C) Where P remains on the land under subsection (1B), P does not acquire any right of possession as against the owner or occupier of the land.

(1D) In subsections (1A) and (1B)—

“caravan”, “caravan site”, “relevant caravan site”, “relevant site manager” and

“registered social landlord” have the same meanings as in section 62A(6);

“a negotiated stopping site” is a site in respect of which an agreement has been reached between the local authority within whose area the site is situated and the trespassers which allows them to stay temporarily on a particular piece of land which is not an official site, in return for which the trespassers agree to certain conditions relating to, but not limited to, behaviour, tidiness of the site, the length of stay and payment for water, refuse collection and other utilities.”

### *Member’s explanatory statement*

*The amendment would provide that a person only commits an offence where they are trespassing on land having been offered a suitable pitch at a caravan site or negotiated stopping site in the local authority’s area; and where they remain on the land because there are no other suitable sites, the landowner or lawful occupier are to be compensated for all loss and damage caused by their entering upon and remaining on the land.*

### **Amendment 55ZB**

Page 59, line 11, at end insert—

“(1A) The occupier, a representative of the occupier or a constable may only make a request under subsection (1)(d) if they have ascertained from the local authority within whose area the land is situated—

(a) that there is a suitable pitch for P’s caravan or caravans and P’s other vehicles and property on a relevant caravan site, or

(b) that, within 48 hours of their receiving notice of P’s presence on the land, a suitable pitch for P’s caravan or caravans and P’s other vehicles and property will become available within a negotiated stopping site in the local authority’s area.

(1B) A “negotiated stopping site” is a site in respect of which an agreement has been reached between the local authority within whose area the site is situated and the trespassers which allows them to stay temporarily on a particular piece of land which is not an official site, in return for which the trespassers agree to certain conditions relating to, but not limited to, behaviour, tidiness of the site, the length of stay and payment for water, refuse collection and other utilities.”

### **Amendment 55ZC**

Page 61, line 20, at end insert—

“but does not include any property that is, or forms part of, P’s principal residence.”

*Member’s explanatory statement*

*This is based on a JCHR recommendation. This amendment would provide that a police officer does not have the power to seize a vehicle that is a person’s home.*

## **Concerns**

### *Sweeping criminalisation*

8. The Bill would broaden the criminalisation of trespass in a way that targets GRT people. It is unacceptable that the new section 60C would empower landowners (or their representatives), as well as the police, to trigger a criminal offence with respect to what is ordinarily a civil dispute. Indeed, the offence can be triggered even before an individual has done anything at all: pursuant to subsection (1)(a), all that is required is for the private landowner to perceive that the individual “*is residing, or intending to reside, on land without the consent of the occupier of the land*” and to request that they leave. This sits in stark contrast to the Government’s position that “*the threshold for the new offence is high*”<sup>6</sup>, and

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<sup>6</sup> Parliament, ‘[Hansard \(Lords Chamber\), Volume 815: debated on Wednesday 3 November 2021](#)’, column 1330.

that “*there is a very high bar for criminality – members of the community committing actual harm – before criminal proceedings begin*”<sup>7</sup> (as stated by Baroness Williams and by Lord Greenhalgh respectively).

9. Further, actual harm would not need to have occurred for an offence to be committed. The concerningly broad wording of subsection (4) means an offence would be committed where it is only “*likely*” that significant damage, disruption, or distress will be caused. There is no guidance on what exactly “*likely*” or “*significant*” may mean, and their meaning is clearly open to subjective interpretation and potential abuse. Therefore, contrary to Baroness Williams and Lord Greenhalgh’s statements, the bar for criminality is in fact very low: individuals would commit an offence where they merely intend to reside on land and it is deemed likely that this will cause significant damage, disruption or distress.
10. Baroness Williams explained that including within the offence situations where it is only “*likely*” that significant damage, disruption or distress is caused is required to enable “*the police to intervene where people are suspected of repeatedly causing significant harms. This is particularly relevant in cases where those who cause damage move a short distance away, only to enter other land and cause more damage.*”<sup>8</sup>
11. It is unclear why the initial criminal damage and other inchoate offences that may be committed are not sufficient for police to intervene in this example. Moreover, if this scenario is the concern, it is unclear why the provision is worded so broadly as to include individuals that do not cause any damage, distress, or disruption at all but are merely deemed to intend to do so. As such, we remain unconvinced that this provision is necessary.
12. Moreover, as the Joint Committee on Human Rights noted in its report,

*“Gypsies, Roma and Travellers would...be in the position of potentially committing a criminal offence without having done anything at all, merely having given the impression to another private citizen that they intended to do something. This is very dangerous territory, which risks creating offences*

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<sup>7</sup> Parliament, ‘[Hansard \(Lords Chamber\), Volume 815: debated on Thursday 4 November 2021](#)’, column 1343.

<sup>8</sup> *Ibid*, column 1332.

*whose elements could largely be based on the prejudice of the accuser and, perhaps, the justice system.”<sup>9</sup>*

13. As mentioned above, subsection (1)(d) of the Bill would not require the individual to disobey a direct police request to leave the relevant land, rather a request from the landowner is sufficient. The Bill does not require such request to be made in writing. This means that a criminal offence could be committed before (and without the need for) the issuance of a police direction. JUSTICE considers that this is deeply concerning and would lead to private individuals exercising significant powers without the need to consider the welfare consequences of the individuals they wish to evict. This was convincingly argued by the Lord Bishop of Manchester:

*“to allow a landowner or other third party to escalate a matter of trespass to the level of a criminal offence without reference to any constable is a very grave matter. It could provide statutory support for decisions taken on pure prejudice. A judgment on whether particular circumstances constitute criminality is not something that, in situations such as this, should be devolved to any private individual, let alone one who may have a direct interest in the land or property in question.*

*As well as these matters of principle, there are strong, pragmatic reasons for this amendment. The presence and leading role of a police officer will be an important safeguard against abuse of the law, as well as assisting in providing a robust evidential chain should a prosecution follow.”<sup>10</sup>*

14. At the Lords Committee stage, Baroness Williams rejected the amendment that would remove the ability for a private citizen to trigger a criminal offence on the basis that this would “*slow the enforcement process down, while using more police resources*”.<sup>11</sup> This is unconvincing. Faster enforcement does not appear to be sufficient justification for broadening the criminal offence of trespass and using private citizens to fill-in the gaps of under-resourced police services (cutting away the safeguards and procedural rigour associated with police involvement). Indeed, there is no evidence that this would reduce

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<sup>9</sup> Joint Committee on Human Rights, ‘[Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4: The criminalisation of unauthorised encampments](#)’, Fourth Report of Session 2021–22, 2 July 2021, page 3.

<sup>10</sup> Parliament, ‘[Hansard \(Lords Chamber\), Volume 815: debated on Wednesday 3 November 2021](#)’, column 1312.

<sup>11</sup> *Ibid*, 1330.

the demand on police resources: given there will potentially be criminal conduct whenever a landowner requests an individual to leave their land, this would surely cause a flood of additional incidents for the police to investigate.

15. Should clauses 63-65 remain part of the Bill, Amendments 55ZA and 55ZB would have a vital effect in limiting the instances where an offence is committed. The landowner or police may only request that an individual vacate land where an alternative suitable site is available or is soon to become available. This means an offence will only be committed where an individual continues to trespass despite the availability of such an alternative site. This would significantly curtail the role of private citizens in the enforcement of the offence, as their request that someone leaves their land would not immediately give rise to the potential of a criminal offence.

### *Discrimination and precise targeting of GRT people*

16. These measures would directly target GRT people and risk incurring serious breaches of human rights and equality law.<sup>12</sup>
17. The proposed measures risk further breaching GRT people's rights under Article 8 ECHR, which obliges the Government to take proactive steps to facilitate GRT people's way of life; indeed, special consideration should be given to the needs and lifestyles of GRT people.<sup>13</sup> A central issue is the severe lack of authorised encampment pitches available to for GRT people. Friends, Families & Travellers identified a 11.1% decrease in permanent pitches (and an 8.4% decrease in total pitches) on local authority and registered social landlord sites between January 2010 and January 2020<sup>14</sup> and a current waiting list for pitches of 1696 households where there are just 59 permanent and 42 transit pitches available.<sup>15</sup> Moreover, only 8 of 68 local authorities in the South East of England have even carried out assessments of the accommodation needs for GRT people in their area.<sup>16</sup>

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<sup>12</sup> The term unauthorised encampments is associated with GRT people (see J. Brown, '[Police powers: unauthorised encampments](#)' December 2020) and the Government explicitly references Traveller caravans in the background briefing to the [Queen's speech](#), p.74. The Government has also made it clear it is not criminalising trespass generally, see Parliament, '[Government response to: Don't criminalise trespass](#)'.

<sup>13</sup> *Chapman v United Kingdom* (App. No. 27328/95) (Judgment of 18 January 2001) ECtHR, para 96.

<sup>14</sup> Friends, Families & Travellers, '[Submission to the Public Bill Committee: on Part 4 PCSCB](#)' (May 2021), p.8.

<sup>15</sup> Friends, Families & Travellers, '[New research shows huge unmet need for pitches on Traveller sites in England](#)' January 2021.

<sup>16</sup> Friends, Families & Travellers, '[No Place to Stop : Only 8 of 68 local authorities in South East England have identified enough land for Travellers to live](#)', February 2020.



In light of this chronic shortage of authorised pitches and sufficient planning for GRT people, GRT people that exercise their right to their nomadic way of life are far more likely to be affected by the criminalisation of unauthorised encampments. The proposed measures would fail to give the required consideration to GRT people's needs and lifestyles and would have a disproportionately criminalising effect on an already marginalised community.<sup>17</sup>

18. The Court of Appeal recently held, "*that there is an inescapable tension between the article 8 rights of the Gypsy and Traveller community...and the common law of trespass.*"<sup>18</sup> It is likely that this tension will be more pronounced if this new criminal offence is introduced. Given that these powers appear unnecessary, as discussed below, it is difficult for the Government to justify that the proposed measures are a proportionate interference with Article 8 ECHR. Indeed, the Court of Appeal noted that

*"[t]he obvious solution is the provision of more designated transit sites for the Gypsy and Traveller community. It is a striking feature of many of the documents that the court was shown that the absence of sufficient transit sites has repeatedly stymied any coherent attempt to deal with this issue. The reality is that, without such sites, unauthorised encampments will continue and attempts to prevent them may very well put the local authorities concerned in breach of the Convention."*<sup>19</sup>

19. The proposed measures are also likely to indirectly discriminate against GRT people in contravention of sections 19 and 29(6) of the Equality Act 2010. The chronic lack of authorised sites for GRT people to use, as noted above, puts GRT people at a particular disadvantage by the criminalisation of trespass as there is little option open to them if they want to enjoy their "*enshrined freedom not to stay in one place but to move from one place to another*".<sup>20</sup> The Equality and Human Rights Commission ("**EHRC**") considered that this indirect discrimination could not be justified in their response to the Government consultation on this issue in 2018.<sup>21</sup> The EHRC were also of the opinion that criminalisation

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<sup>17</sup> Case law suggests the UK will be afforded a narrower margin of appreciation in cases where a particular lifestyle is criminalised than in cases involving social and economic policy such as planning, the subject of most of the cases on this issue to date see *Connors v United Kingdom* (App. No. 66746/01) (Judgment of 27 May 2004) ECtHR, para 82.

<sup>18</sup> *London Borough of Bromley v Person Unknown and Others* [2020] EWCA Civ 12, para 100.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*, para 109.

<sup>21</sup> EHRC, '[Response of the Equality and Human Rights Commission to the Consultation: "Powers for dealing with unauthorised development and encampments"](#)', 2018.

of trespass would breach the public sector equality duty in section 149(1) of the Equality Act.<sup>22</sup> No equalities statement has been issued in relation to the new offence proposed in clause 63 of the Bill. Indeed, JUSTICE recalls statements made by other groups, such as the Muslim Council of Britain<sup>23</sup> and the Board of Deputies of British Jews,<sup>24</sup> who share concerns at the potential for further discrimination and criminalisation of an already deeply marginalised community.

20. Baroness Williams responded that it was not only GRT people that would be affected by the proposed provision, but “*anyone who sets up camp on unauthorised land and causes significant damage, disruption or distress.*”<sup>25</sup> Given the nomadic lifestyle of GRT people and the serious lack of authorised sites available, Baroness Williams’s statement that this provision does not target GRT people because it applies to anyone that sets up camp on unauthorised land does nothing to justify its severe and disproportionate discrimination. GRT people would remain far more likely to be in a position to be criminalised by these provisions. As noted by Baroness Chakrabarti, “[t]his measure... is targeted. The euphemism is so thin: “*without permission, with vehicles*”. I wonder who we are talking about there. The euphemism makes this racial discrimination even more obscene.”<sup>26</sup>

21. By premising the offence of trespass on alternative sites being available, amendments 55ZA and 55ZB would place responsibility on local authorities to provide more authorised sites for GRT people. Indeed, amendment 55ZA goes so far as to make local authorities liable for damages arising from unauthorised encampments where alternative sites are not made available. Greater authorised site provision is essential for reducing the discriminatory effects of clause 63, and this is an important change to the extent that clauses 63-65 remain part of the Bill.

22. Amendment 55ZC, in preventing police from confiscating vehicles that constitute an individual’s principal residence, would not only provide vital protection to the concerning power this would give the police to make an individual homeless, but would also act as a

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<sup>22</sup> *Ibid.*

<sup>23</sup> Muslim Council of Britain, ‘[Muslim Council of Britain expresses deep concern over the Police, Crime, Sentencing & Courts Bill](#)’, (8 September 2021).

<sup>24</sup> Board of Deputies of British Jews, ‘[Board of Deputies President reacts to new legislation on unauthorised encampments](#)’, (18 March 2021).

<sup>25</sup> Parliament, ‘[Hansard \(Lords Chamber\), Volume 815: debated on Wednesday 3 November 2021](#)’, column 1330.

<sup>26</sup> *Ibid.*, column 1323.

safeguard to some of the disproportionately severe effects the Bill would have on GRT people whose principal residences are otherwise more likely to be confiscated.

*Police reject additional powers and further criminalisation of trespass*

23. The police currently have extraordinarily strong powers in relation to unauthorised encampments. Section 61 of the CJPO provides that the police can remove trespassers who set up an unauthorised encampment from a property, and section 62C details the power to seize their vehicles. These new powers are, therefore, unnecessary.

24. Indeed, in response to a government consultation on this issue in 2018, 75% of police responses said current police powers were sufficient and 85% of police responses did not support the criminalisation of unauthorised encampments.<sup>27</sup> Furthermore, in response to the Home Office consultation on additional powers in relation to unauthorised encampments, the NPCC stated:

*“[t]he possibility of creating a new criminal offence of 'intentional trespass' or similar has been raised at various times over the years but **our position has always been – and remains – that no new criminal trespass offence is required.**”<sup>28</sup> (Emphasis as in original).*

25. The NPCC response concludes:

*“[i]n summary, we believe that criminalising unauthorised encampments is not acceptable. Complete criminalisation of trespass would likely lead to legal action in terms of incompatibility with regard to the Human Rights Act 1998 and the Public Sector Equality Duty under the Equality Act 2010, most likely on the grounds of how could such an increase in powers be proportionate and reasonable when there are insufficient pitches and stopping places?”<sup>29</sup>*

26. This is a damning rejection by the police, clearly signalling that they do not consider that the Bill would alleviate issues arising from unauthorised encampments, such as those of the innocent farmer, raised by Lord Garnier, “*whose livelihood is put at risk by people who*

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<sup>27</sup> Friends, Families & Travellers, [‘Police oppose criminalising unauthorised encampments and call for more sites’](#), 2019.

<sup>28</sup> Home Office (NPCC Response), [‘Strengthening police powers to tackle unauthorised encampments – Government consultation’](#), 2019, p.8.

<sup>29</sup> *Ibid*, p.10.

are not interested...in the farmer's right to earn a living and to do so undisturbed."<sup>30</sup> Indeed, as noted by the Lord Bishop of Manchester:

*"[t]he problem with Clause 6[3] as it stands is that it seeks to respond only to the consequences and not to the cause. The world-renowned Desmond Tutu, formerly archbishop of Cape Town, famously remarked that it is not enough to fish bodies out of the river; we need to take a stroll upstream to see who is throwing them in."*<sup>31</sup>

27. Should clauses 63-65 remain as part of the Bill, Amendments 55ZA and 55ZB would make the Bill more effective in reducing the issues related to unauthorised encampments by incentivising local authorities to provide alternative authorised sites.

## Conclusion

28. There are serious issues with Part 4 of the Bill. Not only would it have a disproportionately high and discriminatory impact on GRT people, but, in the opinion of the police themselves, it is also unlikely to resolve the issues that it seeks to improve. These proposals would dilute the UK's commitment and adherence to international human rights laws and norms. They represent a more punitive approach to policing society that is deeply divisive and problematic.

29. For the reasons set out in this briefing, JUSTICE strongly urges Parliament to remove the Bill's abovementioned offending provisions, in the interests of those communities likely to be impacted by these measures and the UK's reputation as a country governed by the rule of law.

**JUSTICE**

**10<sup>th</sup> December 2021**

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<sup>30</sup> Parliament, '[Hansard \(Lords Chamber\), Volume 815: debated on Wednesday 3 November 2021](#)', column 1314.

<sup>31</sup> *Ibid*, column 1311.