



Home Office

# **Statutory Guidance for Police on Unauthorised Encampments**

a summary of available powers

October 2021

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# Summary

## About this guidance

This statutory guidance sets out the suite of powers available for police to respond to unauthorised encampments and to tackle a range of harms proportionately.

The Secretary of State must issue this guidance under s62F of the Criminal Justice and Public Order Act 1994 (“CJPOA”) which will help police forces to exercise the powers in the new or amended provisions in the CJPOA. This statutory guidance is in relation to the exercise by the police of their powers under s60C to 62E of the CJPOA and regulations made under s67. Changes to the CJPOA, including a new offence of residing on land without consent in or with a vehicle with specific conditions, were introduced by the [Police, Crime, Sentencing and Courts Act 2022].

Under section 67 of the CJPOA, any vehicles which have been seized and removed by police under sections 62(1), 62C(3), or 64(4) may be retained in accordance with regulations made by the Secretary of State. The Police (Retention and Disposal of Motor Vehicles) Regulations 2002 are made under this section.

These measures have been designed to apply to anyone who meets the conditions for enforcement action regardless of race or ethnicity. The Government expects the police to take action where appropriate against those who break the law. Police should also continue to consider their obligations under human rights legislation, their Public Sector Equality Duty and wider equalities legislation.

It remains the case that the response to unauthorised encampments requires a locally driven multi-agency response, led by local authorities and supported by police. Operational advice for officers dealing with unauthorised encampments produced by the National Police Chiefs Council (NPCC) will be updated in accordance with changes in the [2022 Act]. There is also guidance for dealing with unauthorised encampments which is primarily aimed at local authorities but is also intended to be helpful to landowners and others affected by unauthorised encampments. The decision on which police powers are used remains at the discretion of the police officer attending a particular incident who must, when exercising that discretion, have regard to this guidance under [provision X in the Act].

The unauthorised encampments provisions do not seek to lead to action against rough sleepers, nor to those looking to access the countryside for leisure, such as ramblers and other groups, providing they do not meet the conditions for the offence.

## Purpose of guidance

In the above context this guidance aims to:

- set out all the new powers in the [2022 Act] and existing powers in the CJPOA (s60C to 62E of the CJPOA and regulations made under s67) which are available to police to tackle unauthorised encampments. highlight the criteria that must be met for police to lawfully exercise the powers.
- clarify the meaning of key terms within the [2022 Act].
- help the police decide on proportionate action.

The scope of this guidance does not cover incidents whereby individuals purchase land and occupy it, with or without planning permission. Action against an unauthorised development will continue to be led by the local planning authority.

## What has been introduced in the [2022 Act]?

Sections 60C to 60E of the CJPOA set out the criminal offence relating to residing on land without consent, in or with a vehicle, and associated seizure and forfeiture powers.

## What about the existing powers?

Existing powers, which in some cases have been strengthened in the [2022 Act], are set out in sections 61 to 62E of the CJPOA. Regulations made under section 67 relate to vehicles seized under section 62(1) or section 62C(3).

The existing provisions, as strengthened, are designed to ensure that lower levels of harm or disruption than those for the offence can be met with proportionate enforcement action. Where possible, the police should liaise with local authorities when assessing each individual case and rely on the evidence in each to determine the appropriate powers to use.

# The new criminal offence

The new criminal offence under s60C to s60E of the CJPOA is as follows:

<b>Offence relating to residing on land without consent in or with a vehicle, as introduced by the [2022 Act]</b>	
<p><b>Primary conditions of the criminal offence- s60C(1)</b></p>	<p>Offence relating to residing on land without consent in or with a vehicle applies where:</p> <ul style="list-style-type: none"> <li>a) a person is aged 18 or over;</li> <li>b) a person is residing, or intending to reside, on land without the consent of the occupier of the land;</li> <li>c) a person has or intends to have at least one vehicle with them on the land;</li> <li>d) one or more conditions in subsection 60C(4) are met;</li> <li>e) the person is requested to leave and/or remove their property by the landowner, a representative of the landowner or police.</li> </ul> <p>This offence was created by the [PCSC Act 2022]</p>
<p><b>Further conditions of the criminal offence - s60C (2)</b></p>	<p>A criminal offence is committed when a person meets all the conditions in s60C (1) and also meets one of the following:</p> <ul style="list-style-type: none"> <li>a) a person fails to comply with the request to leave as soon as reasonably practicable;</li> <li>b) a person re-enters or enters the land with an intention of residing there without consent and has, or intends to have a vehicle with them, within 12 months of the request being made.</li> </ul>
<p><b>Specific conditions related to harm - s60C (4)</b></p>	<p>A person will be committing this offence if they have caused, or are likely to cause, significant damage, disruption, or distress.</p> <p>A constable must consider if the person has caused or is likely to cause significant damage, disruption or distress. What could constitute significant damage, disruption and distress can be found under the heading 'significant' below.</p> <p>Under s60C(4) a person can be committing the offence if they are not yet physically on the land and if they are likely to cause significant damage, disruption or distress. Further detail can be</p>

	<p>found in the 'likely to cause' subsection further down this document.</p> <p>If a person commits significant damage, disruption or distress and then leaves further to the request from the landowner/their representative/a constable, the s60C offence will not apply unless they return to the land within the prohibited period of 12 months. However, other offences relating to damage could have been committed and options should be explored where appropriate.</p>
<p><b>Accompanying power to seize and retain vehicles/other property - s60D</b></p>	<p>Police will be able to exercise powers of arrest and seizure in relation to the offence. The power of seizure includes a vehicle but is not limited to this.</p> <p>A constable can remove any property on the land which the police suspects the person had or intended to have with them for the purposes of the offence or which was subject to the request to leave if that property:</p> <ul style="list-style-type: none"> <li>a) belongs to the person suspected of committing the offence;</li> <li>b) is in the person's possession; or</li> <li>c) is under the person's control</li> </ul> <p>Section 60D (2A) provides that a vehicle can be seized 'wherever located' For 'other property' to be seized it must be on the land which was subject to the request to leave, as provided by section 60D(2)(b)).</p> <p>Section 60D (10) and (11) prevent another person retrieving the seized vehicle where the chief officer of police reasonably believes that the vehicle was in the possession or control of the offender with that person's consent at the time of the offence.</p> <p>The relevant chief officer of police may retain any property that has been seized under subsection (1) until the end of the period of three months beginning with the day of the seizure or, if criminal proceedings are commenced, until the conclusion of those proceedings.</p> <p>If a prosecution is not taken forward, the property must be returned to the person believed to be the owner as soon as practicable.</p> <p>If a chief officer of police cannot after reasonable inquiry identify the vehicle owner:</p>

	<p>(a) the chief officer must apply to a magistrates' court for directions, and (b) the court must make an order about the treatment of the property.</p> <p>Existing vehicle seizure regulations can be found in the Police (Retention and Disposal of Motor Vehicles) Regulations 2002.</p>
<b>Accompanying power for forfeiture - s60E</b>	If a person is convicted of the offence under section 60C, the court may order any vehicle/other property that has been seized under section 60D and retained by the police to be forfeited.
<b>Penalties</b>	The maximum penalty for the offence will be three months' imprisonment or a fine not exceeding level 4 (£2,500) on the standard scale, or both.
<b>Reasonable excuse</b>	A person will not commit the offence if they can show they have a reasonable excuse for failing to comply as soon as reasonably practicable with a request to leave and remove their property, or after receiving the request, entering (or re-entering) the land with the intention of residing there without consent within 12 months of the request.
<b>Significant</b>	<p>The factual circumstances of each case will determine whether a 'significant' level of damage, disruption or distress has been caused or is likely to be caused and this will be for police and courts to assess.</p> <p>The assessment of this will depend on the individual facts of each case; it is important to remember that at least one of the below must be caused or likely to be caused by the person's conduct or residence on the land or a likelihood of either of these. Such harms, disruption or distress could include, but are not limited to:</p> <ul style="list-style-type: none"> <li>a) local communities being prevented from accessing or using facilities, such as school sports fields, parks and car parks.</li> <li>b) property on the land is damaged or the land itself is damaged, including agricultural land.</li> <li>c) forcing entry to the land has caused damage to any fixtures or fittings.</li> <li>d) the environment is damaged, including excessive littering, fly tipping, excessive noise and smells from waste or smoke due to bonfires.</li> <li>e) interference with water, energy or fuel supplies.</li> <li>f) impacting the ability of workers or customers to access shopping centres, businesses, or agricultural land, if this results in the loss of lawful use of the land.</li> <li>g) distress caused by offensive conduct such as verbal abuse and threatening behaviour. This may include a level</li> </ul>

of distress which changes behaviour, rather than distress which amounts to 'disgust'. For example, this may include behaviours which may cause fear when walking close to the encampment which prevents a person from leaving their house.

These are some of the factors that the police could consider when assessing whether damage, disruption or distress is significant. If the police deem the harms to not be significant, then the offence under Section 60C would not apply. However, powers under section 61 and 62A of the CJPOA 1994 could still be used, providing the conditions are met.

Some of the factors for police to consider could also include:

**How are landowners and users of the land affected?** If local sports teams cannot use the facilities due to damage caused by people residing or intending to reside on land, or because the land is severely obstructed, then this could be deemed significant damage or disruption. The size and scale of the land occupied/damage caused is relevant when considering how landowners and land users are affected. If the land comprises of a small park and there are several vehicles, then the police/court may deem this to be more significant than fewer vehicles on a large park.

**How frequently is the land used?** People residing or intending to reside on an industrial estate or shopping centre car park could significantly disrupt people's ability to go about their lawful business and impact trade. However, if the unauthorised encampment is in the corner of a local field or park then it might not be causing significant disruption. An unauthorised encampment on an abandoned piece of land may equally not be causing significant disruption or harm.

**How is the environment being damaged?** A small amount of rubbish may not be judged by the courts to constitute significant damage to the land. However, excessive smells, noise, bonfires, and larger amounts of rubbish which might interfere with a person's right to go about their business or daily life may be considered significant by the police/courts.

Police will be expected to deal with each case on its own merits and determine through gathering evidence if the threshold of significant has been met. If it has not been met, the other CJPOA

	powers may be used.
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# Existing and strengthened powers to remove trespassers on land

Existing powers to remove trespassers on land as introduced in the 1994 Act and amended in the [2022 Act]	
<p><b>Power to remove trespassers with a common purpose of residing on land</b></p>	<p>In cases where no significant harms have been committed, police may decide to take other enforcement action using <b>Section 61 of the Criminal Justice and Public Order Act 1994</b>, providing the conditions of this are met.</p> <p>Section 61 gives police the powers to direct trespassers on land who have the common purpose of residing there for any period.</p> <p>The power applies where a senior officer reasonably believes that two or more people are trespassing on land with the purpose of residing there, that the occupier has taken reasonable steps to ask them to leave, and any of the following have occurred:</p> <ul style="list-style-type: none"> <li>a) any of the trespassers has caused, damage, disruption, or distress <b>or</b></li> <li>b) The trespassers have between them six or more vehicles on the land.</li> </ul> <p>The <b>conditions that can be caught by the power to direct under 61(1) (a) have been broadened</b> under the [2022 Act]. These replicate the damage, disruption and distress included in the new offence but will not need to meet the threshold of 'significant'.</p> <p>Failure to comply with the direction, by failing to leave the land as soon as reasonably practicable, without reasonable excuse, is an offence.</p> <p>Similarly, it is an offence for a trespasser who has left the land in compliance with a direction to re-enter it as a trespasser within 12 months of the direction being given. <b>The period of prohibited return has been extended from 3 months to 12 months</b> under the [2022 Act]. If breached, without reasonable excuse, police will be able to exercise powers of arrest and seizure.</p>

	<p>If a person fails to remove their vehicle as directed, without reasonable excuse, or enters the land as a trespasser within 12 months of the direction to leave being given, the police officer may seize and remove that vehicle under section 62 of the CJPOA.</p> <p>As introduced in the [2022 Act], a direction under 61 can be issued to trespassers on <b>land that forms part of a highway</b>, but only where other conditions are met.</p> <p>If there are no significant harms committed, then section 61 powers can be used by police and local authorities can use other existing powers available to them.</p>
<p><b>Police Powers to direct trespassers to an alternative site</b></p>	<p>Police have powers under <b>section 62A of the Criminal Justice and Public Order Act 1994</b> to direct trespassers to leave land and remove any vehicle and property from the land where there is a suitable pitch available on a caravan site elsewhere in the local authority area, providing there is at least one trespasser with the purpose of residing, one vehicle present on the land and an occupier or person acting on their behalf has asked the police to remove the trespassers.</p>
<p><b>Retention and disposal of vehicles</b></p>	<p>Under <b>section 67 of the Criminal Justice and Public Order Act 1994</b>, any vehicles which have been seized and removed by police under sections 62(1), 62C(3), or 64(4) may be retained in accordance with regulations made by the Secretary of State. The Police (Retention and Disposal of Motor Vehicles) Regulations 2002 are made under this section.</p> <p>These regulations provide for the retention, safe keeping, disposal and destruction, by the police or persons authorised by the chief officer of the relevant police force, of vehicles seized under those powers.</p> <p>Under Regulation 4, the authority having custody of the vehicle is obliged to take steps to give a notice to the person from whom the vehicle was seized requiring them to claim the vehicle within 21 days. The notice must indicate that charges may be payable by that person and that the vehicle may be retained until these charges are paid.</p> <p>The level of the charges is prescribed in Regulation 9.</p> <p>Where the authority is unable to serve a notice on the owner of</p>

	<p>the vehicle, or that person fails to remove the vehicle from their custody, the authority may dispose of or destroy the vehicle in accordance with Regulation 6.</p> <p>Regulation 6(5)(a) provides, subject to Regulations 6(5)(b) or (c), that the vehicle must not be disposed of/destroyed before 3 months from the date of seizure</p> <p>Regulation 8 provides that where a vehicle is sold, the net proceeds of sale are payable to the owner of a vehicle, if, within one year of the sale, they satisfy the authority that they were the owner of the vehicle.</p>
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# Application of the guidance

When deciding on the appropriate enforcement action to take in relation to the new offence and existing CJPOA enforcement powers, police should continue to consider all the facts in each situation. NPCC operational advice for unauthorised encampments and individual police force guidance will provide operational best practices and can be used alongside this statutory guidance.

The 'likely to cause' damage, disruption or distress provision only applies to the offence and not the existing s61 provision. Similarly references to 'residence' or 'presence' and 'conduct' are only in relation to the s60 offence, while under s61 the requirement is just trespassing with a common purpose of residing and then either damage, disruption or distress.

Potential considerations for the police include (but are not limited to) the levels of and for the new offence only 'likely to cause' levels of:

- (a) damage that the person has caused or might cause.
- (b) interference that a person has caused or might cause to local amenities such as gas and electric supplies through their presence, likely presence or conduct on the land.
- (c) harm that the person has caused or might cause to the local environment, such as excessive noise or smells through their presence, likely presence or conduct on the land.
- (d) interference with people's ability to access or use the land through the person's presence, likely presence or conduct on the land.
- (e) potential interference with the peaceful enjoyment of neighbouring property.
- (f) harm to good community relations.
- (g) distress caused by abusive behaviour and/or language or threatening, abusive or insulting writing or signs.
- (h) risks of public disorder or public safety – for example, by deterring fly-tipping and criminal damage.

The s60C offence applies only to those individuals who commit or are likely to commit *significant* damage, disruption or distress.

## Failing to leave

A s61 direction to leave can be made against all trespassers even if the damage, disruption, or distress is only caused by one member of the encampment, providing there are two or more trespassers on the land with the purpose of residing. A direction to leave can also be made against all trespassers in the event no damage, disruption or distress is caused but there are six or more vehicles on that land. Section 61 relies upon reasonable steps being taken, by or on behalf of the landowner, to ask trespassers to leave in every case before police powers can be used.

Under s61, if the person fails to comply with the request to leave as soon as practicable, which will depend on the facts of the case, or they return as a trespasser to the location within 12 months of the direction, without reasonable excuse, they are then committing a section 61 offence.

### Suitable sites

Provision of authorised transit sites in accessible locations may not be limited to official sites. It might also include negotiated stopping where particular locations have been identified by the local council as suitable stopping sites in the district for limited and agreed short periods of time, without having any adverse impact on the settled community.

The Government expects local planning authorities to assess the need for sites in their area and make provision accordingly. Local authorities are best placed to make decisions about the number and location of such sites locally, with due regard to national policy and local circumstances. Local Authority officers can make an agreement for negotiated stopping and for basic facilities to be provided by the council.

### What is a reasonable excuse?

A person can show they have a reasonable excuse for failing to leave the land or for entering again within the prohibited period.

Police will be expected to consider what constitutes a reasonable excuse depending on the factual circumstances of each case,

The following examples are unlikely to be considered as reasonable excuses:

- a) the vehicle has broken down; the legislation states a vehicle is 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;
- b) the attendance of events;
- c) the attendance at an appointment, unless for medical reasons to which the police and courts deem a reasonable excuse for residing on land without permission applies.

### Welfare issues

Police should ensure that, in accordance with their wider Equalities and Human Rights obligations, proper welfare enquiries are carried out to determine whether there are pressing needs presented by those on unauthorised encampments and that, where

necessary, the appropriate agencies (including Local Authorities) are involved as soon as possible.

However, the police, alongside other public bodies, should not gold-plate human rights and equalities legislation. The police have been given strong powers to deal with unauthorised encampments and when deciding whether to take action, they should consider the harms caused by the unauthorised encampment (including those listed on page 12) and that the state may enforce laws to control the use of an individual's property where that is in accordance with the general public interest.

Each case should be dealt with on its own merits by police. This includes considering the potential impact issuing a direction to leave, arresting a person or seizing a vehicle may have on the families involved and on the vulnerable, before taking an enforcement decision.

If necessary, enforcement action against those on the unauthorised encampment could be delayed while urgent welfare needs are addressed.

The police have the powers to take action where significant harms have been caused. It is for the police to decide on proportionate enforcement action based on the circumstances and evidence of each case.

### Likely to cause

Relating to the new offence under s60C only, a person will be committing an offence if they have caused, or are **likely to cause**, significant damage, disruption, or distress while residing or with an intention to reside. This enables the police to prevent further repeated significant harms, rather than waiting until the damage has taken place again. This is particularly useful where those who cause damage return to the same land or move a short distance away only to re-enter it, or enter other land and cause the same type of damage.

As is the case for other criminal offences, the police will need to collect evidence to form reasonable grounds to suspect a person has committed the offence and the offence will have been committed only where the specific conditions have been met.

### Intention to reside

As with 'likely to cause', the police will need to assess each case and consider whether there is an intention to reside. An example could be where a person is not yet physically on the land but is in a car just outside of the land and has already placed several of their belongings on the land, thus indicating an intention to reside.

## Equalities

The Equality Act 2010 makes it unlawful to treat someone less favourably than others because of their protected characteristic, including race (which includes a person's ethnic or national origins and nationality) .

The Public Sector Equality Duty applies to the police and places a duty on the police to have due regard to the need to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between persons of different racial groups.

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# Preventing the return of an unauthorised encampment

## Following up on enforcement action

Where a trespasser or encampment returns in the conditions specified and the police have used their powers under the CJPOA as amended by the [2022 Act] to remove them, police should consider pursuing criminal sanctions. Circumstances where the police should consider criminal sanctions are if the new offence is committed as well as if the person returns with an intention to reside in or with a vehicle within 12 months of being directed to leave, without a reasonable excuse.

Police should have systems in place to record data so they can know whether a trespasser or encampment is returning to the same location in order to make best use of their enforcement powers.

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## Additional Sources of Information

The police may also wish to refer to the following guidance documents and resources:

[Dealing with illegal and unauthorised encampments - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/dealing-with-illegal-and-unauthorised-encampments)

[The Police \(Retention and Disposal of Motor Vehicles\) Regulations 2002 for powers of seizure](#)

[NPCC operational advice](#)

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# Glossary of terms

Term	Definition
Highway	This can be interpreted broadly. In <i>London Borough of Southwark and Another v. Transport for London</i> [2018] UKSC 63, the Supreme Court considered a highway to be “a way over which the public have rights of passage, whether on foot, or horseback or in (or on) vehicles”.
Human Rights Act	An Act passed in 1998, and brought into force in October 2000, which requires all public authorities to act in compliance with the rights and obligations set out in the Act.
Land	Does not include buildings other than— (a) agricultural buildings within the meaning of paragraphs 3 to 8 of Schedule 5 to the Local Government Finance Act 1988, or (b) scheduled monuments within the meaning of the Ancient Monuments and Archaeological Areas Act 1979.
Proportionality	The concept that enforcement action should go no further than necessary to prevent or tackle the harm that has been or is likely to be committed and whether a fair balance has been struck between the rights of the individual and the interests of the community.
Occupier	The person entitled to possession of the land by virtue of an estate or interest held by the person.
Relevant property	1) a vehicle which the police suspects the person had or intended to have with them for the purposes of the offence under section 60C or 2) any other property on the land which was subject to the request to leave.
Vehicle	Vehicle includes 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. Static caravans which are capable of being moved are included.

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