The proposed extension of police powers against unauthorised encampments

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Trespass – a re-cap

- Trespass is a tort / civil wrong. It consists of any unjustifiable intrusion by one person upon land in the possession of another.

- To bring a private action for trespass, it is not necessary to show any actual damage.

- Trespass is not generally a criminal offence.

- However, there are lots of criminal offences, created by statute, which involve trespass.

Examples of criminal offences involving trespass

- Trespass on land / in a building with a firearm: s.20 Firearms Act 1968

- Squatting in residential premises: s.144 LASPO 2012

- Trespass on protected sites (e.g. Royal / Governmental / Parliamentary / MOD / Nuclear sites): s.128-131 Serious Organised Crime and Police Act 2005

- Failing to comply with a police direction to leave land: s.61(4) Criminal Justice Public Order Act 1994

My favourite trespass-related offence

- Failure to comply with a direction to leave a "rave": s.63 CJPO 1994

- What is a "rave"? A "*gathering on land in the open air of 100 or more persons at which amplified music is played during the night (with or without intermissions) and is such as, by reason of its loudness and duration and the time at which it is played, is likely to cause serious distress to the inhabitants of the locality*".

- What is "music"? "*Sounds wholly or predominantly characterised by the emission of a succession of repetitive beats*".

Current position on unauthorised encampments

- Trespass for the purpose of setting up an unauthorised encampment is not itself an offence.

- It is only an offence if all of the following ingredients are present (s.61 CJPO):
  - Two or more persons trespass on land
  - With the common purpose of residing there for any period
  - Reasonable steps have been taken by or on behalf of the occupier to ask them to leave
  - Either:
    - Any person has caused damage to land/property or used threatening/insulting/abusive words or behaviour towards occupier **OR**
    - 6 or more vehicles on the land
  - Police have directed persons to leave, and they knowlingly haven't.

Recent consultation on proposed changes

- **Strengthening police powers to tackle unauthorised encampments:**
  - Consultation from 5/11/19 to 5/3/20

- Two alternative proposals:
  - Criminalise unauthorised encampments
  - Amend the existing powers

Proposal (1): criminalise unauthorised encampments

- Based on examples from Ireland and Scotland:

  - In <u>Ireland</u>, unauthorised encampments are criminalised if they substantially damage the land or prevent use of the land by the owner or other lawful users. The police are given a discretion to direct trespassers to leave if suspected to be committing the offence: s.24 Housing (Miscellaneous Provisions) Act 2002

  - In <u>Scotland</u>, it is an offence to occupy private land without the landowner's permission: Trespass (Scotland) Act 1865

Proposal (1): criminalise unauthorised encampments

- **Why?** Deterrent to future encampments, speedier enforcement, reducing cost of eviction and clean-up.

- **What would the ingredients of the offence be?**

  - Actual / likely future damage?
  - Requirement for landowner to take reasonable steps to ask trespasser to leave?
  - Requirement for the encampment to prevent those entitled to use the land from making use of it?
  - Trespassers have demanded money in return for departure?
  - Actual / likely future anti-social behaviour?

Proposal (2): Amending existing powers

- Currently it is an offence to return to site within **3 months** after being directed to leave by police. The proposed amendment is to extend this to **12 months**.

- Currently police powers to direct persons to leave require either anti-social behaviour / damage or **6 or more vehicles**. The proposed amendment is to reduce this to **2 or more vehicles**.

- Currently the police powers don't apply to **highway land**. The proposed amendment would remedy this.

- Currently the police can direct trespassers to suitable authorised sites within the **same authority area**. The proposed amendment would widen this to **neighbouring authority areas**.

Proposal (2): Amending existing powers

- Potential issues about extending to neighbouring authority sites

  – Having agreements in place about directing to neighbouring authority sites;

  – Maximum distances for travel to neighbouring authority sites;

Consultation responses

- Local Government Association: supportive of strengthened powers, but needs to be done in conjunction with:
  - Financial support to local authorities and police for exercising the powers
  - Financial support for provision of transit sites
  - Reform to court process for obtaining injunctions
  - More collaborative approach with Gypsy, Roma and Traveller community

- Friends Families and Travellers: opposed to strengthened powers, and switch to improved site provision duties/targets and funding (citing support for these views among the police).

Conclusions

- We await the Government's response;

- No consensus on whether the extended powers are desirable (it basically depends on who you ask);

- Consensus that there needs to be a joined-up approach with more funding to LAs and police / provision for available transit sites.

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the chat section which can be found along the top or bottom of your screen.

Thank you for listening

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