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GUIDANCE NOTE: TRESPASS – TRAVELLERS, UNAUTHORISED ENCAMPMENTS AND RAVES

BACKGROUND

At any time of the year, and especially in the summer months, it is not uncommon for members to experience unauthorised encampments of travellers on their land. This guidance note is intended to assist in general terms with information about the options open to the landowner and the relevant legislation.

Steps to take in advance

1. Have ready an accurate, up to date plan of all the land you occupy including copies of all relevant title deeds or land registry documents if your land has been registered, tenancy agreements and grazing agreements. This allows you to quickly and easily prove your ownership of, or legal right to the land.
2. You should arrange to keep in contact with the neighbouring landowners on this issue. In this way you are all more likely to hear about potential problems and even the identity of specific people. It is particularly important if travellers are being successfully removed from elsewhere in your area, as they may be looking for new sites.
3. Fence off or be prepared to bar access to your property with ditches, boulders, sand, rubble and the like. Do not erect anything likely to cause injury.

4. You should ensure gates are secure and where practical place locks on

them. This may not be possible where there are public or private rights of way.

5. Make sure you have adequate and up to date insurance cover for all your property and legal costs arising from Court proceedings.
6. Do not invite would-be trespassers on to your land, even if urged to do so. The Police will then not be able to exercise their discretion under Section 61 of the Criminal Justice and Public Order Act 1994 (CJPOA 1994).
7. Warn your solicitor and find out how to contact him/her outside office hours. Travellers do not always operate during the day and it is important to be able to react as quickly as possible.
8. Consult your solicitor if you consider taking out an injunction to prevent trespass.

Steps to take if Trespass does take place

1. Request the trespassers to vacate immediately. If possible you should be accompanied by a friend, member of the family or employee, if needed they will then be able to confirm that you asked the trespassers to leave. Filming your request is also an option but it can aggravate an already tense situation. If

your own or anybody else's safety is in doubt then you should immediately stop what you're doing and leave.

2. If possible, take photographs and make a note of the number of cars there and their registration details. Also, keep a record of any damage done to your property. Again this may aggravate the situation. If so stop what you're doing and walk away.
3. Exercise care in confronting them – if in doubt, do not confront them at all. Do not use any force – although, in law, reasonable force may be used, it is safer not to do so.
4. Do nothing which could be seen to acquiesce in the trespass; for instance do not supply food, firewood or water. Do not agree to trespassers remaining on any part of the land for any period of time as this may damage your chances of getting a possession order.
5. Make sure your staff and family are available to give evidence if they have asked the trespassers to leave or if they have suffered threats or abuse.
6. Inform the Police immediately and request them to use their powers under Section 61 of the CJPOA 1994. If they refuse, request an explanation.
7. Contact your solicitor as soon as possible with a view to obtaining a possession order and obtain an estimate of costs prior to instructing him. Obtain alternative estimates if you are unhappy about the level of costs. Your Regional CLA office may be able to assist with local firms (see contact numbers at end).

The Landowner's Legal Position

Trespass on land is a tort. This means that it is a civil wrong for which the landowner may seek redress through the civil courts. It is also the case that if a trespasser peaceably enters or is on land, the person who is in or entitled to possession may request him to leave and if he refuses to

leave, remove him from the land. If a trespasser enters with force and violence, the person in possession may remove him without a previous request to depart. It is open to the landowner to attempt to remove the trespasser himself; however this can be dangerous without the requisite experience in handling these situations. If the force or violence used by the landowner to remove a trespasser is deemed excessive then the landowner may be committing a "trespass upon the person", which is a criminal offence. No more force than is reasonably necessary should be used. It may also involve the landowner being placed in danger if the trespassers become violent. Police should always be notified of an eviction and called in to stand by to prevent a breach of the peace.

Because of both the risk of danger to the landowner and the risk that a criminal offence may be committed if too much force is used, it is much more common for the landowner to engage a bailiff's firm. Bailiffs can be instructed to remove travellers by relying on the landowner's right to use reasonable force. If reputable bailiffs with practical experience in the area are used then this method has the potential to get the matter resolved quicker and with less expense than the traditional method. In areas where the bailiffs are known this is said to be more effective as there is no recourse to force merely the threat is sufficient.

In certain circumstances the police will step in and take action to remove the travellers (see below). In other situations this may not be appropriate and the landowner will have the option of seeking an injunction through the civil courts. This will generally require the assistance of a solicitor.

The Legislative Situation

Parliament has determined that in certain circumstances it shall be appropriate for the police to take action on behalf of a landowner. The powers set in the Public Order Act 1986 were then further strengthened, due in part to CLA lobbying, in the CJPOA 1994. Section 61 of the Act sets out a power for the police to exercise in

certain circumstances to direct trespassers to leave land and to arrest them when they fail to obey a direction. The Act also gives the local authority powers to remove illegal trespassers.

Section 61 CJPOA 1994

If the senior police officer present believes that:

- a) Two or more persons have entered land as trespassers with the common intention of residing there for any purpose; and
- b) reasonable steps have been taken by or on behalf of the occupier to ask them to leave;

and *either*,

- i) any of them has caused damage to the land or property on the land, *or*
- ii) any of them has used threatening, insulting words or behaviour to the landowner or a member of his family, *or*
- iii) they have six or more vehicles on the land,

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

These provisions are also extended to cover all rights of way on the definitive map and land to which the public has access including common land.

A direction to leave may also be given where temporary consent had been given by the landowner for persons to reside on his land and that consent had been breached.

The offence occurs if a person knowing that such direction has been given which applies to him/her and either:

- 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.

The offence is punishable by up to 3 months in prison or a fine not exceeding £2,500 or both.

Section 62 of the Act creates an offence of failing to remove from the land any vehicles the constable may seize and remove them.

Sections 62A-E CJPOA 1994

This is a separate power for the police to direct the trespassers to leave land and remove any vehicles and property where they believe there is a suitable alternative site for the trespassers to pitch.

In order to exercise the power, the police must ensure that:

- a) At least two people are trespassing on the land and intend to reside there for any period;
- b) the trespassers have at least one vehicle on the land;
- c) the trespassers have a caravan in their control and there is a suitable alternative pitch for the caravan or caravans at another pitch.

The constable will need to speak to the relevant local authorities to ascertain whether there is a suitable alternative pitch.

If a trespasser fails to leave following such a direction or leaves and then enters any land within the relevant authority within three months it could lead on summary conviction to 3 months in prison or a fine not exceeding £2,500 or both.

It will be a defence if the trespasser has a reasonable excuse for not complying, for instance if the vehicle he is using has broken down.

Section 62C also provides a power to seize and remove vehicles. This applies where a constable who reasonably suspects that a person to whom the direction under section 62A was made has failed to remove the vehicle or has entered onto land as a trespasser within the relevant authority within a 3 month period.

There has been much activity on the part of the CLA to ensure that the police do use their powers when appropriate. There has been considerable variation from region to region as to when it is appropriate. The Association of Chief Police Officers (ACPO) produces guidance on different aspects of policing and the CLA has lobbied hard to ensure that an acceptable interpretation of the legislation is set out in ACPO documents.

Section 61 and 62A-E confer powers on the police not a duty. Police guidance does acknowledge that the power under section 61 does not require the landowner to have applied for a court order for possession nor should it be used as a last resort.

The Act does not define damage but makes reference to the Criminal Damage Act 1971 when defining property. Police guidance recommends a common sense approach and states that damage has included:

- Churned up ground caused by heavy vehicles;
- diesel, spillages;
- animal and human excrement;
- destroyed fencing and spoiled crops.

Police guidance specifies that the dumping of litter and rubbish may fall within the category of damage depending on the severity of the particular situation and each case must be looked at on its merits.

When trespassers arrive in circumstances which satisfy the trigger points set out above the landowner must contact the police immediately to inform them of the situation and suggest that it would be appropriate to use police powers under the CJPOA 1994. In addition to the trigger points it is important to give the police information in respect of the trespass such as interference with farming practices, repeated incidents, nuisance to neighbouring land. If the police decide that it is not appropriate in the circumstances to take action under section 61 or 62A-E the landowner might wish to ask that he be given a written explanation as to why. It is always advisable to keep the CLA Regional Office informed as to what is happening and

to bear in mind that the legal team is available to be consulted.

Section 63-67 CJPOA 1994

These provisions apply to a gathering on land in the open air of 100 or more persons where amplified music is played during the night, which by reason of its loudness and duration and the time at which it is played is likely to cause serious distress to the local community. The provisions are in part designed to enable the police to control the situation before a rave develops.

Where a police officer of at least the rank of superintendent believes that:

- 2 or more persons are present on land with a view to preparing for organising a rave gathering, *or*
- 10 or more persons are waiting for such a gathering to begin there, *or*
- 10 or more persons are attending such a gathering which is in progress, he may give a direction to leave.

Where a person fails to obey a direction to leave or returns within 7 days he commits an offence for which he faces a fine of £2,500 or 3 months' imprisonment. The same officer also has powers to remove and confiscate any vehicle or equipment which has not been removed. That equipment may also be forfeited by order of the court.

The police also have powers to stop people they reasonably believe are on their way to a gathering within a radius of five miles of the boundary of the site of the gathering.

Sections 68-69 CJPOA- Aggravated Trespass

An offence is committed when a person trespasses on land in the open air and in relation to any lawful activity on that land and adjoining land does anything which is intended by him to have the effect of:

- Intimidating those persons so as to deter them from engaging in that activity;
- obstructing that activity, or

- disrupting that activity.

The police have powers to arrest persons they reasonably believe are committing the offence and direct that a person leave land if they believe they are there with the intention of committing the offence. The provisions also extend to most rights of way. A person guilty of the offence faces a fine of up to £2,500 or 3 months imprisonment.

From a landowner's perspective it is important to ensure that the activity that is disrupted is one that is lawful. It has been successfully argued by those disrupting a shoot that the activity the landowners were undertaking when disrupting the shoot was not lawful as the shoot had more than five employees but did not have a written health and safety policy and risk assessment. With keepers, beaters, pickers and helpers, whether paid or not, falling within the definition of employees for the purposes of the Health and Safety at Work Act 1974 even the smallest of shoots will need to keep this in mind.

Sections 77-79 CJPOA

Under section 77 a **local authority** has powers to direct persons to leave any land and remove their vehicles from the land if they are residing in vehicles without the consent of the owner. Failure to obey a direction to leave is a criminal offence punishable with a fine of £1000.

A magistrates court can under section 78 on the application of the local authority

make an order authorising the local authority to enter and take steps to remove the vehicle from the land.

The Crime and Disorder Act 1998 requires a multi-agency approach in a region which is experiencing an ongoing problem in respect of trespassers. This will involve the police together with the local authority devising a strategy for dealing with a local problem.

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