

## NATIONAL BARGEE TRAVELLERS ASSOCIATION

### Response to Home Office Consultation: Strengthening police powers to tackle unauthorised encampments

**Q1: To what extent do you agree or disagree that knowingly entering land without the landowner's permission should only be made a criminal offence if it is for the purpose of residing on it?**

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Please explain your answer

We strongly disagree with the criminalisation of trespass under any circumstances regardless of the purpose of entry to land. We believe that these proposals are a racist attack on the Gypsy, Traveller and wider nomadic communities.

This question and many other questions in the consultation are ambiguous and badly framed. Accordingly the consultation is not in compliance with the Cabinet Office Consultation Principles 2018, in that the questions are not easy to understand and not easy to answer. This question is framed in such a way that, however you might answer the question, you are forced to agree to a greater or lesser extent with the criminalisation of trespass. If respondents answer 'strongly disagree' or 'disagree' that could be interpreted as the respondent having the opinion that trespass should be criminalised in all circumstances, not only when it is for the purpose of residing on land.

The Home Office justifies its proposal to criminalise trespass by reference to legislation in the Republic of Ireland. However the consultation document misrepresents the law in the Republic, which is likely to mislead consultees into agreeing with the Home Office proposals when they would not agree if in possession of full and correct information about the law in Ireland. Therefore the consultation breaches another of the Cabinet Office Consultation Principles in that the consultation is not informative, it fails to provide adequate information to ensure that consultees understand the issues and can give informed responses.

The consultation therefore also fails to meet the standards that the Cabinet Office Consultation Principles are based on, which are found in case law *R v Brent LBC ex parte Gunning* [1986] 84 LGR 168:

"To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken".

The Home Office's proposals amount to criminalisation of the traditional way of life of Gypsies and Travellers and as such will exacerbate the extent to which these groups are ostracised from society. The consequences of this are likely to lead to an increase in prejudice.

Criminalising trespass for the purpose of residing on land will disproportionately affect Gypsies and Travellers, but will also affect other communities. It could conflict with the rights of boaters under Common Law and other legislation. For example it could affect Bargee Travellers and boat dwellers exercising the historic Public Right of Navigation on

all navigable rivers that includes the right to moor for a 'reasonable' length of time. It could also affect boaters mooring due to the need for safe haven in floods or other dangerous conditions, in case of which the master of the boat has a perfect right under the Merchant Shipping Act 1995 to remain moored until it is safe to move, and that is absolutely in the judgement of that master. It could also add to the already draconian exercise of civil enforcement powers by Canal & River Trust to seize and remove boats under Section 8 of the British Waterways Act 1983, adding criminal conviction to the power to seize and remove boats, including boats used as homes.

Homeless people sleeping on the streets, in parks and other areas will be affected by these proposals. Van dwellers and recreational camper van users are also likely to be affected, as are recreational wild campers, backpackers and even ramblers. There could be wider consequences, with the danger of legislative creep regarding trespass further eroding our civil liberties relating to access to land and urban open spaces.

The criminalisation of trespass would criminalise nomadic communities, including those with protected ethnic status. We do not believe criminalising trespass is compatible with Article 8 of the European Convention on Human Rights or with the Public Sector Equality Duty under the Equality Act 2010, as these measures are not proportionate or reasonable, particularly when there are insufficient safe moorings on rivers or authorised sites and stopping places on land. It conflicts with the requirement to 'eliminate discrimination' and 'advance equality of opportunity'. Criminalisation of trespass in this form would also not comply with the positive duty imposed on the UK to 'facilitate the Gypsy way of life' (by the European Court of Human Rights ruling: *Chapman v UK*, 2001). The proposals also conflict with Article 3 of the UN Convention on the Rights of the Child, which the UK is a signatory to, in that they conflict with the best interests of the children of Gypsy, Traveller, Bargee Traveller and other nomadic families.

The recent victory in the Court of Appeal by London Gypsies and Travellers and Liberty against Bromley Council supports our argument. (*L B Bromley v Persons Unknown* [2020] EWCA Civ 12). The Court found in favour of the 'enshrined freedom not to say in one place ...', and also mentioned the 'lack of availability of alternative sites'.

The Home Secretary's assertions that unauthorised encampments "cause misery to those who live nearby, with reports of damage to property, noise, abuse and littering" focus on the behaviour of a minority, yet tar all Gypsies and Travellers with the same brush. This is dangerous and discriminatory rhetoric. If property damage, noise, abuse and littering truly are the Home Office's concerns, local authorities and the Police already have a sufficient range of enforcement powers to prevent and punish this.

In any event, there is evidence that criminalising trespass in Ireland has not reduced the number of families living on unauthorised encampments and that research shows there has been a 'significant increase from 444 families in 2010 to 534 in 2015. The notion that similar legislation would stop the existence of unauthorised encampments in England and Wales is flawed. In addition, there has been a successful legal challenge against the position in Ireland.

**Q2: To what extent do you agree or disagree that the act of knowingly entering land without the landowner's permission should only be made a criminal offence if it is for the purpose of residing on it with vehicles?**

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Please explain your answer

This question is misleading and ambiguous. Accordingly it is not in compliance with the Cabinet Office Consultation Principles 2018. For the reasons set out above we strongly disagree with the criminalisation of trespass under any circumstances regardless of the purpose of entry to land. We believe that these proposals are a racist attack on the Gypsy, Traveller and wider nomadic communities. Please see our answer to Q1 which covers this question as well.

**Q3: To what extent do you agree or disagree that the landowner or representatives of the landowner should take reasonable steps to ask persons occupying their land to remove themselves and their possessions before occupation of the land can be considered a criminal offence?**

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Please explain your answer

This question is misleading and ambiguous. Accordingly it is not in compliance with the Cabinet Office Consultation Principles 2018. For the reasons set out above we strongly disagree with the criminalisation of trespass under any circumstances regardless of whether or not the landowner has taken steps to ask persons to remove themselves from land. We believe that these proposals are a racist attack on the Gypsy, Traveller and wider nomadic communities. Please see our answer to Q1 which covers this question as well.

**Q4: To what extent do you agree or disagree that a criminal offence can only be committed when the following conditions have been met?**

**a) the encampment prevents people entitled to use the land from making use of it;**

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

**b) the encampment is causing or is likely to cause damage to the land or amenities;**

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

**c) those on the encampment have demanded money from the landowner to vacate the land; and/or**

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

**d) those on the encampment are involved or are likely to be involved in anti-social behaviour.**

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Please explain your answer

This question is misleading and ambiguous. Accordingly it is not in compliance with the Cabinet Office Consultation Principles 2018. For the reasons set out above we strongly disagree with the criminalisation of trespass under any circumstances regardless of what conditions are set before trespass becomes a criminal offence. We believe that these proposals are a racist attack on the Gypsy, Traveller and wider nomadic communities. Please see our answer to Q1 which covers this question as well.

**Q5: What other conditions not covered in the above should we consider?**

For the reasons set out above we strongly disagree with the criminalisation of trespass under any circumstances regardless of what conditions that are applied to deciding whether a criminal offence has been committed. We believe that these proposals are a

racist attack on the Gypsy, Traveller and wider nomadic communities. Please see our answer to Q1 which covers this question as well.

**Q6: To what extent do you agree or disagree that police should be given the power to direct trespassers to suitable authorised sites in a neighbouring local authority area?**

Strongly disagree

Please explain your answer

We oppose the strengthening of police powers of eviction. We believe that these proposals are a racist attack on the Gypsy, Traveller and wider nomadic communities. There is no need whatsoever for stronger enforcement powers. The proposal that the police be given the power to direct Gypsies and Travellers to another local authority area may disrupt schooling and healthcare. In addition, this proposal would discourage local authorities from making site provision as they could rely on their neighbouring local authorities to do so.

**Q7: Should this be subject to conditions around agreements being in place between local authorities?**

We oppose the strengthening of police powers of eviction regardless of what conditions are set around agreements between local authorities.

**Q8: Should there be a maximum distance that a trespasser can be directed across?**

Yes / No

**If yes, what distance should that be?**

We oppose the strengthening of police powers of eviction and we oppose any powers that serve to exclude Gypsies, Travellers and the wider nomadic community from any local authority or other area.

**Q9: Should there be any other conditions that should be considered when directing a trespasser across neighbouring authorities.**

Yes / No

**If yes, what should these be?**

We oppose the strengthening of police powers of eviction and we oppose any powers that serve to exclude Gypsies, Travellers and the wider nomadic community from any local authority area.

**Q10: To what extent do you agree or disagree that the period of time in which trespassers directed from land would be unable to return should be increased from three months to twelve months?**

Strongly disagree

Please explain your answer

No evidence at all is provided to justify this proposal, the effect of which would be to make whole swathes of the country 'no-go' areas for nomadic communities. Police powers under

Sections 61, 62 and 62A of the Criminal Justice and Public Order Act 1994 are already draconian in the extreme. At present, the police can give Gypsies and Travellers extremely short time-scales to leave an encampment, typically half an hour or an hour. If they refuse, they can be arrested and their homes impounded. Even the National Police Chiefs' Council and the Association of Police and Crime Commissioners have stated that criminalisation of Travelling communities is not the answer and have called for a "significant increase" in the number of permanent and temporary sites across the country. Although these proposals stop short of the formal criminalisation of trespass, they would have much the same effect if adopted. Therefore please also see our answer to question 1.

**Q11: To what extent do you agree or disagree that the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised should be lowered from six to two vehicles?**

Strongly disagree

Please explain your answer

When the existing police powers were first discussed in Parliament during the passage of the Criminal Justice and Public Order Bill in 1994, the government stated that the powers were intended for situations of mass trespass. There has already been significant legislative creep regarding these powers, and any further restriction on the number of vehicles that constitute an unauthorised encampment would mean that the powers could be used against almost all encampments, however small and innocuous they may be. The question is poorly framed as it does not clarify whether vehicles that arrived at a location independently from each other would be counted towards the total of the proposed two that would constitute an unauthorised encampment. The proposal has not been thought through and accordingly the question it is not in compliance with the Cabinet Office Consultation Principles 2018. Although these proposals stop short of the formal criminalisation of trespass they would have much the same effect if adopted. Therefore please also see our answer to question 1.

**Q12: To what extent do you agree or disagree that the police should be granted the power to remove trespassers from land that forms part of the highway?**

Strongly disagree

Please explain your answer

Gypsies and Travellers stopping for a short period on the verge of a highway is a commonplace and lawful use of the highway that has occurred for hundreds of years. See *DPP v Jones* [1999] 2 All ER 257. Although these proposals stop short of the formal criminalisation of trespass they would have much the same effect if adopted and they would also have the intended or unintended consequences of criminalising truck drivers and other motorists who stop on the roadside to sleep for vital road safety reasons; families with caravans or camper vans on holiday who stop for a meal or overnight in roadside lay-bys; and even families who stop for a picnic beside the road on a journey. Therefore please also see our answer to question 1.

**Q13: To what extent do you agree or disagree that the police should be granted the power to seize property, including vehicles, from trespassers who are on land with the purpose of residing on it?**

Strongly disagree

Please explain your answer

This would amount to a clear and immediate breach of Article 8 of the European Convention on Human Rights. The seizure of "property" from alleged trespassers would in this case mean the forcible removal of people's homes, rendering them homeless. The question fails to make clear to consultees that seizure of "property" would include the seizure of caravans, vans, boats or camper vans in which people live. Accordingly the question it is not in compliance with the Cabinet Office Consultation Principles 2018. We believe that although these proposals stop short of the formal criminalisation of trespass they would have much the same effect if adopted. Therefore please also see our answer to question 1.

**Q14: Should the police be able to seize the property of:**

**i) Anyone whom they suspect to be trespassing on land with the purpose of residing on it;**

**ii) Anyone they arrest for trespassing on land with the purpose of residing on it; or**

**iii) Anyone convicted of trespassing on land with the purpose of residing on it?**

Strongly disagree with all of the above

Please explain your answer

This would amount to a clear and immediate breach of Article 8 of the European Convention on Human Rights. The seizure of "property" from alleged trespassers would in this case mean the forcible removal of people's homes, rendering them homeless. The question fails to make clear to consultees that seizure of "property" would include the seizure of caravans, vans, boats or camper vans in which people live. Accordingly the question it is not in compliance with the Cabinet Office Consultation Principles 2018. We believe that although these proposals stop short of the formal criminalisation of trespass they would have much the same effect if adopted. Therefore please also see our answer to question 1.

**Q15: To what extent do you agree or disagree that the proposed amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994 contained in this consultation are sufficient measures to tackle the public disorder issues which are associated with unauthorised encampments without the requirement for introducing specific powers that criminalise unauthorised encampments?**

Strongly agree / Agree / Neither agree or disagree / Disagree / Strongly disagree

Please explain your answer

We object to the generalisation that so-called unauthorised encampments are associated with public disorder issues. This is a racist slur on a community that for the most part simply needs a place to park or moor their homes when at present there is insufficient provision. This question is ambiguous and badly framed. Accordingly the consultation is not in compliance with the Cabinet Office Consultation Principles 2018, in that the question is not easy to understand and not easy to answer. This question is framed in such a way that, however you might answer the it, you are forced to agree to a greater or lesser extent with the proposed amendments to the Criminal Justice and Public Order Act 1994. If respondents answer 'strongly disagree' or 'disagree' that could be interpreted as the respondent having the opinion that the proposed amendments to the Criminal Justice and Public Order Act 1994 are not sufficient measures to tackle alleged public order issues and

that consultees would prefer even harsher powers to be given to the police. Although these proposals stop short of the formal criminalisation of trespass they would have much the same effect if adopted. Therefore please also see our answer to question 1.

**Q16: Do you expect that the proposed amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994 contained in this consultation would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities?**

Highly negative impact

If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?

The Home Office consultation proposes that unauthorised encampments be addressed by the criminalisation of trespass or the strengthening of the police powers of eviction. This conflicts with the government's announcement in June 2019 that the Ministry of Housing, Communities and Local Government would lead development of a cross-government strategy to improve outcomes for Gypsy, Roma and Traveller communities. The consultation also conflicts with the conclusions drawn by the House of Commons Women and Equalities Select Committee Inquiry into Tackling inequalities faced by Gypsy, Roma and Traveller communities in its report of 5th April 2019. It is unacceptable that the Home Office should block such a strategic approach with these proposals. Draconian powers of eviction targeted at Gypsy, Traveller, Bargee Traveller and other nomadic or vehicle dweller communities already exist.

The Women and Equalities Select Committee found that Gypsies and Travellers have some of the worst outcomes nationally in terms of health and education. The Home Office's proposals will only make these health and education inequalities worse.

The obvious and best way to proceed would be to provide an adequate number of public and private moorings, pitches, transit moorings, transit sites and emergency stopping places, and adopt a policy of toleration of so-called unauthorised moorings and encampments. These are credible solutions to the perceived problem of so-called unauthorised encampments. The Home Office has ignored the evidence of the failure of local authorities to comply with their duties to identify land for sites. We note that the Welsh Government has realised this simple truth and enacted a duty to meet assessed needs in Section 103 of the Housing (Wales) Act 2014. This has already led to an improvement in the situation in Wales.

Specifically in the case of Bargee Travellers, we would like to see the provision of 14 to 56 day residential transit moorings on all navigable rivers and artificial navigations, regulated through affordable permits available to boat dwellers without a permanent mooring. On the artificial canals under the control of Canal & River Trust, we would like to see the abandonment of the unlawful requirement for Bargee Travellers/ boats without a permanent mooring to travel a range of 20 or more miles during their licence period that has been imposed without any change in the law on top of the lawful requirement for such boats not to remain continuously in any one place for more than 14 days or such longer period as is reasonable in the circumstances (see Section 17(3)(c)(ii) of the British Waterways Act 1995.

**Q17: Do you expect that criminalising unauthorised encampments would have a positive or negative impact on the health or educational outcomes of Gypsy, Roma and Traveller communities?**

Highly negative impact

If so, do you have any evidence to support this view, and/or suggestions for what could be done to mitigate or prevent any negative impacts?

Please see our response to question 17.

**Q18: Do you have any other comments to make on the issue of unauthorised encampments not specifically addressed by any of the questions above?**

Nomadism is at the heart of the traditions and culture of Gypsies and Travellers. The first written record of Romani Gypsies in Britain dates from 1502 and nomadism has been part of British life for at least 500 years. The community of working boat families that lived on the UK's canals and rivers since the construction of the artificial canals in the early 19th century were also nomadic and this tradition is carried on by today's Bargee Travellers.

These proposals amount to one of the most serious assaults on the nomadic tradition in the UK in 500 years. They amount to criminalisation of the traditional way of life of Gypsies and Travellers. Such a significant increase in enforcement powers is neither proportionate nor reasonable when there are insufficient pitches and stopping places and when hundreds of Gypsies, Travellers and other nomadic communities have to resort to unauthorised encampments through no fault of their own. It is entirely unjust to criminalise them overnight.

Indeed even without these draconian and racist proposals, a number of international human rights treaty committees have indicated that the UK Government is failing in its responsibility to protect the human rights of Gypsies and Travellers. The Committee on the Convention on the Elimination of All Forms of Racial Discrimination; the Committee on Economic, Social and Cultural Rights; the European Commission against Racism and Intolerance and the Advisory Committee on The Framework Convention for the Protection of National Minorities have all urged the UK Government to do more to ensure culturally appropriate accommodation is made available for Gypsies and Travellers.

**Q19: Full name**

Pamela Smith

**Q20: Job title or capacity in which you are responding to this consultation exercise (for example, member of the public)**

Chair

**Q21: Date**

28th February 2020

**Q22: Company name/organisation (if applicable)**

National Bargee Travellers Association

**Q23: Address**

30 Silver Street, Reading, Berkshire RG1 2ST

**Q25: If you would like us to acknowledge receipt of your response, please tick this box (please tick box) Address to which the acknowledgement should be sent, if different from above**

Yes, please acknowledge our response. Please do so by email to [secretariat@bargee-traveller.org.uk](mailto:secretariat@bargee-traveller.org.uk)

**Q26: If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent**

The National Bargee Travellers Association (NBTA) is a volunteer organisation formed in 2009 that campaigns and provides advice for Bargee Travellers: itinerant boat dwellers on Britain's inland and coastal waterways. This includes anyone whose home is a boat and who does not have a permanent mooring for their boat with planning permission for residential use. The NBTA is the only national organisation in Britain dedicated to upholding and defending the rights of itinerant boat dwellers. The NBTA has members on all the major navigation authorities' waterways and beyond. The NBTA deals with approximately 200 individual cases each year.

The navigable inland waterway system in Britain is home to an estimated 15,000 to 50,000 Bargee Travellers. There are no accurate statistics for the number of Bargee Travellers (or boat dwellers generally) in the UK. There are at least 21 inland navigation authorities in the UK. Canal & River Trust (CRT) is the largest, with around 80% of the UK's inland waterways. Other significant navigation authorities are the Environment Agency (EA); the Broads Authority; the Conservators of the River Cam; the Middle Level Commissioners; Peel Holdings (the Bridgewater Canal) and British Waterways Scotland. A smaller number of Bargee Travellers/ boat dwellers live in coastal harbours and estuaries controlled by harbour authorities.

Bargee Travellers have few rights in law and these are frequently violated by navigation authorities; local authority riparian landowners; and central or local government departments. Despite Bargee Travellers' rights to occupy and moor their homes being derived from provisions such as the Public Right of Navigation on navigable natural and canalised rivers and/or the British Waterways Act 1995, their rights are frequently violated with few or no effective routes of redress.

**National Bargee Travellers Association  
February 2020**

30 Silver Street, Reading, Berkshire, RG1 2ST      0118 321 4128

[secretariat@bargee-traveller.org.uk](mailto:secretariat@bargee-traveller.org.uk)      [www.bargee-traveller.org.uk](http://www.bargee-traveller.org.uk)