



Home Office

Strengthening police powers to tackle unauthorised encampments

Government consultation

This consultation begins on 05/11/2019

This consultation ends on 05/03/2020

About this consultation

To: This consultation is open to the public.

We will be particularly interested to hear from local authorities, police forces, Gypsy, Roma, and Travelling communities and the general public.

Duration: From 05/11/2019 to 05/03/2020

Enquiries to: Strengthening police powers to tackle unauthorised encampments consultation
Police Powers Unit
Home Office
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London
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Email:
UnauthorisedEncampmentsConsultation@homeoffice.gov.uk

How to respond: Please provide your response by 05/03/2020 at:
www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments

If you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email or post it to:

Strengthening police powers to tackle unauthorised encampments consultation
Police Powers Unit
Home Office
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2 Marsham Street
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Email:
UnauthorisedEncampmentsConsultation@homeoffice.gov.uk

Please also contact the Police Powers Unit (as above) if you require information in any other format, such as Braille, audio or another language. We cannot analyse responses not submitted in these provided formats.

Response paper: A response to this consultation exercise is due to be published at <https://www.gov.uk/search/policy-papers-and-consultations>

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1. Foreword by the Home Secretary

We are fortunate to live in one of the most tolerant countries in the world, which has a proud tradition of promoting respect for the rule of law, for property, and for one another. This Government is committed to creating a just and fair country, where equality of opportunity flourishes and the life chances of all are enhanced. I am clear that that this must be built on shared rights, responsibilities and opportunities.

In April 2018, the Government published a consultation on the effectiveness of enforcement against unauthorised developments and encampments. It sought views from a number of stakeholders including local authorities, police forces, Gypsy, Roma, and Traveller communities and the general public on the scale of the problem, whether existing powers could be used more effectively and if any additional powers were required.

In response to the consultation my predecessor, the Rt Hon Sajid Javid MP, announced the Government would look to amend sections 61 and 62A of the Criminal Justice and Public Order Act 1994 to lower the criteria that must be met for the police to be able to direct people away from unauthorised sites.

He also confirmed Home Office officials would review how this Government could criminalise the act of trespassing when setting up an unauthorised encampment in England and Wales, learning from the trespass legislation that exists in the Republic of Ireland. This consultation document sets out the information gathered during that consultation, makes proposals for change and seeks views on those proposals.

This document consults on whether criminalising unauthorised encampments would be preferable to the amendments we originally proposed to the Criminal Justice and Public Order Act 1994, and if so, how it should work. It sets out a proposed package of measures in some detail, as well as some more general questions.

The Government recognises that the proposals contained in this consultation are of interest to a significant minority of Gypsies, Roma and Travellers who continue to travel. The Government's overarching aim is to ensure fair and equal treatment for Gypsy, Roma and Traveller communities, in a way that facilitates their traditional and nomadic way of life while also respecting the interests of the wider community. In June this year the Government announced that the Ministry of Housing Communities and Local Government will lead development of a cross-government strategy to improve outcomes for Gypsy, Roma and Traveller communities.



Rt Hon Priti Patel MP

Home Secretary

2. Executive summary

We would like to consult on measures to;

- Criminalise the act of trespassing when setting up an unauthorised encampment in England and Wales.

We would also like to consult on the following alternative approach to this issue:

- Amending section 62A of the Criminal Justice and Public Order Act 1994 to permit the police to direct trespassers to suitable authorised sites located in neighbouring local authority areas.
- Amending sections 61 and 62A of the Criminal Justice and Public Order Act 1994 to increase the period of time in which trespassers directed from land would be unable to return from 3 months to 12 months.
- Amending section 61 of the Criminal Justice and Public Order Act 1994 to lower the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised from six to two or more vehicles.
- Amending section 61 of the Criminal Justice and Public Order Act 1994 to enable the police to remove trespassers from land that forms part of the highway.

This consultation is open until 05/03/2020; details of how to respond are set out towards the front of this document.

3. Introduction

The vast majority of travelling communities reside in caravans on authorised traveller sites. Indeed, out of the 23,726 caravans in England and Wales in July 2018, only 1049 (4.4%) were on unauthorised sites that were not owned by the occupants. However, there have been long-standing concerns about the disproportionate impact of these unauthorised encampments, where significant distress has been caused to local communities and where local authorities have consequently had to deal with a range of issues.

Recognising these concerns, the Government published a consultation in April 2018 on the effectiveness of enforcement against unauthorised developments and encampments. Through that consultation, we sought views from a number of stakeholders including local authorities, police forces, travelling communities and the general public on whether there is anything we can do to ensure that existing powers can be used more effectively and if additional powers are required. It was led by the Ministry for Housing, Communities and Local Government in partnership with the Home Office and Ministry of Justice.

The responses to the consultation were clear¹, suggesting that significant problems are created by many unauthorised encampments. Responses highlighted the sense of unease and intimidation residents feel when an unauthorised encampment occurs, the frustration at not being able to access amenities, public land and business premises, and the waste and cost that is left once the encampment has moved on.

Parliament has already given local authorities and the police significant powers and duties designed to help them manage the impact of unauthorised encampments on local communities, including local authority and police powers in the Criminal Justice and Public Order Act 1994.

However, the Government heard compelling evidence, in response to the consultation, that stronger powers are needed to be able to address the issues and concerns identified.

That is why in February 2019, the previous Home Secretary announced that the Government would publish a further consultation on extending police powers by making a series of amendments to sections 61 and 62A of the Criminal Justice and Public Order Act 1994. These amendments would permit the police to direct trespassers to suitable alternative sites located in neighbouring local authority areas (as well as the authority which the encampment was currently situated within); to increase the period of time in which trespassers directed from land would be unable to return from three, to twelve months; to lower the number of vehicles needing to be involved in an unauthorised encampment before police powers can be exercised from six to two vehicles; and to enable the police to remove trespassers from land that forms part of the highway.

The Government also heard arguments that England and Wales should follow the so-called 'Irish model' for dealing with unauthorised encampments. This approach

¹ <https://www.gov.uk/government/consultations/powers-for-dealing-with-unauthorised-development-and-encampments>

criminalises trespass in certain circumstances. The responses to our consultation demonstrated that the majority of respondents believe the Government should consider criminalising unauthorised encampments in England and Wales, by creating an offence of trespassing when setting up an unauthorised encampment.

That is why the previous Home Secretary announced that Home Office officials would undertake a review into how this Government can criminalise the act of trespassing when setting up an unauthorised encampment in England and Wales, learning from the trespass legislation that exists in the Republic of Ireland.

Having considered the findings from that review, we would like to test the appetite to go further and broaden the existing categories of criminal trespass to cover trespassers on land who are there with the purpose of residing in their vehicle for any period, and to give the police the relevant powers to arrest offenders in situ and to seize any vehicles or other property on existing unauthorised encampments (or those in the process of being set up) immediately.

We are therefore consulting on whether and how the setting up of or residing on an unauthorised encampment should be made an offence, as well as seeking views on the previously proposed changes to the Criminal Justice and Public Order Act 1994 to lower the criteria that must be met for the police to be able to direct people away from unauthorised sites, which could be introduced as an alternative to criminalisation.

4. The proposals

This chapter sets out options to extend police powers to tackle unauthorised encampments, including the creation of an offence of trespassing while setting up an unauthorised encampment, as well as other measures to extend police powers to direct trespassers, who have the intention to reside there, to leave land.

4.1 Criminalising Unauthorised Encampments

Through the Government's consultation on the effectiveness of enforcement against unauthorised developments and encampments, the majority of respondents said they believe we should consider criminalising unauthorised encampments, as has been done in the Republic of Ireland. A similar offence also exists in Scotland.

The Republic of Ireland: Criminal trespass and site provision

The Irish Government has criminalised trespass in certain circumstances, in conjunction with a statutory requirement for local authorities to provide traveller sites. In response to concerns about trespassers occupying public spaces and private land, the Irish Republic introduced the Housing (Miscellaneous Provisions) Act 2002² (the Act).

The Act made it an offence for any person to enter and occupy land without the owner's permission - or bring any "object" on to the land - if this is likely to "substantially damage" the land or interfere with it.

The offence contained in Section 24 of the Act has the effect of criminalising trespassers who occupy land without consent. The legislation does not amount to a ban on all unauthorised encampments. It criminalises encampments that 'substantially' damage the land or prevent use of the land by the owner or other lawful users.

The Act gives the Irish police discretion to direct trespassers to leave land if it is suspected that this offence is being committed. Failure to comply with a direction is also punishable by a fine and/or a one-month prison sentence. It is for the police to consider which approach to adopt depending on the individual circumstances of the case and the encampment.

Scotland: Criminal trespass

Under the Trespass (Scotland) Act 1865, it is an offence to occupy private land without the permission of the landowner³

² <http://www.irishstatutebook.ie/eli/2002/act/9/section/24/enacted/en/html#sec24b>

³ <http://www.legislation.gov.uk/ukpga/Vict/28-29/56>

It was generally viewed by respondents to the consultation in 2018 that criminalisation of unauthorised encampments would act as a deterrent to future encampments and allow the police to enforce removal of trespassers in a timelier fashion. Advantages were seen in financial terms in both the cost of evicting trespassers and clean-up costs.

We would like to gather views on broadening the existing categories of criminal trespass.

The Government could make it an offence to enter or occupy land subject to certain conditions being met. We would welcome your views on what the conditions and threshold for this offence should be. For example, in the Republic of Ireland it is a criminal offence to enter or occupy land without the landowner's consent or bring any "object" on to the land - if this is likely to cause "substantial damage". Imposing conditions such as a need to require proof that damage or harm has been caused will help limit prosecutions to cases where there is an element of public disorder for which there is an interest to protect against and explicitly reflect the balance between land owners' rights to peaceful enjoyment of their property and travellers' rights to privacy and family life.

Question

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 disagree

Please explain your answer

We strongly disagree that entering land without the landowner's permission should be made a criminal offence in any circumstances.

This Question is poorly framed. 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.

We oppose the criminalisation of trespass, as it would criminalise nomadic communities including those with protected ethnic status. We do not believe criminalising trespass is compatible with the Human Rights Act 1998 and the Public Sector Equality Duty under the Equality Act 2010, as these measures are not proportionate or reasonable, particularly when there are insufficient authorised sites and stopping places. It conflicts with the requirement to 'eliminate discrimination' and 'advance equality of opportunity'.

Criminalisation of trespass would not make unauthorised encampments and nomadic Gypsies and Travellers disappear, it will however compound the stark inequalities experienced by Gypsies and Travellers and raise serious questions about compatibility with human rights protections.

Currently there are requirements and processes for local authorities to conduct welfare checks before taking any enforcement action. If trespass was criminalised, the vital responsibilities to assess and address any serious welfare issues will disappear. This will put communities who have been widely recognised as being amongst the most marginalised and disadvantaged groups at further risk. It will compound any hardship and exacerbate the inequalities experienced by Gypsy and Traveller communities by having a lifestyle that has been criminalised.

The Government asserts it is basing a model on Ireland yet focusses solely on the legislation that criminalises trespass (Housing [Miscellaneous Provisions] Act 2002) and not attempting to replicate the other pertinent legislation that exists there (the Housing [Traveller Accommodation] Act 1998) which makes the provision of Traveller accommodation a statutory requirement.

Question

There is evidence that criminalising trespass in Ireland has not worked. In 2017, an independent '*Review of Funding for Traveller-Specific Accommodation and the Implementation of Traveller Accommodation Programmes*' highlighted that the criminalisation of trespass had not reduced the number of families living on unauthorised encampments. In fact, the research showed there had been a 'significant increase' in the number of Traveller families living on unauthorised encampments - increasing from 444 in 2010 to 534 in 2015; a 20% increase in 5 years. The notion that similar legislation would stop the existence of unauthorised encampments is flawed.

There has been a successful legal challenge against the position in Ireland and in 2018 the European Committee of Social Rights found Ireland to be in violation of Article 16 of the Charter under the five grounds. These included that; there is insufficient provision of accommodation for Travellers; that many Traveller sites are in an inadequate condition; and that there are inadequate safeguards for Travellers threatened with eviction.

Criminalising trespass for the purpose to reside will disproportionately affect Gypsies and Travellers but will also affect other homeless communities. Homeless people sleeping on the streets, in parks and other areas will be affected by these proposals. At a time where the country faces a homelessness crisis these are retrograde proposals, penalising some of the most vulnerable communities in the UK.

There are wider implications to these proposals, with the danger of legislative creep on regulations relating to trespass further eroding civil liberties in terms of land access.

Question

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 disagree

Please explain your answer

We strongly disagree that entering land without the landowner's permission should be made a criminal offence in any circumstances.

We restate our point made about Question 1 here. It leads respondents to answer in a way that does not necessarily reflect their position. 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 in vehicles.

Making trespass a criminal offence if it is for the purpose of residing on it with vehicles would almost exclusively affect Gypsies and Travellers. We question the compatibility with equality and human rights legislation. 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).

Research we conducted this year showed that the overwhelming majority of Police Forces and Police and Crime Commissioners who responded to the 2018 unauthorised encampment consultation oppose the criminalisation of trespass, recognising the human rights implications this will have and seeing the issue as being closely linked to the lack of sites. The evidence is outlined in our report ['Police oppose criminalising unauthorised encampments and call for more sites'](#) (November 2019) which shows that:

- **84% of police responses did not support the criminalisation of unauthorised encampments**
- **75% of police responses felt current police powers were sufficient and/or proportionate.**
- **65% of police responses said that lack of site provision was the real problem**

Police bodies seem to have a clear understanding of the wider issues around the lack of site provision and the negative impact criminalisation of trespass will have, and it appears their views, as submitted in the last consultation, have not been recognised by the Home Office.

Question

Although site provision falls under the responsibility of the Ministry of Housing Communities and Local Government, if the Home Office seeks to address unauthorised encampments then it must, as we across our sector have said countless times, recognise the intrinsic link between the number of unauthorised encampments and the national shortage of pitches.

Aside from the human cost of criminalising trespass and increasing police powers, this will create an additional financial burden to the already over-stretched Police Force budgets.

The Government could stipulate that the landowner or representatives of the landowner must take reasonable steps to ask trespassers to leave. This would help the police to demonstrate where a trespasser is **knowingly** trespassing. However, in some instances, landowners may feel afraid to approach trespassers.

Question

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?

Please explain your answer

We strongly disagree that occupation of land should be a criminal offence at all. There are already a number of powers available to local authorities and the police to evict Gypsies and Travellers from unauthorised encampments.

If trespass is criminalised, which we strongly oppose, the landowner should have a say as to whether they wish to allow people to stop on their land.

We restate our point about the poor framing of the Question here.

Question

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;
- b) the encampment is causing or is likely to cause damage to the land or amenities;
- c) those on the encampment have demanded money from the landowner to vacate the land; and/or
- d) those on the encampment are involved or are likely to be involved in anti-social behaviour.

Please explain your answer

We strongly disagree that occupation of land should become a criminal offence at all. Local authorities and the police already have a whole range of powers available both to evict unauthorised encampments, as listed in Department for Communities and Local Government / Home Office and Ministry of Justice document; 'Dealing with illegal and unauthorised encampments; A summary of available powers' (2015).

There is also legislation and powers available to enable the police to deal with anti-social behaviour, which is different to the actual existence of an unauthorised encampment. If, for instance, a criminal offence such as extortion occurs as in c) above, there are separate laws to deal with this as with other forms of anti-social behaviour. It shouldn't be made a criminal offence just for being a Traveller living a culturally pertinent life.

Too frequently the Government and parliamentarians wrongly conflate anti-social behaviour and unauthorised encampments. There may be instances of anti-social behaviour by individuals on some encampments but these must be addressed under current anti-social behaviour legislation, and these isolated incidents should not validate the introduction of further draconian approaches based on the behaviour of a small minority, but will affect whole populations of Gypsies and Travellers. This form of collective punishment is discriminatory.

In terms of answer d) above, we question how exactly it would be possible for someone to determine if someone is 'likely to be' involved in anti-social behaviour. A basic principle of British law is 'innocent until proven guilty'. This is an absolutely absurd condition to suggest.

If there is abusive or threatening behaviour the police already have the use of Section 61 Criminal Justice and Public Order Act to evict Travellers.

We restate our point about the poor framing of the Question here. If respondents answer 'disagree' or 'strongly disagree' that could be interpreted as the respondent thinking it should be criminalised in all circumstances when in fact they may oppose it in all circumstances.

Question

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

We strongly disagree that occupation of land should become a criminal offence at all.

4.2 Criminal Justice and Public Order Act 1994

Under Section 61 of the Criminal Justice and Public Order Act 1994, the police have powers that allow them to direct trespassers to leave land. The requirements of these powers are currently:

- I. that the trespassers have an intention to reside on the land for any period;
- II. that the occupier or someone on the occupier's behalf has taken reasonable steps to ask the trespassers to leave;
- III. that: either (a)
 - any of the trespassers have caused damage to land or property; or
 - that any of the trespassers have used threatening, abusive or insulting words or behaviour towards the occupier, a member of the occupier's family or an employee or agent of the occupier;or (b) that the trespassers have between them six or more vehicles on the land.

Section 62A of the Criminal Justice and Public Order Act 1994 allows the police to direct trespassers to remove themselves and their vehicles and property from land on which they have the intention to reside where a suitable pitch is available within the same local authority area. The police must consult every local authority within whose area the land is situated to confirm if a suitable pitch is available on a relevant site.

Responses to the consultation from the police and some local authorities highlighted how a lack of availability of transit sites means that they are unable to exercise some of their existing powers such as section 62A of the Criminal Justice and Public Order Act 1994 which provides a power to remove trespassers to alternative available sites.

We would welcome views on whether to amend section 62A of the Criminal Justice and Public Order Act 1994 to permit the police to direct trespassers to suitable authorised sites located in neighbouring local authority areas.

Extending this power would make it more likely that the police could act where there is a shortage of site capacity in one particular area. However, we believe that such changes may need to be subject to conditions around:

- Agreements being in place between local authorities. Local authorities have advised us that the use of such a power without agreements in place would deter them from creating more authorised sites. This would be counterproductive.
- A maximum distance that trespassers should be directed across. In some rural areas, a site in a neighbouring local authority area could be several hours drive away. It could be considered unreasonable to relocate someone that far.

Question

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?

Please explain your answer

We do not support any extension of police powers to evict Gypsies and Traveller communities from unauthorised encampments.

There is a severe shortage of transit sites across the country – only 374 transit pitches in the whole of England. Only 34 local authorities out of 343 in England have any transit site provision.

An extension of Section 62A to be able to direct to a site in another local authority area would not be reasonable – the issue is the lack of available pitches in most local authority areas. It is unreasonable to direct Travellers out of an area, whether they may be accessing essential services, due the failure of the local authority to meet the assessed need for pitches in the area they are currently stopping in.

If the police can direct families over a border into another local authority area that have a transit site, then this acts as a disincentive for local authorities to build a transit site or organise negotiated stopping. The reluctance of local authorities to build transit sites is clearly evident in the pitiful numbers of pitches nationally, if Section 62A powers are extended in this way local authorities will be given cart blanche to ‘pass the buck’.

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

We don’t support stronger police powers to evict Gypsies and Travellers but if this is introduced there should be as many protections in place as possible.

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

Question

We don't support stronger police powers to evict Gypsies and Travellers but if this is introduced, yes there should be a maximum distance. The distance from one side of a local authority area to the far side of another local authority area can cover a huge distance. Travellers directed out of an area to great distances away could mean Travellers can no longer access any services they may already be using.

If yes, what distance should that be?

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

Yes

If yes, what should these be?

That it wouldn't affect access to services already being used. If families are made to move too far away it will be difficult to access essential services such as healthcare and will have a dramatic effect on school attendance.

Failure to comply with a police direction under Section 61 or 62A of the Criminal Justice and Public Order Act 1994 is a criminal offence punishable by a fine and/or a custodial sentence of up to three months' imprisonment, as is re-entry onto the land by persons subject to the direction within three months.

Respondents to the consultation suggested that the current three-month period during which a trespasser is prohibited from returning to a location once directed from the site by the police should be increased.

We would welcome views on whether to amend sections 61 and 62A to increase the period of time in which trespassers directed from land would be unable to return from three months to twelve months. This would provide greater protection to land targeted by the same group of trespassers on a regular basis.

Question

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

We do not support any extension of police powers to evict Gypsies and Traveller communities from unauthorised encampments. Police powers under Section 61 and 62A of the Criminal Justice and Public Order Act are already robust and can give extremely short time frames for families to move (sometimes only one hour). When evictions happen quickly, not only does this add to the cumulative negative impact on Travellers, it also means it is difficult to challenge to ensure the authorities have assessed any humanitarian considerations.

The current 3 month exclusion time period is already incredibly harmful to families who have nowhere else to go. If several areas within a small geographical area are covered by Section 61 orders this means families can essentially be prohibited by law from being on a camp in a local authority area. This in turn prohibits such families to access essential services they may be using in the area.

To extend the period to 12 months is completely unreasonable and will have a devastating effect on communities who cannot access an authorised site. In all likelihood, if families are continuing to camp on unauthorised encampments in the same areas on a regular basis it's because they have family connections there and are accessing services in the area, but have no authorised place to stop.

Strengthening police powers to move Gypsies and Travellers on more easily is not compatible with the Public Sector Equality Duty to 'advance equality of opportunity' as it will become increasingly difficult for Gypsy and Traveller families and individuals to access essential services.

We share the concerns of the Equality and Human Rights Commission who were clear in their submission to the 2018 UE consultation;

"We would remind the Government that all powers to remove unauthorised encampments must be exercised with a full awareness of the occupiers' welfare needs, human rights, and, where applicable, their entitlement to protection under the Equality Act 2010. These cannot be circumvented by new powers."

This proposed amendment is disproportionate and totally unreasonable.

Section 61 of the Criminal Justice and Public Order Act 1994 grants police the power to direct trespassers to leave if there are six or more vehicles present on the land they are trespassing on. However, if there are fewer than six vehicles present, police do not obtain the power to direct trespassers to leave.

We would welcome views on whether to amend section 61 of the Criminal Justice and Public Order Act 1994 to lower the number of vehicles needing to be involved in an unauthorised encampment from six to two, before police powers can be exercised. This will increase the opportunity for police intervention where smaller encampments are present.

Question

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

As both a car and a caravan are defined as a vehicle for the purposes of this legislation, it would essentially mean that any encampment with a caravan could be subject to a Section 61 direction to leave, as any caravan will be towed by a vehicle, meaning the threshold is instantly met.

This proposed amendment would also affect some of the more vulnerable families, who by the very nature of being on a smaller encampment are less likely to have a family and community support network around them, and are more likely to experience race hate incidents as they are alone.

This proposed amendment is disproportionate and totally unreasonable.

We would welcome views on whether to amend section 61 of the Criminal Justice and Public Order Act 1994 to enable the police to remove trespassers from land that forms part of the highway. The police are currently restricted in dealing with these encampments unless there is a suitable pitch in the same local authority area. This could make it easier for the police to tackle problematic encampments.

Question

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

Local authorities have the use of Section 77 & 78 of the Criminal Justice and Public Order Act (1994) which can be used on virtually any land (including the highway) and can be implemented extremely quickly. Given this, it is unnecessary to extend this power for use by the police.

We believe giving the police powers to seize property, including vehicles, could enable the police to remove unauthorised encampments more quickly and act as deterrent to setting up an unauthorised encampment. We would welcome views on whether to grant police powers to seize property from trespassers and in what circumstances they should have these powers.

Question

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

The power to seize someone's home and their vehicle simply because they are living a nomadic life is utterly indefensible. We would expect that a robust impact assessment is conducted to fully understand the impact this will have on nomadic families, particularly the children. We are concerned about the absence of a specific assessment about how all the proposals in this consultation paper are compatible with the 'best interests of the child' as stipulated in Article 3 of the UN Convention on the Rights of the Child.

The police already have the power to seize vehicles if people don't comply with a Section 61. An extension of powers is disproportionate and unreasonable.

We strongly oppose this on the basis of the erosion of the fundamental rights and freedoms that belong to all. Gypsies and Traveller have the right to pursue a nomadic way of life and to live life free from persecution and discrimination.

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?

Please explain your answer

No, we strongly disagree that the police should be able to seize property in any of the instances above.

If the police seize a caravan or other form of home this would have dire consequences for a family or individual, leaving them destitute.

In terms of point i) above, we question how the police will determine if they suspect someone has the purpose of residing.

As stated earlier, we would envisage that the above amendments to the Criminal Justice and Public Order Act 1994 would be as an alternative to criminalising unauthorised encampments, rather than in addition to.

Question

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

Again, we reiterate our concerns about the framing of this Question. There is no way for us to select an answer from the above options that reflects our opposition to both the criminalisation of trespass and the amendments to Section 61 and 62A. The wording of this Question, and others, reflects substandard social research techniques which should not be applied by government departments.

Respondents to this Question could easily be led towards answering ‘strongly agree’ when in fact they mean they don’t believe the requirement for introducing specific powers that criminalise unauthorised encampments are needed but they also don’t believe the CJPOA amendments to be necessary either. Respondents to this Question could easily be misled into answering in a way that doesn’t truly reflect their views.

Also, again in this Question we see the conflation of anti-social behaviour and unauthorised encampments. What exactly is meant by ‘public disorder issues’? If the Home Office means specific forms of anti-social behaviour like fly-tipping then the authorities need to use the laws already available to them – not introduce tougher eviction powers.

The plethora of existing powers available to the police and local authorities are already incredibly harmful, some which already equate to criminalising Travellers stopping on camps, such as public space protection orders and wide injunctions which are being used by an alarming number of local authorities. The Government should support and enforce duties on local authorities to ensure more sites are built, not introduce more enforcement powers.

4.3 Impacts on the Gypsy, Roma and Traveller communities

While there are clear challenges presented to settled communities by unauthorised encampments, it is also highly likely that such unlawful encampments can lead to significant hardships for Gypsy, Roma and Traveller communities themselves.

The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. Therefore, we would welcome views on any adverse impacts that these proposals could have on the Gypsy, Roma and Traveller communities.

Question

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?

It is completely inappropriate that this paper has listed the options to this answer that it has. To allow people the option to express a view that these amendments would have a 'highly positive' or 'positive' impact on Travellers is incredibly insulting.

Clearly a more stringent approach will have a negative impact on Gypsy and Traveller communities. This is something that the Government recognised in the 'Powers for dealing with unauthorised development and encampments' 2018 consultation paper, stating; '*Accommodation insecurity is an issue with far-reaching impacts, including on educational attainments, social inclusion and on both physical and mental health. Additional insecurity arises when accommodation is unauthorised and travelling communities are liable to be moved on at short notice.*'

The impact of insecure accommodation and repeated evictions is well documented and the Home Office should have already taken into account this evidence in producing this consultation paper.

Studies have highlighted the experience of Gypsy and Traveller children who faced eviction noting that they report feelings of constant fear, insecurity, and repeated loss resulting in serious long term psychological trauma (Warrington, 2006 and Children's Participation Project, 2007 in Cleemput, 2007; Warrington & Peck, 2005; Ormiston Trust, 2006 in [Cemlyn et al, 2009](#)).

Question

Recent research conducted by Derbyshire Gypsy Liaison Group and Anglia Ruskin University; '[Life on and Off the Hard Shoulder](#)' explored the experiences of older Gypsies and Travellers living on the road. One of the key findings is that evictions caused chronic anxiety and stress among the participants, leading to other serious health issues.

The Home Office need only to speak to families who cannot access an authorised stopping place to get the evidence to understand the impact of evictions on families.

A Traveller mother we support said this;

"I was making 100 mile trips every day just to get my kids to school and back. The hardest thing is the evictions every week, they would happen at night. I was eight months pregnant and the police gave me a Section 62, they told me they would take my caravan if I didn't move there and then, I couldn't take it any more I just physically, mentally broke down crying there and then. With my other boy, this was five years ago, I had him by caesarean, I had nowhere to go but they still made me move again. I'm 40, and I have the body of a 60 year old because of the stress."

A tougher enforcement approach will exacerbate the inequalities experienced by Gypsy and Traveller communities. It will become increasingly difficult to access essential services which are needed to improve the educational and health outcomes for Gypsies and Travellers.

Our suggestion to prevent any negative impacts would be not to make the amendments to Sections 61 and 62A of the Criminal Justice and Public Order Act (1994) outlined in this consultation paper. We suggest the Government takes a site provision approach to the issue and not an enforcement approach.

Question

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?

Again, it is completely inappropriate and offensive to even have ‘*Highly positive impact / Positive impact*’ as a possible response to this question. There is absolutely no doubt that criminalisation or trespass would have very harmful consequences on the health and educational outcomes of Gypsy and Traveller communities.

A number of international human rights treaty committees have indicated that the UK Government are failing in their responsibilities to protect the human rights of Gypsies and Travellers. The Committee on the Convention on the Elimination of All Forms of Racial Discrimination, Committee on Economic, Social and Cultural Rights, 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. These human rights bodies already recognise the failings of the UK Government to safeguard Gypsy and Traveller communities. Criminalising trespass would be a further violation of the human rights of Gypsies and Travellers.

The UK Government should fulfil their commitments to the Rights of the Child, specifically children’s right to an adequate standard of living. The Equalities Statement has not mentioned the Rights of the Child. Has a more comprehensive assessment been made of the compatibility of all the proposals in this consultation document with Rights of the Child and other international treaties?

Criminalising trespass is an assault on our nomadic communities and any harm it will create to Gypsy and Traveller communities far outweighs any harm done to settled communities. If trespass was criminalised welfare checks would not be conducted meaning families from what is one of the UK’s most vulnerable communities will be further marginalised and disadvantaged.

Our recommendation to prevent any negative impacts would be not to criminalise trespass at all and that the Government takes a site provision approach to the issue and not an enforcement approach.

4.4 Other Comments

Question

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

We have a number of major concerns about this consultation exercise and the approach the Home Office is taking to unauthorised encampments.

Firstly, we are alarmed to see the Government perpetuating harmful stereotypes which runs the risk of fanning the flames of race hate towards Gypsies and Travellers. In the parliamentary debates on these issues MPs have referred to Travellers as “an irritant”, “an expensive menace”, “a Traveller incursion”; being “plagued by groups who descend on open land”. The Government should be challenging this dehumanising language, not reinforcing harmful stereotypes by constantly coupling anti-social behaviour with unauthorised encampments which legitimises prejudice and discriminatory attitudes.

We see this consultation exercise as flawed in that it fails to present alternative approaches to addressing unauthorised encampments, i.e. the wider context of the chronic national shortage of sites and the need for more sites to be built so that Travellers can access an authorised stopping place. Both consultation exercises represent a populist approach as they have sought public views without informing them about the wider issues of the lack of site provision and the plethora of other available powers. A disproportionate number of respondents would have responded to the 2018 consultation and this one as they have something negative to say about unauthorised encampments. Ultimately this leads to a biased and skewed set of responses.

The Home Office has ignored the evidence of the failure of local authorities to comply with their duties to identify land for sites to meet the assessed need for pitches – an issue that cannot be overlooked if addressing the number of unauthorised encampments. Evidence includes that in the combined [Research into Gypsy and Traveller Pitch Supply](#) conducted by Friends, Families and Travellers, the National Federation of Gypsy Liaison Groups and London Gypsies and Travellers, and Friends, Families and Travellers briefing; [Lack of increase in Affordable Pitches for Gypsies and Travellers in England](#).

Organisations across the Gypsy and Traveller sector, equality organisations, and the police all submitted strong concerns about the equality and human rights impact of further enforcement powers during the 2018 consultation. However, these views appear not to be incorporated and reflected in the Government’s approach to the

Question

issue. It very much appears that responses have been 'cherry-picked'. The direction the Government wishes to proceed in addressing unauthorised encampments has become quite clear and we are concerned about the degree to which our views will be heard during this consultation process.

This consultation document is incredibly inaccessible to the very communities who will be most affected by the proposals outlined. Responding to a consultation document such as this is near impossible if you do not have access to a computer or have low or no literacy. Approximately 45% of the Gypsies and Travellers we work with have low or no literacy skills.

The questions in this paper are worded in a confusing and misleading way. For example, the answers respondents give to, Questions 3 / 4 / 15 could easily be interpreted in a way that does not accurately reflect their viewpoint. In our view this invalidates the consultation exercise and does not follow the guidance outlined in the Cabinet Office produced document 'Consultation Principles 2018', namely point A and G which state;

- *Consultations should be clear and concise Use plain English and avoid acronyms. Be clear what questions you are asking and limit the number of questions to those that are necessary. Make them easy to understand and easy to answer. D. Consultations are only part of a process of engagement Consider whether informal iterative consultation is appropriate*
- *Consult stakeholders in a way that suits them.*

We also believe the timing of this publication breaches Principle K of the 'Consultation Principles 2018', that;

- *Consultation exercises should not generally be launched during local or national election periods.*

This paper was published on 5th November, only a matter of hours before parliament was dissolved for election campaigning.

The punitive approaches set out in this paper are completely at odds with the Government's commitment to implement a national cross-departmental strategy to tackle the inequalities experienced by Gypsies and Travellers. This damaging approach of attacking nomadic communities as a far cry from the commitment the Government made to tackle the findings of the Race Disparity Audit.

In this document's introduction, waste crime and anti-social behaviour were included as reasons for needing more powers to 'deal with' unauthorised encampments. Again, we wish to stress the point that legislation to deal with anti-social behaviour and waste crime already exists. This provides officials with the power to deal with any anti-social

Question

behaviour wherever it might happen, be it on the high street, a residential street or an unauthorised encampment.

We also note that this paper asks for evidence on the impact the proposals will have on Travellers (Q16/17) yet fails to ask respondents to provide evidence on why trespass should be criminalised or police powers strengthened. Asking for evidence in other sections of this paper would have enabled the Home Office to sort the wheat from the chaff, exposing those that clearly hold discriminatory views.

We question the evidential basis to support the proposals put forward in this paper. The MHCLG published Caravan Count shows a huge decrease in the number of caravans on UE from 1,263 caravans in January 2009 to 789 caravans in January 2019 – a reduction of 37% in 10 years. The timing and approach is not consistent with the evidence, suggesting a political agenda rather than a practical, legal or humanitarian approach.

The equalities statement in this paper does not address the impact of the proposals in any meaningful way.

5. About you

Please use this section to tell us about yourself

| | |
|---|---|
| Q19: Full name | Abbie Kirkby |
| Q20: Job title or capacity in which you are responding to this consultation exercise (for example, member of the public) | Advice and Policy Manager |
| Q21: Date | 21 November 2019 |
| Q22: Company name/organisation (if applicable) | Friends, Families and Travellers |
| Q23: Address | Community Base 113 Queens Road Brighton |
| Q24: Postcode | BN1 3XG |
| Q25: If you would like us to acknowledge receipt of your response, please tick this box | Yes |
| Address to which the acknowledgement should be sent, if different from above | |
| | |
| | |

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.

We are a national charity aiming to end racism and discrimination against Gypsies, Roma and Travellers, regardless of ethnicity, nationality, culture or background, whether settled or mobile, and to protect the right to pursue a nomadic way of life.

6. Contact details and how to respond

Please respond using the online system available at:

www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments

Please submit your response by 05/03/2020

You are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it to:

Strengthening police powers to tackle unauthorised encampments consultation
Police Powers Unit
Home Office
6th Floor NW, Fry Building
Home Office
2 Marsham Street
LONDON
SW1P 4DF

Email: UnauthorisedEncampmentsConsultation@homeoffice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Home Office at the above address.

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available online at www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments

Alternative format versions of this publication can be requested from:

UnauthorisedEncampmentsConsultation@homeoffice.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published in [insert publication date, which as far as possible should be within three months of the closing date of the consultation] months' time. The response paper will be available online at www.gov.uk/government/consultations/strengthening-police-powers-to-tackle-unauthorised-encampments

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Home Office.

The Home Office will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

7. Impact of Proposals

Impact Assessment

In accordance with the Better Regulation Framework Manual issued by the Department for Business, Energy and Industrial Strategy (BEIS)⁴, an initial assessment of the impact of these proposals has been carried out and no material financial impact on business, charities or voluntary bodies is envisaged. Impact on the public sector, such as the police and the Crown Prosecution Service, is expected to be relatively minor.

Equalities Statement

Section 149 of the Equality Act 2010 places a duty on Ministers and Departments, when exercising their functions, to have 'due regard' to the need to eliminate conduct which is unlawful under the 2010 Act, advance equality of opportunity between different groups and foster good relationships between different groups.

In accordance with these duties, we have considered the impact of the proposed changes on those sharing protected characteristics in order to give due regard to the matters mentioned above.

Eliminating unlawful discrimination

The Traveller community includes Romany Gypsies and English, Scottish, Welsh and Irish Travellers are legally recognised as ethnic groups under the Equality Act 2010.

We recognise that the proposals outlined in this document could have an adverse impact on some members of this minority group. Indeed, in response to the original consultation, some traveller groups, human rights groups and legal organisations told us that criminalising trespass would be a disproportionate response that would impact on their way of life. However, we also recognise the distress that local communities and businesses face as a result of unauthorised encampments. While we recognise that not all unauthorised encampments cause disruption and impact communities, there is evidence that shows where this is the case, the financial costs falling to landowners to evict and to clear sites along with the impact to the community can be significant.

The Home Office will seek views on all proposals and any mitigating actions to limit any disproportionate impact on the Travelling community, as well as any indirect impacts on other protected characteristics, such as disability. The Public Sector Equality Duty is an ongoing duty that will be kept under review as we develop the policy.

⁴ See: <https://www.gov.uk/government/publications/better-regulation-framework-manual>

Advancing equality of opportunity between different groups

We recognise the rights of Romany Gypsies and English, Scottish, Welsh and Irish Travellers to follow a nomadic way of life in line with their cultural heritage.

The vast majority of the Traveller community, estimated to be over 80%, live in caravans staying on permanent public and private sites which have planning permission, or in residences of bricks and mortar. A small minority of Gypsies and Traveller caravans that are classed as unauthorised are those staying in one area and are likely to be on local authority housing waiting lists, those who travel seasonally for work and a very small number who travel across the country.

The Government's overarching aim is to ensure fair and equal treatment for Gypsy, Roma and Traveller communities, in a way that facilitates their traditional and nomadic way of life while also respecting the interests of the wider community. In June this year the Government announced that the Ministry of Housing Communities and Local Government will lead development of a cross-government strategy to improve outcomes in areas including health, education and employment for Gypsy, Roma and Traveller communities.

The Home Office will seek views on all proposals and any mitigating actions to limit any disproportionate impact of the Travelling community.

Fostering good relationships between different groups

It is possible that these new measures could lead to a reduction in unauthorised encampments, which in turn could improve relations. On the other hand, it is also possible that coverage of these measures could reinforce prejudices against Travellers, even those who are compliant with the law.

The Home Office will seek views on all proposals and any mitigating actions to limit any disproportionate impact of the Travelling community.

8. Consultation Questions

Q1. To what extent do you agree or disagree that knowingly entering 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

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

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

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

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

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

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

Yes / No

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

Yes / No

If yes, what distance should that be?

Q9: Should there be any other conditions that should be considered when directing a trespasser across neighbouring authorities. If so, what should these be?

Yes / No

If yes, what should these be?

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 3 months to 12 months?

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

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

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

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

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?

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

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? 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?

Highly positive impact / Positive impact / Neither positive nor negative impact / Negative impact / Highly negative impact

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? 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?

Highly positive impact / Positive impact / Neither positive nor negative impact / Negative impact / Highly negative impact

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

9. Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>



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