



SCOTTISH EXECUTIVE

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Your ref:
Our ref:

1 March 2004

Dear Colleague

CONSULTATION ON GUIDELINES FOR MANAGING UNAUTHORISED CAMPING BY GYPSIES/TRAVELLERS

Please find enclosed a copy of the above consultation paper. We are inviting written responses to this paper by 24 May 2004 and you should send your response to:

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Fax number – 0131 244 5596

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We would be grateful if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will help our analysis of the responses received.

If you wish to access this consultation paper online, please go to <http://www.scotland.gov.uk/consultations/housing/gmuc-00.asp>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is, if you prefer to submit your response by e-mail.

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A new email alert system for SE consultations ([SEconsult](#)) will be launched soon. This system will allow stakeholder individuals and organisations to register and receive a weekly email containing details of all new SE consultations (including web links). SEconsult will complement, but in no way replace, SE distribution lists and is designed to allow stakeholders to 'keep an eye' on all SE consultation activity, and therefore be alerted at the earliest opportunity to those of most interest.

Access to consultation responses

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Respondee Information Form

It would be very helpful if you could also complete and return the attached Respondee Information Form with your response, as this will help us handle your response appropriately.

Yours sincerely

JOYCE GEGAN

CONSULTATION TITLE: GUIDELINES ON MANAGING UNAUTHORISED CAMPING BY GYPSIES/TRAVELLERS

RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help to ensure that we handle your response appropriately.

Name:

Organisation (if applicable):

Address:

1. Are you responding as (please tick one box):

(a) an individual (please go to box 2a)

(b) on behalf of an organisation or group (please go to box 2c)

INDIVIDUALS

2a Do you agree to your response being made available to the public (in the SE library and/or on the SE website)?

Yes (go to 2b below)

No, not at all

2b Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one of the following boxes):

Yes, make my response, name and address all available

Yes, make my response available but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS

2c Your name and address as respondents **will** be made available to the public (in the SE library and/or on the SE website). Are you content for your response to be made available also?

Yes

No

3./continued

3. We will share your response internally with other SE policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future for consultation or research purposes?

Yes

No

GUIDELINES FOR MANAGING
UNAUTHORISED
CAMPING
BY GYPSIES/TRAVELLERS



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CAMPING
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CONSULTATION PAPER

GUIDELINES FOR MANAGING UNAUTHORISED CAMPING BY GYPSIES/TRAVELLERS

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PREFACE

This consultation paper, on Guidelines for Managing Unauthorised Camping by Gypsies/Travellers, sets out draft proposals for local authorities, in conjunction with local police forces, to consider when developing and implementing a strategy on managing unauthorised camping. It was prepared by a small, short life working group, with representatives from CoSLA, the Association of Chief Police Officers in Scotland (ACPOS) and the Scottish Executive and is now being circulated widely.

We are inviting written comments on the specific questions posed throughout the paper, as well as general views and suggestions on the issues covered. Examples of good practice are also invited throughout the paper. These will be included, if appropriate, in the final published guidelines.

Responses should be sent by **24 May 2004** to:

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The text of this consultation paper can be found online at:
<http://www.scotland.gov.uk/consultations/housing/gmuc-00.asp>

Please see the full text of the covering letter (also available online) for more information on the consultation process and for the Respondee Information Form, which should be completed and returned with your comments.

Part or all of this document can be made available in a variety of languages and other formats on request.

We will acknowledge all responses and will place copies of all responses (unless otherwise requested by a resposdee) in the Scottish Executive library 20 working days from the closing date of the consultation. We will analyse the responses after the closing date and will publish the report on the SE website, advising resposdees when it is available. A hard copy will be also be available from the above address on request.

CHAPTER 1

INTRODUCTION

1. Unauthorised camping requires sensitive and proportionate handling by all concerned and can be a difficult issue to resolve. This is mainly because different and often conflicting sets of rights, responsibilities and expectations are involved. It is also the aspect of Gypsy/Traveller presence that can be the focus of the greatest friction between communities. Local residents and businesses have frequently reported experiencing noise, anti-social behaviour and other nuisance from an encampment on nearby open land. At the same time, Gypsies/Travellers living in unauthorised encampments lack basic amenities, can find it hard to access health and education services for their families and can be subjected to verbal and sometimes racist abuse and discrimination. It is recognised that, until more authorised sites have been provided to meet an identified need, unauthorised camping will still take place. Even then, it may still occur as an expression of cultural identity.
2. Throughout this report, the Executive uses the phrase ‘Gypsy/Traveller’ to include all those who wish to be defined primarily by their ethnic origin. This does not specifically include fairground/showpeople, occupational and New Age Travellers. It should be emphasised that the issue of terminology is a sensitive area and that the Executive will continue to listen and respond to any concerns voiced on this subject.
3. In developing policies on unauthorised camping, the Scottish Executive believes that certain basic principles should be followed:
 - Policies should seek to manage unauthorised encampments to minimise disruption for all concerned and ensure that any anti-social behaviour is tackled firmly, regardless of who the perpetrators are.
 - The same standards of behaviour should be expected from all members of the community, whether Gypsies/Travellers or the settled population, based on mutual respect and with equal rights, responsibilities, entitlements and obligations

BACKGROUND

4. A change in Scottish Executive policy on unauthorised encampments took place in 2001. Until then, a policy of ‘toleration and non-harassment of Travellers’ (as they were then known) had been in existence since 1977. This had been linked to the Scottish Executive’s grant scheme to provide councils with the capital costs of building sites for Gypsies/Travellers, and the setting of targets, at local authority level, for the provision of pitches for Gypsies/Travellers. The policy of toleration and non-harassment stated that where pitch targets were not met, Gypsies/Travellers in unauthorised encampments should not be moved on. The policy, which applied only to the physical occupation of land and did not apply to large encampments of more than 12 caravans, was reflected in prosecution policy. The policy had been adopted to encourage councils to take advantage of the Development Department grant scheme to build permanent sites as a long term solution to unauthorised encampments. The grant scheme has now been wound up after being in existence for nearly 30 years.

5. The policy of toleration and non-harassment of Gypsies/Travellers was initially fought for by representatives of the Travelling community to prevent them from being constantly moved on. In later years, others criticised the policy of toleration for being discriminatory and embodying a racist concept. Representations to that effect were made to the then Advisory Committee on Scotland's Travelling People. In its Ninth Term Report, published in 2000, the Committee recommended that both the setting of pitch targets and the policy of toleration and non-harassment should be discontinued. These recommendations were accepted by Scottish Ministers. Local authorities were asked to work with local police forces to prepare their own strategies for managing unauthorised encampments. Guidance on the content of these local strategies was provided by the Advisory Committee (Section 5 of the Ninth Term Report).
6. Since the Advisory Committee guidance was issued in 2000, there have been a number of changes that have contributed to the decision to review this and these are summarised below.
7. The Human Rights Act 1998 (HRA) came into force in October 2000, incorporating the European Convention on Human Rights into British law. The Act means that all eviction and enforcement decisions made by public authorities must be 'proportionate'. Potential challenge under the HRA means that all decision-making must be fully recorded and evidenced to withstand scrutiny.
8. During 2000-2001, the Equal Opportunities Committee (EOC) of the Scottish Parliament carried out an enquiry into Gypsies/Travellers and public sector policies. One of the Committee's recommendations was that national guidelines should be prepared on the management of unauthorised camping. The Executive regarded the guidance from the Advisory Committee to be the equivalent of national guidelines. At present, however, over a third of all local authorities have yet to develop a strategy for dealing with such encampments.
9. The Race Relations (Amendments) Act 2000 was introduced to tackle 'institutional' racism. To this end, key public bodies in Scotland were required to produce and publish race equality schemes by 30 November 2003. This included an assessment of all their policies and functions to ensure that, if there is evidence that these discriminate against minority ethnic people, they will take action to eliminate such discrimination. For the purposes of the application of the legislation in Scotland, the Scottish Executive has defined Scottish Gypsies/Travellers as a minority ethnic community, a position adopted by other Scottish public bodies. This guidance has been written with this commitment very much in mind.
10. In 2002, the Office of the Deputy Prime Minister (ODPM), the successor body to DETR, announced a new approach to tackling unauthorised camping in England and signalled its intention to introduce stronger police powers to move on encampments where there was adequate site provision. In April 2003, the ODPM/Home Office issued a consultation paper, in which the previous 1998 guidelines on unauthorised camping were revised, offering more comprehensive guidance on the courses of action that local authorities and police forces might follow. A report on the analysis of responses to the ODPM paper is still being prepared.

11. In June 2002, the Association of Chief Police Officer in Scotland (ACPOS) announced that a new permanent standing committee was to be added to its organisational structure to examine race and community relations issues. This move was intended to ensure that police involvement with a wide range of communities and groups, including Gypsy/Travellers, was given a permanently high profile on the policing agenda. It is also a positive sign that the Scottish Police Service is moving towards a national policy that ensures consistency throughout Scotland. Through a sub-committee of the Race and Community Relations Standing Committee, the police service as a whole is currently developing and updating operational guidance on unauthorised encampments. A summary of this is provided at Annex C and will be consulted on separately. This guidance will not only be informed by the various civil and criminal law provisions that have the potential to impact on unauthorised camping (some of these provisions are briefly set down in Annex B to this guide), it is also being framed against the background that the development of policy and practice towards Gypsies /Travellers has moved away from the previously held public order/crime prevention/community safety focus and is now being taken forward as part of the more modern and less proscriptive dimension of diversity.
12. In June 2003, the Executive published its consultation document 'Putting our Communities First: A Strategy for Tackling Anti-Social Behaviour', which sets out the stand the Executive is taking against anti-social behaviour. For the purposes of the Anti-Social Behaviour Bill, a person engages in anti-social behaviour if they act in a manner that causes or is likely to cause alarm or distress, or pursues a course of conduct that is likely to cause alarm or distress to at least one person not of the same household as themselves. The Anti-Social Behaviour Bill, published in October 2003, has taken full account of the Race Relations (Amendments) Act 2000 and the provisions in the legislation will apply equally to all members of the community.

AIMS OF THE GUIDANCE

13. The Executive considers that the time is now right to review the existing guidance on managing unauthorised camping in Scotland. The overall objective is to assist local authorities, police, the Gypsy/Traveller community and those affected by unauthorised camping to manage this and to minimise the disruption it can cause. In doing this, it aims:
 - To help strike an appropriate balance between the needs and legitimate expectations of members of the settled community, local businesses and landowners, and Gypsies/Travellers
 - To set out recommended courses of action which all local authorities and police forces are strongly urged to follow in order to provide an effective solution to unauthorised camping in their area
 - To encourage a more consistent approach across Scotland, building on current good practice and sharing experience
 - To encourage active engagement with the settled and Gypsy/Traveller communities in order to achieve 'buy in' to the strategy

14. The guidance is aimed primarily at local authorities and police who share the responsibility for managing unauthorised camping. It should also be made available to Gypsies/Travellers to ensure that they are fully aware of what they should expect from authorities and what is expected of their community.

CONTEXT - NUMBERS AND SCALE

15. Many Gypsies/Travellers are settled for at least part of the year on permanent sites and some will travel for part of the year, although there is a small residual group who travel all year round. Whilst there is no one source for estimating the total number of Gypsies/Travellers in Scotland, particularly as many are now settled in housing, the Scottish Executive Social Research Unit has undertaken twice-yearly counts of Gypsies/Travellers on sites and in encampments in Scotland. This suggests that there are clear seasonal trends, with approximately 50 caravans on unauthorised encampments in winter and between 130 and 160 in summer. This fits in with long-standing patterns of movement where Gypsies/Travellers are 'on the road' in the summer and in many cases involved in seasonal employment.
16. It is difficult to gauge whether there are sufficient places on 'authorised' sites for Gypsies/Travellers, as waiting list for places on sites are not common, are generally small in real numbers and may not be a reliable measure of demand. However, local authorities in Scotland are now expected to address the issue of assessing and considering the accommodation needs of Gypsies/Travellers in their Local Housing Strategy, which will help inform what the priorities and outstanding needs are for this group.
17. Unauthorised camping is more significant in some areas than in others but all local authorities should nonetheless be prepared to deal with such encampments. It should not be seen as purely a local phenomenon, as an eviction in one area may have the effect of merely displacing the encampment over a local boundary for another authority to deal with. Local authorities should therefore give serious consideration to measures that will facilitate cross boundary co-operation between authorities.

<p>Box 1: we would like to hear from local authorities that have developed good practice around cross-boundary liaison with neighbouring authorities in managing unauthorised camping.</p>
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CHAPTER 2

DEVELOPING A STRATEGY FOR UNAUTHORISED CAMPING

18. In order to take effective, appropriate and proportionate action where there is unauthorised camping, local authorities and the local police force need to be clear on their strategy and protocol, on who will take the lead and who else will be involved. The strategy must be developed with the involvement of all key stakeholders and must seek to balance the rights and responsibilities of the Gypsy/Traveller and settled communities.
19. The suggested stages involved in developing a strategy are: evidence gathering; setting the aims and objectives; formulating the strategy; consulting with stakeholders and making any necessary adjustments to the strategy; implementation; allocating resources; communicating the strategy to all relevant stakeholders and communities; and monitoring/evaluating its effectiveness.

EVIDENCE GATHERING

20. This could cover assessing existing provision; assessing needs; identifying gaps in provision; information on the incidence of unauthorised camping in the area; numbers involved; seasonality and; checking records of issues and problems.

AIMS AND OBJECTIVES

21. The key objectives in having a strategy for unauthorised encampments might well include the following (although each local strategy will have its own objectives):
 - Being able to plan ahead to minimise problems and to avoid the need to respond on a crisis basis (information from the evidence gathering stage could assist here)
 - Ensuring that the needs and legitimate expectations of all parties are considered
 - Setting a framework within in which clear, consistent and appropriate decisions can be made in a transparent manner
 - Ensuring a fit with relevant legislation
 - Linking the approach to unauthorised camping to other strategies and policies that affect Gypsies/Travellers (not just housing and the provision of sites/stopping places, but also health, education and anti-social behaviour)
 - Involving all those with an interest in developing and implementing the strategy
 - Clarifying roles and responsibilities of public bodies, stakeholders and communities
 - Ensuring that the policies and approaches reflect the human rights of both the settled and travelling communities
 - Ensuring the prevention of anti-social behaviour, regardless of who the perpetrator are, and effective enforcement against perpetrators

FORMULATING THE STRATEGY

22. Local authorities should take the lead role in formulating the strategy and have responsibility for monitoring its implementation, ensuring that the process is driven forward. The process of producing the strategy involves a number of key stages and these might include:

- Appoint lead officer
- Set up a strategy working group, with adequate support/resources and ensuring liaison with other services
- Ensure key players are involved in the strategy working group (see Annex C for stakeholders who might be involved)
- Set up consultation procedures/mechanisms
- Ensure consistency with other strategies
- Review information from evidence gathering stage on the assessment of needs, existing provision and gaps in services/provision
- Plan new services/improve existing ones, through joint working
- Implement programme
- Monitor/evaluate/review

Box 2: we would be interested to hear about examples of good practice in setting up a well-resourced, inclusive working group

ELEMENTS FOR INCLUSION IN THE STRATEGY

23. There are a number of elements that could be included in the strategy and these are set out in more detail in the following paragraphs:

- legislative background (see Annex B for a summary)
- local information on which strategy is based
- protocols for sharing information, subject to compliance with data protection legislation
- approach to be taken on site provision (permanent sites and short-stay stopping places)
- policy to be followed when unauthorised camping takes place, setting out alternative courses of action and the circumstances that determine that action (see Chapter 3)
- working arrangements and protocols for the involvement of different agencies
- resources/best value
- arrangement for communicating and consulting on the strategy
- arrangements for monitoring the strategy
- involvement of other local authority services, to ensure a holistic approach
- protocols with neighbouring authorities regarding notification of ‘moving on’ of unauthorised encampments

Local Information

24. The starting point for a local strategy should include information on the characteristics of Gypsies/Travellers who reside in or are likely to travel through an area. This might include information on numbers, travelling patterns, accommodation needs, as well as health/welfare/education needs. The twice yearly count, referred to in paragraph 15, can provide a starting point for this. Other potential sources include information from the monitoring of unauthorised encampments, information from managers of permanent sites and from Gypsies/Travellers themselves through local liaison groups.

25. Information should be collected on the location of encampments, numbers of caravans/vehicles involved and the duration of each encampment. A record of issues, complaints and actions regarding these encampments would also be useful.

Box 3: we would like to hear about examples of good practice around gathering information about Gypsies/Travellers at a local level and around engaging them in discussions about developing/implementing strategies.

Sharing Information

26. Sharing information between partner agencies and across local authority boundaries can help particularly when looking at travelling patterns and considering site provision. Where they don't already exist, protocols will have to be developed to deal with issues of professional confidentiality and data protection.

Site Provision

27. The provision of suitable accommodation for Gypsies/Travellers is an essential element in the strategy for managing unauthorised camping. Local authorities are now expected to address accommodation needs of Gypsies/Travellers in their Local Housing Strategy. Site provision can be provided publicly or privately and can take the form of residential sites providing long-term settled accommodation or stopping places for short-term stays. The local strategy for managing unauthorised camping will be linked to the extent of provision of sites/short-stay stopping places in the area. Please note that for the purposes of this paper, the term 'short-stay' encompasses other terms such as 'transit site'.

28. Local authorities that experience unauthorised camping should review the provision of authorised sites, whatever form they take. This should be done in collaboration with neighbouring authorities to avoid double counting and to highlight cross boundary issues.

Box 4: what action should the local authority consider taking where there is deemed to be adequate site provision and/or unused pitches on existing sites?

Working Arrangements and Protocols

29. The local authority should be the lead agency in managing unauthorised camping in its area, with named officers being identified in each local authority and the local police force. It is important that all key stakeholders, including the Gypsy/Traveller community, know who these officers are. Other departments and organisations likely to be involved should be identified, with a list of named contact officers in each stakeholder body. Responsibilities for dealing with unauthorised camping should be recognised within the job descriptions and work loads of these officers. Regular liaison meetings involving officers from all stakeholder organisations will encourage good working relationships to develop and will provide an opportunity to discuss current issues and review arrangements as necessary. Joint training events can also help develop working relationships.

Box 5: we would like to hear about examples of good practice in developing joint working/protocols/joint training between local authorities and police forces.

Best Value

30. Local authorities should apply Best Value principles to their strategy for dealing with unauthorised encampment. This would include:

- identifying what they are spending at present on dealing with this (responding to complaints, clearing rubbish etc)
- estimating the costs borne by others (local businesses and landowners)
- considering whether there are indirect costs of unauthorised camping e.g. additional costs to health and education
- comparing these with the possible costs and benefits of improving site provision, where appropriate (including short-stay)

Communicating the Strategy

31. The strategy for unauthorised camping should be published and widely disseminated to local businesses, residents and Gypsy/Traveller groups, making clear who is responsible for what elements of the strategy. It is also important to make clear what can be achieved and the timescale for doing so, to avoid raising unrealistic expectations about what the strategy can deliver. Mechanisms for communicating the strategy can include information leaflets and local authority websites. Media handling arrangements and strategies should also be considered.

Monitoring the Strategy

32. Monitoring arrangements need to be planned as an integral part of the strategy and it would make sense for the local authority, as lead agency, to take responsibility, reporting back to the strategy working group. This should identify progress towards meeting the objectives of the strategy, but could also include monitoring how protocols and arrangements for partnership working are evolving and how they could be revised and improved.

A Holistic Approach

33. Developing a strategic approach towards managing unauthorised camping provides an opportunity for local authorities and others to consider policies for Gypsies/Travellers in a holistic manner. Relevant policy areas include land planning, housing, environmental health, education, health care, equality and social inclusion.

Box 6: we would like to hear from local authorities about how their other strategies link into and inform the strategy on unauthorised camping
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CHAPTER 3

MANAGING UNAUTHORISED CAMPING

34. Local authorities, the police and other partners should work pro-actively to manage encampments to minimise the disruption caused; facilitate access to services for Gypsies/Travellers and to keep all parties informed of decisions and actions.
35. To facilitate integrated management of sites and unauthorised camping, officers should have information about vacancies on sites in their own, and neighbouring, areas. Site turnover at any short-stay stopping places should be maintained if these sites are to contribute to the management of unauthorised camping. Local authorities should consider keeping a record/log-book of all unauthorised encampments, which will facilitate sharing of information, noting behaviour at the site, as well as information about numbers etc.
36. A pro-active approach to managing unauthorised encampments involves keeping encampments under review. Police and local authorities should be prepared to re-assess their decision if circumstances change. The fact that an encampment has been allowed to remain for a period does not preclude eviction proceedings being started at a later date, provided proper procedures have been followed.

Box 7: we would like to hear about examples of good practice in pro-actively managing unauthorised encampments.

GYPSY/TRAVELLER BEHAVIOUR AT ENCAMPMENTS

37. This may include setting out standards for the encampments in a Code of Expected Behaviour, which should apply the same standards, responsibilities and obligations as would be applied to members of the settled community. Examples of unacceptable behaviour could include:
- Large encampments, which by their very size can have a disproportionate effect on the immediate area
 - Aggressive or threatening behaviour towards local authority staff, the police, officers of other public bodies or members of the public
 - Failure to control dogs and other animals
 - Persistent noise which disturbs others, particularly at night
 - Littering or fly-tipping on or near the site, which causes a build up of rubbish which is unsightly, hazardous to health and expensive to clear
 - Damage to the immediate or surrounding area
 - Criminal activity by the campers
38. A basic principle in establishing such a Code is to ensure that the same standards are applied to Gypsy/Traveller communities and to the settled community. It is important to tackle unacceptable behaviour towards encampments by members of the settled community.

Box 8: we would like to hear about examples of good practice in developing Codes of Expected Behaviour and the methods used for/difficulties in developing them and/or communicating the wider strategy to Gypsies/Travellers.

DEALING WITH CRIME AND ANTI-SOCIAL BEHAVIOUR

39. Dealing with criminal behaviour is the responsibility of the police and no group should be above the law. Anti-social behaviour, by and towards Gypsies/Travellers, can also arise at unauthorised encampments.
40. Unauthorised encampments can be subject to abuse/vandalism by the settled community. There may be issues about community safety to take into consideration. To ensure that there is a point of contact for Gypsy/Traveller groups, it is recommended as good practice for police forces to nominate specific Gypsy/Traveller Liaison Officers whose role it would be to establish links with Gypsies/Travellers and ensure that the Travelling community (settled or travelling) benefits from all of the services of the police enjoyed by the community as a whole, which includes support and guidance on community and personal safety matters, home security, how to report incidents to the police, racist incident monitoring etc.

DEALING WITH WASTE DISPOSAL AND FLY-TIPPING

41. Accumulations of rubbish and waste represent one of the most common problems associated with unauthorised camping. They can be unsightly, hazardous, smelly and costly to clean up. Prevention of waste, as well as action to remove it, should be one of the elements in a policy of pro-active management of encampments.
42. Local authorities should supply plastic sacks and arrange regular collection of rubbish. The use of skips or wheelie bins might also be appropriate in some locations. It might also be useful to discuss what form of toilet provision the local authority might be able to assist with. Regular monitoring visits to the encampment may help reinforce the message about keeping the site clean and tidy. These could be cost effective ways of reducing the need to spend large sums on cleaning up sites.
43. It is an offence to drop litter or leave waste on land that is not licensed for waste disposal. Local authorities should ensure that Gypsies/Travellers are at least made aware of the nearest Civic Amenity Site facilities for disposing of their waste.

Box 9: we would like to hear from any local authority that has a strategy in place for managing fly-tipping on unauthorised encampments.

FACILITATING ACCESS TO SERVICES

44. Local authorities should facilitate access to services by Gypsies/Travellers during the period of their stay, particularly health, education and welfare services. As part of this process, the local authority should also ensure that appropriate welfare enquiries are made.

KEEPING PEOPLE INFORMED

45. It is important that all agencies/departments, Gypsies/Travellers and members of the settled community are kept informed about what is happening, both in terms of the wider policy and with individual encampments. It would normally be the local authority, in its role as the lead agency in dealing with unauthorised camping, who would co-ordinate communications with the public and the press.
46. Gypsies/Travellers should also be clearly informed about what is expected of them and what is going to happen. Information should be provided in an appropriate format.
47. Any encampment is likely to be of concern to local residents and businesses. Local authorities may wish to consider briefing elected members about encampments in their areas, so that they can handle queries from their constituents.

SITE PROTECTION

48. Protection of land vulnerable to unauthorised camping is a valid part of a strategy. Local authorities can take appropriate action to protect their own land and can advise private landowners how best to secure their land. However, site protection can have the effect of forcing Gypsies/Travellers to camp in other, more prominent, unsuitable land. Experience and practice suggests that the police and the courts, when deciding on an appropriate course of action, may consider what steps have been taken to prevent unauthorised encampments in areas where there has previously been a problem.

MASS GATHERINGS

49. This would usually cover family gatherings, for bereavement/celebration purposes, and traditional gatherings. Ideally, Gypsies/Travellers should give the local authority some advance notice of these events, so that preparations can be made, in conjunction with the local police, for managing the gathering. This could include waste disposal, a water supply and portable toilets.

<p>Box 10: we would like to hear from consultees with experience of dealing with mass gatherings and whether this is a particular issue in Scotland. How should 'mass gathering' be defined?</p>
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CHAPTER 4

MAKING DECISIONS AND TAKING ACTION

50. This section deals with some of the considerations to be borne in mind by local authorities, police and others when making decisions about how to deal with unauthorised encampments as they occur. Its aim is to help make clear consistent decisions that will withstand challenge and that will help ensure a balance is struck between the needs of all parties.

A POLICY STATEMENT

51. A policy statement should set out

- To whom the term Gypsy/Traveller relates
- the responsibilities of different authorities and agencies
- alternative courses of action
- characteristics of encampments that would trigger removal
- standards of behaviour expected on the encampment site
- the circumstances in which a local authority might provide rubbish collection services, water supply or toilets to an encampment.

UNACCEPTABLE ENCAMPMENT LOCATIONS

52. Where there are insufficient authorised sites (either short-stay or permanent), it is recognised that some unauthorised camping will continue. Even where such authorised provision is sufficient, unauthorised camping may still occur. However, there are locations where encampments will not be acceptable under any circumstances (because of traffic hazards, public health risks, environmental damage etc). These should be identified and communicated to everyone involved. This might include:

- A Site of Special Scientific Interest
- A site where pollution could damage water courses/water supply
- an area with toxic waste or serious ground pollution
- the verge of a busy road where traffic would be a danger to campers' children
- proximity to a railway line

Box 11: we would welcome comments about what should be included as unacceptable locations

WELFARE ENQUIRIES

53. Local authorities may have obligations towards members of an encampment under other legislation (regarding homelessness, children and education). Some form of welfare enquiry is necessary to identify whether needs exist and the local authority should liaise with other services that might have responsibilities towards the campers' families. Any particular welfare needs of the campers are material in reaching a balanced and appropriate decision about action to be taken in respect of an unauthorised encampment.

The authority should be able to demonstrate that they have taken any welfare needs into consideration prior to making a decision to evict.

54. Wherever possible, an initial visit should be made to a new encampment within 24 hours of the authority becoming aware of it. This will allow the authority to gather basic information on its location, size, families and vehicles involved, anticipated length of stay and the reason for the stay. Relevant guidance and advice can also be distributed. Initial information can also be collected on a perceived welfare, health or educational needs and this will be the starting point for liaison with other relevant departments. Officers should also note the state of the camp in terms of any damage, rubbish accumulation etc as this will form the baseline from which subsequent behaviour can be monitored. The relevant police force should also be notified.
55. This visit will provide an opportunity for giving information to the Gypsies/Travellers about the standard of behaviour expected of them; what is going to happen next; what procedures the police and the authority are likely to follow and the implications for the campers; names and contact details for local services and sources of advice.
56. All information given and received should be clearly recorded as this will help form the basis of an audit trail for subsequent decisions if they are challenged. Local authorities have no power to insist that information is given and should be aware that any information gathered is subject to data protection legislation.
57. Local authorities should take sensible precautions to ensure the safety of their officers when visiting encampments. Site visits should be risk-assessed for health and safety issues and, where necessary, the officer should be accompanied by other local authority personnel or by a police officer.

REACHING A DECISION

58. Decisions about what action to take about an unauthorised encampment should be made in the light of information gathered and should be proper (in line with local policy and procedures); reasonable (in the light of the evidence available); balanced (taking into account the needs of the Gypsies/Travellers and the settled population) and proportionate (taking into account the nature of the location and the needs/behaviour of the campers).
59. Good practice suggests that welfare needs should be taken into account when considering removal from an unauthorised encampment and, if necessary, an authority should delay any removal where these welfare needs are acute or immediate.
60. Responsibility for reaching a decision should be clearly identified within the agreed policies and procedures. This may be made by an authorising officer or by a case conference/joint site visit in difficult cases. A decision to pro-actively manage an encampment for a period should be kept under review, as circumstances can change.
61. All decisions (whether to remove an encampment or to allow it to remain for a period) must be fully recorded and documented. Records should be kept of damage, nuisance, complaints (and the validity of these). These records can provide invaluable information on the number and nature of unauthorised encampments, in the immediate and

neighbouring authorities, and can be useful in assessing the need for further site provision.

PREPARING FOR REMOVAL

62. Although there is a general presumption against prosecution for unauthorised camping by Gypsies/Travellers, this presumption may be over-ridden by public interest considerations, depending on the circumstances. Circumstances that may give rise to considering a prosecution option are likely to be:
- Where a suitable alternative site has been identified and the Gypsies/Travellers have refused to re-locate within a reasonable time
 - Where the use or size of a particular site causes a road safety or public health hazard
 - Where the same Gypsies/Travellers have been repeatedly moved from the same site only to return
63. Once a decision has been made to remove an authorised camp, the aims should be to act quickly and efficiently; to use the most appropriate powers and to ensure that policies and procedures are properly followed.
64. The local authority is seen as the lead agency in the management of unauthorised encampments including removals. The circumstances when removal will be deemed appropriate will be rare. However a range of civil and criminal powers granted by various statutes are available, most notably section 61 of the Criminal Justice and Public Order Act 1994, but also a range of other statutes relating to trespass and the roads. A summary of this legislative framework is set out in more detail in Annex B.
65. Whilst the prevention of crime and the maintenance of good order and community safety are vital all relevant agencies must have due regard to humanitarian issues and act in a way that is culturally sensitive, promotes equality of opportunity and good race relations. Accordingly Annex B also provides some of the main features of the European Convention on Human Rights (ECHR), as well as key sections of the Race Relations and Human Rights Acts.
66. ACPOS operating guidance (see Annex C) will provide information on police powers and circumstances relating to forced removals.

USEFUL REFERENCES

References

Ninth Term Report of the Advisory Committee on Scotland's Travelling People (2000)

Department of the Environment, Transport and the Regions/Home Office (1998) *Managing Unauthorised Camping: A Good Practice Guide*, DETR; Revised Chapter 5 issued July 2000

Equal Opportunities Committee of the Scottish Parliament – the official report of the EOC inquiry into Gypsies/Travellers and Public Sector Policies 2001 is published on the Scottish Parliament's website at http://www.scottish.parliament.uk/S1/official_report/cttee/equal-01/eor01-01-vol01-02.htm#5

Office of the Deputy Prime Minister/Home Office: *Managing Unauthorised Camping - Operational Guidance - A Consultation Paper* issued April 2003

Scottish Executive's consultation paper *Putting our Communities First: A Strategy for Tackling Anti-Social Behaviour* issued June 2003

Twice yearly counts of Gypsies/Travellers in Scotland – these are published on the Scottish Executive website at <http://www.scotland.gov.uk/library5/finance/gty3-00.asp>

Commission for Racial Equality: draft strategy for the work of the CRE in relation to Gypsies/Travellers, published September 2003

Gypsies/Travellers: A Policing Strategy by Inspector Ian Taggart, Grampian Police. Published by the Home Office in 2003.

SUMMARY OF LEGISLATIVE FRAMEWORK RELATING TO UNAUTHORISED ENCAMPMENTS

The Law in Scotland

The structure and application of the law in relation to unauthorised encampment in Scotland is not entirely clear. There are various civil and criminal law provisions which have the potential to impact on unauthorised camping. The police can, of course, deal with any criminal activity where they have powers to do so. For example, the police have powers to arrest and detain persons who commit a crime which can range from statutory offences to common law offences.

As regards prosecution, for unauthorised encampment, the **Trespass (Scotland) Act 1865** and the **Roads (Scotland) Act 1984** are relevant. The purpose of the prosecution would be to deal with one of the three sets of circumstances:

- 1) Where a suitable alternative stopping place has been identified and the individuals have refused to re-locate within a reasonable time. (The Local Authority is normally responsible for identifying a 'suitable alternative' and to agree a 'reasonable time' with the individuals).
- 2) Where the use of a particular site or the excessive size of the encampment causes a road safety or public health hazard.
- 3) Where the same individuals have been repeatedly moved from the same site only to return, although it may be relevant for the Fiscal to consider what action might have been taken by the landowner to prevent such further access.

Time limits for prosecution under both Acts are short and a degree of urgency may be required. After arrest the most common way of dealing with offenders is to release them on an undertaking to appear at court on a specified day rather than to keep them in custody.

Sections 61 and 62 of the Criminal Justice and Public Order Act 1994 deal with trespass and the removal of vehicles. Section 61 deals with police powers to remove trespassers on land and section 62 provides supplementary powers of seizure and imposes criminal sanctions [Note that the Westminster Anti-social behaviour Act 2003 makes some changes to police powers in respect of section 62. However, those provisions do not extend to Scotland].

It is important to note that sections 61 and 62 apply to situations in which two or more "trespassers" are involved. Section 61 allows the police to direct trespassers to leave the land and to remove vehicles or property on the land where the senior police officer present at the scene has a reasonable belief that (a) two or more persons are present with the intention of staying there for a period of time, and (b) reasonable steps have been taken by, or on behalf of, the occupier to ask them to leave. In addition, the senior police officer must have a reasonable belief that either (a) the group have caused damage to the land or property, or threatened, abused or insulted the occupier or representatives of the occupier or, (b) the group have six or more vehicles between them on the land. The practical application and meaning of section 61(1) has been tested in the Scottish courts.

The court in *Neizer v Rhodes* 1995 S.C.C.R 799 said that;

“The whole structure of s.61(1) depends upon what the senior police officer present at the scene reasonably believes to be the case. The purpose of the section is to enable action to be taken on his direction rather than by resorting to the process of ejection under the civil procedure at the instance of the owner or occupier.”

It is clearly a matter of judgement for the senior police officer present at the relevant time.

These provisions could arguably be implemented to deal with the issue of unauthorised encampments by Gypsies/Travellers, where there has been disruption and where the criteria set out above have been satisfied. However, it is clear that this legislation will not be suitable to deal with every situation where, for example, indigenous Gypsies/Travellers are merely camping on a site without any authority to do so.

In addition, it should be noted that the statutes deal with “trespassers” and does not specifically mention “Gypsies/Travellers”. Furthermore, it is not confined to the issue of unauthorised encampment specifically. It is important to be aware that this legislation could potentially be applied in a wide variety of circumstances.

In any event, in Scotland it is the Procurator Fiscal who makes the final decision on whether or not to prosecute. Decisions to prosecute or to deal with cases in other ways are taken on an individual basis. A decision not to prosecute will take into account such matters as public interest considerations, dependent upon the circumstances. Enforcement, however, is a matter for the police responsible for the area in question. Discussions with the Procurator Fiscal and Local authority will normally take place at an early stage before enforcement decisions are made. The Procurator Fiscal may advise on the course of action to be taken, dependent on the particular circumstances in each case but the decision would generally be an operational matter for the Police having regard to the Lord Advocate’s guidelines on liberation. Options are likely to be a) report for citation (if considered appropriate) or b) arrest and appearance from custody or on an undertaking.

Procurators Fiscal are in possession of Crown Office guidance that directs them not to prosecute unauthorised campers unless there is a public interest in doing so.

Section 19 of the Crime and Disorder Act 1998

This provision deals with Anti-social behaviour orders and, in essence, allows a local authority to make an application for a section 19 order from the appropriate sheriff where it considers that a person or persons have either acted in an anti-social manner or have taken part in anti-social conduct within the meaning of that section.

Race Relations legislation

The Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000) Section 2 of the 2000 Act substitutes section 71 of the 1976 Act and places a general statutory duty on public authorities, when carrying out their functions, to have due regard to the need to:

- Eliminate unlawful racial discrimination;

- Promote equality of opportunity; and
- Promote good relations between persons of different racial groups.

“Public authorities” are defined in schedule 1 (paragraph 1) of the 2000 Act.

Section 3(1) of the Act defines a racial group as “a group of persons defined by colour, race, nationality or ethnic or national origins and references to any racial group refer to any racial group into which he falls.” It is also important to note section 3(2) which states that “The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group for the purposes of this Act.”

Public authorities in Scotland are also bound by duties imposed under the **Race Relations Act (Statutory Duties) (Scotland) Order 2002**. The police service is bound by the general duty imposed by the Race Relations Acts and also by the specific duties to publish a Race Equality Scheme and to monitor employment procedures and practices.

There is also legislation which offers protection from racially motivated crimes. In Scotland, protection against racially aggravated harassment is afforded under **Section 33 of the Crime and Disorder Act 1998**. **Section 96 of the 1998 Act** also creates an aggravation of any offence which is racially motivated.

The Public Order Act 1986, Part III, applies to Scotland. It creates a number of offences which involve racial hatred such as use of words or behaviour or display of written materials intended to stir up racial hatred; possession of inflammatory material; etc.

The European Convention on Human Rights

The rights and protections afforded by the articles of the European Convention on Human Rights (and laterally the Human Rights Act 1998) should be enjoyed by all, without discrimination on the grounds of “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” In particular, Article 8 states that “everyone has the right to respect for his private and family life, his home and his correspondence.”

The question of whether the above provisions (in particular, section 61 of the Criminal Justice and Public Order Act 1994) will be deemed to be compatible with Article 8 remains unanswered although the case law is developing¹.

The Human Rights Act 1998 created a statutory requirement to read all legislation (past and present) in accordance with the provisions of the European Convention. In relation to public bodies, Section 6(1) states that “it is unlawful for a public authority to act in a way which is incompatible with a Convention right.”

¹ R (Fuller) v Chief Constable of Dorset Police, The Secretary of State for the Home Department [2003] Q.B. 480; Chapman v The United Kingdom 2001 (Application no. 27238/95); Varey v The United Kingdom 1998 (Application no. 26662/95); Buckley v The United Kingdom 1994 (Application no. 20348/92).

European Community legislation

Council Directive 2000/43/EC (the Race Directive) is due to be implemented in member states by 19th July 2003². The Directive has regard to the Treaty establishing the European Community, in particular Article 13 (as amended by the Treaty of Nice), which states that,

“Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

Fly-tipping legislation

Fly-tipping is an offence under section 33 of the Environmental Protection Act 1990 (EPA) and can be defined as the unauthorised deposit of waste on land that is not licensed for this purpose. Section 59 of the EPA provides powers to SEPA and local authorities to require the removal of the waste or to remove it themselves and recover the costs.

Explanation of Offences

TRESPASS (SCOTLAND) ACT 1865

OFFENCE

Section 3

Every person who lodges in any premises, or occupies or encamps on any land, being private property, without the consent and permission of the owner or legal occupier of such premises or land, and every person who encamps or lights a fire on or near any road or enclosed or cultivated land, or in or near any plantation, without the consent and permission of the owner or legal occupier of such road, land, or plantation, shall be guilty of an offence punishable as hereinafter provided. (Section 3, as amended by Schedule 1 Pt. VI, Statute Law (Repeals) Act, 1973 and Schedule 9, Roads (Scotland) Act, 1984).

APPREHENSION & PUNISHMENT

Section 4

Every person who commits any offence against the provisions of this Act may, if found in the act of committing the same by any officer of Police or Constable, be apprehended by such officer or constable, and detained in any prison, Police station, lock-up, or other place of safe custody, and not later than in the course of the next lawful day after he shall have been so taken into custody shall be brought before a magistrate; and every person charged with the commission of any such offence may, if not so taken into custody, or if he shall have been liberated on bail or pledge, be summoned to appear before a magistrate; and every person committing an offence against the provisions of this Act shall be liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

² Implemented in the UK by the Race Relations Act 1976 (Amendment) Regulations 2003

PROSECUTIONS

Section 5

Every prosecution for an offence against the provisions of this Act shall be raised and proceeded in at the instance of the Procurator Fiscal, and shall be heard and determined by one or more magistrate or magistrates in a summary form; and every such prosecution shall be commenced within one month after the offence has been committed.

ROADS (SCOTLAND) ACT 1984

OFFENCES

Section 100(c)

A person who, without lawful authority or reasonable excuse, by lighting a fire within, or by permitting a fire for which he is responsible to spread to within, 30 metres of a road, damages the road or endangers traffic on it, commits an offence.

Section 129(4)

A person who pitches a tent or encamps in a road commits an offence.

ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND (ACPOS)

Draft Operational Guidance for the Management of Unauthorised Encampments of the Gypsy/Traveller Community.

1.0 Introduction

- 1.1 In accordance with recommendations proposed by the Advisory Committee on Scotland's Travelling People and the Scottish Parliament Equal Opportunities Committee, the Association of Chief Police Officers in Scotland (ACPOS) is producing draft Operational Guidance for the Scottish Police Service on the Management of Unauthorised Encampments of the Gypsy/Traveller Community.
- 1.2 The guidance document is being produced in conjunction with Local Authorities across Scotland who have also been undergoing a process of reviewing arrangements for service provision and social inclusion in respect of the Gypsy/Traveller Community.
- 1.3 The guidance document is being produced by a Group of representatives from each of the Scottish Forces working under the auspices of the ACPOS Race and Community Relations Standing Committee.
- 1.4 The Guidance document is also being produced in consultation with Crown Office.

2.0 Summary

- 2.1 The ACPOS Guidance document is intended to provide guidance for police officers on the Police role in relation to unauthorised encampments including their role during civil eviction proceedings, internal monitoring processes and guidance on legislative issues.
- 2.2 There is a general presumption against prosecution in relation to unauthorised encampments of Gypsies/Travellers. However, there are circumstances where this may be overridden by public interest considerations dependent upon the prevailing circumstances.
- 2.3 The guidance document emphasises the lead role assumed by local authorities in managing the variety of issues around unauthorised encampments. Its focus is upon service provision and social inclusion and it also takes into account human rights considerations.

3.0 Conclusion

- 3.1 The ACPOS Guidance Document for the Scottish Police Service is intended to complement each Local Authority's policy and strategy in relation to the Gypsy/Traveller Community. It is also produced in accordance with the guidance developed by the Scottish Executive.

3.2 It is recognised that the role of the Scottish Police Service will essentially be to act in partnership with local authorities in ensuring that the welfare and human rights of the Gypsy/Traveller Community are met and at the same time ensuring that public order and wider community safety issues are effectively addressed.

NB A full copy of the ACPOS Guidance Document will shortly be circulated by ACPOS to all interested parties as part of the ongoing consultation work.

ANNEX D

INTERESTS TO BE INVOLVED WHEN DEVELOPING A STRATEGY FOR UNAUTHORISED CAMPING

ORGANISATION/PARTY	MAIN AREA OF INTEREST
Local authority	Planning; information; race equality; site provision; site protection; unauthorised camping; housing and homelessness; education; social services; refuse collection; communication and public relations
Elected members, MPs and MSPs	All aspects including unauthorised camping
Local health authority	Welfare assessments; Gypsy/Traveller health in all forms of accommodation including unauthorised encampments
Neighbouring local authorities	All aspects to help inform their own strategies; liaison over site provision and unauthorised camping
Police	Planning; race equality; dealing with crime, anti-social behaviour and threats to public order from unauthorised encampments; communication and public relations
Crown Office	Handling prosecutions associated with unauthorised camping
Gypsies/Travellers	All aspects including needs assessment; service delivery; advice on site provision and unauthorised camping
Settled community	Site planning/land use planning; site protection and unauthorised camping
Roads authority	Unauthorised camping affecting roads/lay-bys
Scottish Environment Protection Agency	Fly-tipping and pollution associated with unauthorised camping
Forestry Commission	Land owner in some areas that may be affected by unauthorised camping
National Trust	Land owner in some areas that may be affected by unauthorised camping
Local press/media	All aspects of the strategy but especially site provision and unauthorised camping

ANNEX E

EXAMPLES OF NOTABLE GOOD PRACTICE

The content of this annex will depend on the information returned by local authorities.

LIST OF CONSULTEES

Travelling Site Managers Association of Scotland members
Local Authority Site Managers
Chief Executives of all local authorities
Directors of Housing of all local authorities
Save the Children
COSLA
Scottish Gypsy/Traveller Association (chair)
Association of Chief Police Officers in Scotland (ACPOS)
Local police forces
Commission for Racial Equality
Equal Opportunities Commission
Disability Rights Commission
Scottish Federation of Housing Associations
Chartered Institute of Housing in Scotland
Communities Scotland
Shelter
Crown Office
Scottish Executive Health Division
Scottish Executive Education Division
Scottish Executive Social Work Division
Scottish Executive Police Division
Scottish MEPs
Citizens Advice Bureau
Scottish Civic Forum
STEP – Scottish Travellers Education Project
STARS – Scottish Travellers Against Racism in Scotland
Scottish Human Rights Centre
Scottish Landowners Federation
STUC
Scottish Council for Voluntary Organisations
Stationery Office
Scottish Executive Library
SPICe
A number of individuals

THE SCOTTISH EXECUTIVE CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

Typically, Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses³. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4552).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

If you have any comment about how this consultation exercise has been conducted, please send them to:

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³ www.scotland.gov.uk

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