

Crown Office and Procurator Fiscal Service  
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Policy Division



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25<sup>th</sup> July 2014

Dear Mrs Scott,

Thank for your letter of 13<sup>th</sup> of June 2014 to the Lord Advocate concerning the setting up of unauthorised encampments by travellers within the Aberdeen area. I am replying on behalf of the Lord Advocate.

In terms of section 3 of the Trespass (Scotland) Act 1865 the lodging in any premises or occupying or encampment on any land, being private property without the consent and permission of the owner or legal occupier of such premises is an offence. The statute provides that the maximum punishment for this offence is a fine not exceeding level 1 of the standard scale, currently £200.

In 2001 the then Scottish Executive changed its policy on unauthorised encampments in light of the introduction of the Human Rights Act 1998. This Act incorporated the European Convention on Human Rights into British law and meant that all eviction and enforcement decisions made by public authorities, including COPFS, must be 'proportionate' and 'necessary'.

Following this the then Lord Advocate issued guidance to prosecutors that there should be a presumption against prosecution of travellers for unauthorised encampment in terms of section 3 of the Trespass (Scotland) Act 1865. However, the presumption may be overridden by other public interest considerations in favour of prosecution. Examples of this might be where a suitable alternative stopping place has been identified and the travellers have refused to relocate within a reasonable time, or where the use of a particular site by travellers, or the excessive size of the encampment, causes a Road Safety or public health hazard, or where the same travellers have been repeatedly moved from the same site only to return.

This presumption against prosecution outlined above is distinct from enforcement which is an operational matter for the police responsible for the area in question.

All of the foregoing information is contained within the Scottish Government's guidance in relation to the management of unauthorised encampments which was published in 2004. They identify the local authority as the lead agency in the management of unauthorised encampments, including removals.



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TRANSPARENCY IN PRACTICE



This guidance may be found at:

<http://www.scotland.gov.uk/Publications/2004/12/20417/48825>

It is important to note that the policy in relation to the trespass offence refers only to physical occupation of land and not to other criminal offences. The criminal law applies equally to all members of the public, including all traveller communities. If a crime is reported to the police it will be investigated and if there is sufficient evidence, a report will be submitted to the Procurator Fiscal for consideration.

All COPFS policies are reviewed periodically to reflect changes in the law or indeed changes in societal attitudes. However given the human rights considerations outlined above a change in COPFS policy in relation to unauthorised encampments would prove difficult in isolation. Any review would have to be undertaken in conjunction with the Scottish Government, local authorities and the police. I am not aware of any such review being in contemplation, but you may wish to contact the Scottish Government to confirm the position.

I note the particular examples which you have highlighted in the Aberdeen region and would encourage that where there are problems in that area the Police, Local Authority and COPFS should work together to seek to resolve any issues regarding potential prosecution. To this end should you wish to discuss this with someone from COPFS you should contact Andy Shanks on 0844 561 4262 in the first instance.

I hope that this information is of assistance.

Yours faithfully,

Gertie Wallace  
Policy Division Crown Office



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