

Minister for Housing and Welfare  
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Councillor Jenny Laing  
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In 2014 Scotland Welcomes the World



31 October 2014

*Dear Mr Laing*

On 25 July we received the Aberdeen City Council (Prohibition of Camping in Designated Areas) Byelaws 2014. Under the Local Government (Scotland) Act 1973 the Scottish Ministers are required to consider any byelaws made by a local authority under the 1973 Act before they can come into force.

Before turning to the byelaws themselves I believe it would be helpful to set out the Government's position on unauthorised encampments. Gypsy/Travellers have a right to their traditional way of life, but that right must be exercised responsibly and balanced against the rights of the wider community. The same standard of behaviour is expected from all members of the community, whether Gypsy/Travellers or the settled population, based on mutual respect. Any anti-social behaviour, including any alleged criminal activity, should be tackled firmly, and we expect the police to deal appropriately with any allegations of offences by those on unauthorised encampments using their normal procedures.

The Scottish Government issued guidelines on managing unauthorised encampments in 2004. They are based on the two key principles:

- encampments should be managed to minimise disruption for all concerned; and
- the same standards of behaviour should be expected from all members of the community.

The guidelines have been reviewed twice since they were first issued, and are available online:

[www.scotland.gov.uk/Publications/2004/12/20417/48828](http://www.scotland.gov.uk/Publications/2004/12/20417/48828)

We began another review of the guidelines this autumn.

In that policy context, and in line with the prescribed procedure, the Council submitted the byelaws for confirmation following a period of local advertising. The Council was offered the opportunity to respond to the points raised in the objections, and did so on 11 September.

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I am now writing to advise that, having carefully considered the byelaws, the objections received, and the Council's response; Scottish Ministers have decided not to confirm the byelaws. The specific grounds for not doing so are as follows:

- Powers already exist to tackle the issues that can sometimes arise around unauthorised encampments. Offences are already in place in relation to anti-social behaviour and flytipping, and the Council can also take action to recover possession of its property if it wishes to do so.
- Insufficient evidence has been provided that the Council has taken adequate action in response to the accommodation needs of Gypsy/Travellers. We are only aware of the Council providing four new pitches, and planning permission has not been sought to expand the number of sites. This is despite research commissioned by the Council and published in 2009 recommending that the Council and other local authorities in the north east "should continue to work jointly, on a regional basis, to identify and address the accommodation needs and preferences of Gypsies/Travellers households." ACC's Local Housing Strategy 2012-2017 also includes a commitment to develop short stay sites (together with Aberdeenshire Council).
- The byelaws would have an impact on one particular community, and are therefore potentially discriminatory. The Council's own Equality and Human Rights Impact Assessment identified the byelaws as being "Red Amber", and the Council has not provided sufficient evidence to show that the byelaws are a proportionate means of meeting a legitimate aim.

In addition to the points above, there are also substantial deficiencies in the drafting of the byelaws, which are not easily corrected and would present significant difficulties in enforcing it. To give some examples, it is unclear what "occupy" means in relation to a vehicle, and how long a period of "occupation" has to be to constitute an offence (given the definition of "over-night"). The meaning of section 2(2) in relation to repeat offending is opaque. Section 4 creates an offence, but no penalty is provided. Separately, Police Scotland has raised valid concerns about the adequacy of the powers compared with what would seem to be required to enforce the byelaws effectively. We have also noted the views of the Crown Office and Procurator Fiscal Service (COPFS) in relation to the byelaws.

I know that unauthorised encampments are a sensitive issue, and something the Scottish Government has previously worked with the Council on in the Aberdeen & Aberdeenshire Gypsy/Traveller Issues Working Party (which concluded by publishing a Stakeholder Strategy and Joint Action Plan, in March 2011). We have also provided over £280,000 since 2010 to assist the Council with improving your existing Gypsy/Traveller site. The Government continues to be open to working with the Council to address the difficulties that can arise from unauthorised encampments in Aberdeen. Council officials sit on the Government's Gypsy/Traveller Site Working Group, and we welcome their input on this and other issues.

I hope this explains the reasons why the Scottish Ministers have not confirmed the byelaws. A copy of this letter goes to Police Scotland, COPFS, local Aberdeen MSPs, and those who raised objections to the byelaws.

Kind regards

*Margaret Burgess*

**MARGARET BURGESS**