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Note Verbale No. 078

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit the response to communication OL GBR 2/2022, further to the letter dated 10 February 2022 from the Special Rapporteur on minority issues; the Special Rapporteur in the field of cultural rights and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 8 April 2022

Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights

**RESPONSE FROM THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND TO THE JOINT COMMUNICATION FROM SPECIAL PROCEDURES
OL GBR 2/2022**

Thank you for your joint communication of 10 February regarding your concerns in relation to the measures contained within Part 4 of the UK Government's Police, Crime, Sentencing and Courts Bill (the Bill).

We reaffirm the UK's respect for the rights of the traveller community to follow a nomadic way of life, in line with their cultural heritage. In the development of the measures in Part 4 of the Bill we carefully considered the rights of the traveller community, businesses and other communities. The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates their traditional and nomadic way of life, while respecting the interests of the settled community. However, we are equally clear that we will not tolerate law breaking and we are determined to ensure police have the powers they need to support and serve their communities.

The new offence will apply only when a person resides or intends to reside on land with a vehicle and has caused or is likely to cause significant harm and not left the land when asked to do so and 'without reasonable excuse'. The reasonable excuse defence will provide flexibility to reflect the facts in every case and is designed to help ensure that people would not be criminalised in cases where it would be disproportionate to do so.

Our observations on the points raised in your letter are provided in the attached annex.

ANNEX

1. Please provide any additional information and/or comment(s) you may have on the above analysis.

We recognise that not all unauthorised encampments cause harm or disruption. That is why the new offence has been designed to ensure that enforcement action is not taken where someone is merely 'present' and has not caused harm. However, there are people, businesses and communities facing significant damage, disruption and distress caused by some people on some unauthorised encampments. The financial costs to communities, businesses and landowners to clean up sites and repair damage in these cases can also be significant. This is why the measures being introduced have been designed for police to take proportionate enforcement action, dependent on the evidence of each and every case, to protect the rights of nearby residents, landowners and businesses. The power of seizure in these cases will bring significant harms or significantly harmful behaviour to an end and ensure the land is vacated by those who cause significant harm at the earliest opportunity.

2. Please advise what steps are being taken to ensure that the draft Bill will comply with the State's obligations under international law, as set out above.

The Government believes that the measures are compliant with the European Convention on Human Rights (ECHR) and the UK Equality Act 2010. The new measures, and enforcement of them, are not and will not be based on race (including ethnicity and nationality) or any other protected characteristic. The measures will apply to anyone who causes or is likely to cause harm in the conditions described: those who seek to occupy other people's land without permission, do not leave when they are asked to do so and who cause harm. For the new offence to take place, a person must have caused, or be likely to cause, significant damage, disruption, or distress and refuse to leave the land or remove their property when asked to do so, or return to the land with an intention of residing there in or with a vehicle within a prohibition period. The offence cannot be committed owing to a person's mere presence on the land. A person will not be caught by the offence if they can show they have a reasonable excuse for failing to leave the land and removing their property as soon as practicable or for returning within the prohibited period. The threshold of "significant" damage, disruption or distress is a high threshold and therefore proportionate to the enforcement action. The Criminal Justice and Public Order Act 1994 provides that lower levels of damage, disruption and distress can be met with other enforcement action by the police. This allows the police to tackle the wide range of harms suffered by landowners and communities in a proportionate manner.

The police decision to exercise the new powers, as is the case with all powers available to the police, is discretionary and is an operational matter for the police. Decisions on enforcement and prosecution must be evidenced and will be made on a case-by-case basis by police and the Crown Prosecution Service. We expect the police to continue to consider their responsibilities under the Public Sector Equality Duty (see below) and obligations under the Human Rights Act 1998. This includes considering the potential impact issuing a direction to leave, arresting a person, or seizing a vehicle may have on the families involved and on the vulnerable, before taking an enforcement decision. It is expected that proper welfare enquiries will be carried out and, where necessary, the appropriate agencies involved as soon as possible to arrange suitable accommodation if vehicles are seized.

The Public Sector Equality Duty, under section 149 of the Equality Act 2010, applies to the police (as a public authority) and places a duty on the police to have due regard to the need to eliminate discrimination, promote equality of opportunity and foster good relations between persons of different racial groups.

Equality and diversity are an essential part of the professional behaviour expected of everyone working in policing as set out in the Code of Ethics published by the professional policing body, the College of Policing. The Code of Ethics supports those working in policing to deliver the highest professional standards in their service to the public. Complaints can either be made directly to the relevant police force or to the Independent Office for Police Conduct. In addition, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services regularly inspects forces' performance and makes recommendations for improvement where necessary. Due to the design of the measures which set a high threshold of harm for the new offence to apply and due to the requirement for the police to act in a manner which is compatible with the Human Rights Act 1998 and Equality Act 2010, it is our view that these measures are a proportionate means of meeting the legitimate aims of prevention and investigation of crime and the protection of the rights of others.

3. Please provide information as to how your Excellency's Government ensures that representatives of Gypsy, Roma and Traveller minorities are adequately consulted before any measures that affect their situation are implemented, including this draft Bill.

The Government has a Gypsy, Roma, Traveller Liaison Group meeting quarterly with Gypsy, Roma, Traveller Voluntary and Community Sector representatives. The Government carried out an extensive public consultation in 2018 and again in 2019, looking at the powers for dealing with unauthorised developments and encampments.

Following concerns raised that some members of Gypsy, Roma and Traveller communities would encounter obstacles accessing the 2019 consultation, officials worked with a charity organisation on developing targeted engagement with the Gypsy, Roma and Traveller community. The 2018 consultation responses signalled clear calls for the Government to take action to improve enforcement against unauthorised encampments, with only 9% of respondents stating that the current set of powers were effective. In addition, 66% of people responding on behalf of local authorities to the Government's 2019 consultation were in favour of a new criminal offence for intentional trespass. 94% of people who responded on behalf of local authorities to the 2019 consultation, and 86% of those who responded on behalf of police organisations, supported one or more of the Government's proposed amendments to the 1994 Act to extend the powers of the police to direct trespassers to leave land.

All views were considered when determining Government's next steps, including the views of travellers. In addition to launching the consultation, the Home Office also engaged with Gypsy, Roma and Traveller umbrella groups and organisations to understand their points of view on the proposed Bill. These included the national charity Friends, Families and Travellers who ran targeted engagement with the traveller community and the Home Office considered these responses.

4. Please provide information as to how your Excellency's Government ensures in the current proposed legislation the provision of adequate and culturally appropriate housing, which includes accommodation and stopping sites for Gypsy, Roma and Traveller minorities.

The debate around inequalities and site provision is separate to the issue at hand which is dealing with people who cause significant harms. It is the responsibility of local authorities to assess the need for traveller sites in their area and then plan to meet that need, in the same way that they plan for all forms of housing. Local authorities are best placed to make decisions about the number and location of such sites locally, having had due regard to national policy and local circumstances. Local authorities and social housing providers are able to bid through the Government's £11.5 billion Affordable Homes Programme 2021-26 for the funding of new sites.

On 20 March 2022, the Government launched £10 million of capital funding for 2022/23 to support local authorities in England for building new or improved accommodation for travellers who have their needs assessed under the Planning Policy for Traveller Sites or the National Planning Policy Framework. This funding can be used for building new transit and permanent traveller sites, to refurbish existing permanent traveller and transit sites and provide temporary stopping places and facilities for travellers.

We know that some people in Gypsy, Roma and Traveller communities have some of the worst outcomes of any ethnic group in the UK in terms of health, housing, employment, but in particular, education. This is why the Government is delivering the £1 million Gypsy, Roma and Traveller Pilot Education Areas programme across five Local Authority Areas to test initiatives to improve the education attainment and life chances of Gypsy, Roma and Traveller children and young people.

The programme is providing a wide range of targeted work with parents and families with pre-school children, pupils in primary school and those transitioning to secondary school thereby helping to reduce drop-out rates, supporting young people not in education, employment or training and helping adults in need of literacy support, as well as improving teachers' cultural understanding and knowledge of Gypsy, Roma and Traveller culture. This £1 million investment is on top of £400,000 funding provided in 2020/21 for catch-up tutoring for Gypsy, Roma and Traveller children.