

Business Guides



Illegal Encampments and Applying for a Possession Order Business Guide Ref: 009

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Illegal Encampments and Applying for a Possession Order

INTRODUCTION

The last few years have seen an increase in the number of Travellers in the countryside setting up illegal encampments on land which is easily accessible from the road. Such encampments, if set up without the permission of the landowner, constitute a trespass. This NFU Business Guide (which is designed to be read alongside Business Guide 008, which can be downloaded from www.nfuonline.com or ordered from NFU CallFirst on 0370 845 8458) aims to give general guidance to farmers covering:

- action which can be taken in advance to prevent trespass;
- what to do if faced with an actual trespass; and
- the legal remedies available (please note - this document does not cover residential property, to which different provisions apply).

This document contains general information only and affected individuals should consider whether it is necessary to take independent advice in relation to their own particular circumstances. NFU members can obtain free initial legal and professional advice from NFU CallFirst on 0370 845 8458.

Fly-grazing is also covered by separate guidance, as there are different provisions applicable to fly-grazing, see NFU Business Guide 092 on Livestock Straying and Trespass to Land (including fly-grazing) for further information. This can be downloaded from the NFU website or ordered from NFU CallFirst on 0370 845 8458.

ACTION IN ADVANCE - PREVENTATIVE MEASURES

While the Criminal Justice and Public Order Act 1994 (the 1994 Act) increased police powers for dealing with the problem of Travellers and trespassers, it is still prudent to take precautionary measures both to protect property and for evidential purposes. Police resources remain limited and recourse through civil law may be more effective than waiting for police action.

Police powers are summarised in Business Guide 008 Illegal Encampments and Other Forms of Trespass: Police and Local Authority Powers.

Make Access Difficult

You can take a number of practical steps to prevent trespassers entering your land. Consider the following:

- blocking the entrance to the fields to prevent vehicular access to the land (take care not to block any public or private rights of way, although if there is a footpath it may still be possible to block vehicular access to the land);
- putting chains and locks on gates;
- digging ditches and/or removing cattle grids; and
- placing large rocks or building earthen/rock barriers across obvious access points.

However, any measures taken to obstruct entry should be reasonable in the circumstances and should not endanger lives. It is also important to ensure that any public rights of way over the land in question are not obstructed, as obstructing a public right of way is both an offence and a cross compliance breach.

Under the Occupiers' Liability Act 1984, landowners can be liable for injury to and loss sustained by trespassers as a result of known hazards on the land if they have not taken sufficient precautionary measures. The precautionary measures required will vary, depending on the nature of the hazard in question and whether the landowner is aware of difficulties with trespassers in that area. In some instances, a sign warning of the danger may be sufficient, whilst in other cases it may be necessary to consider other steps, such as fencing.

Further information on the duty of care owed to visitors and trespassers on your land can be found in NFU Business Guide 451, which looks at the Duty of Care Owed to Countryside Visitors, which can be downloaded from the NFU website or ordered from NFU CallFirst on 0370 845 8458.

Be Prepared For Legal Action

Have available accurate, up-to-date maps of your land, together with copies of title deeds and/or any tenancy, or grazing agreements. These may be necessary to prove ownership or legal rights in relation to the land in any court proceedings. Having these to hand should help to prevent delays due to difficulties in proving that you have a legal right to occupy the land.

Ensure that you have the name of a specialist solicitor in the area who is familiar with procedure for obtaining possession of land in trespass situations. It is advisable also to ascertain how to contact your solicitor outside office hours in an emergency, as quite often Travellers take advantage of darkness or bank holidays to make their illegal encampments.

Co-Operate With Other Landowners

Where there is reason to believe that Traveller groups are likely to congregate in an area, consider working with neighbouring landowners/farmers to take steps to identify the names of potential

trespassers, or details of their vehicles, and keep track of where they are. This will make it easier to serve any court documents on them, such as applications for injunctions. This will also help to keep you informed of Traveller activity in your area, meaning that you can be prepared for the possibility of travellers moving onto your land.

Concerted action of this type is particularly useful where trespassers are evicted from one piece of land in the area and are likely to try to find an alternative site nearby. If you know that your neighbour is about to obtain an injunction compelling Travellers to move from their land you can take steps to make access to your land more difficult before they enter.

You could also establish an early warning system with neighbours to warn each other of Travellers in the area.

If trespass seems likely, inform the police at once. This means that they can prepare for the possible need to take action if the trespass does occur.

Don't Invite Trouble

Be wary of impliedly consenting to trespassers coming onto your land. If you do so they are no longer trespassers but invitees and certain legal remedies to get rid of them are no longer available to you unless they remain after the consent has ended or breach the terms of any consent.

If the police ask you to allow a convoy to rest overnight in, say, a field because there are problems due to size of the convoy and traffic hold-ups, be wary of the consequences and ensure that you have adequate assurances from the police regarding the moving on of those Travellers. You may also want to discuss practical issues such as who will be responsible for removing rubbish and other items left on the land after the Travellers have left.

Obtain written confirmation of the arrangements in writing so that, if necessary, you can prove what you agreed to at a later date. Obviously, the more detailed the record the more useful it is likely to be to you in the future, but even a brief handwritten note of the key details is likely to be better than nothing.

If allowing Travellers to stay on your land ensure that you are aware of any potential consequences in terms of the BPS (particularly if the land is being used to activate entitlements) as the land would be used for non-agricultural activities during the period it is occupied; agri-environment implications may also need to be considered, if applicable. There could also be planning issues if there is no planning permission for the stationing of residential caravans on the land; this is particularly likely to be an issue for longer-term arrangements. If you are concerned about issues of this nature, you should consider taking independent advice regarding your specific situation; NFU CallFirst (0370 845 8458) can arrange a referral to one of the NFU's panel firms of solicitors should you wish them to do so.

Consider Legal Action to Prevent Trespass

To obtain an injunction to prevent trespass (which is generally preferable to dealing with a trespass after it has occurred) both the landowner and his solicitor must move extremely quickly.

Consult a solicitor who is familiar with dealing with applications for without notice interlocutory injunctions (temporary injunctions granted in the absence of the defendant) in these circumstances. If an injunction is granted and the people named in the Order trespass onto the land in question, you can apply to have the named trespassers committed to prison for breach of the Order.

Similar provisions are outlined in the Protection from Harassment Act 1997, whereby a few protestors can be named in an injunction to prevent them protesting for unreasonable periods or too close to the farmhouse. If you only know one or two names make sure that an injunction is brought to the attention of as many people as possible. (You could consider taking photos or video of people being given or reading the terms of the injunction so that you can show that they were made aware of the terms of the injunction should this become necessary, but be careful not to put yourself in a dangerous position).

Be sure of the facts of the case before starting proceedings for an injunction. The courts are likely to probe into the details very thoroughly as the defendant will not be able to put forward his case. Those served with an injunction may challenge the injunction once it has been brought to their attention and it will not help if the court finds significant inaccuracies in your case. Your solicitor will be able to discuss the sort of evidence which is likely to be useful in supporting your application for an injunction in more detail.

In some instances, it is possible to obtain an injunction against “persons unknown” if the identity of the trespassers cannot be ascertained. Your solicitor should be able to advise you about this option should it be necessary to go down this route.

Remember Travellers often favour grassland without livestock, preferably not easily seen from a road, with some sort of derelict or unused premises and good access. Travellers usually send out "spotters/scouts" ahead of the main convoy to search for new sites. If you see someone who you think could be carrying out this task, contact the police and, if possible, put appropriate precautions in place to make access to your land more difficult.

WHEN A TRESPASS HAS OCCURRED

Practical Things to Do

Contact your local authority.

Prior to May 2013, the use of Temporary Stop Notices in relation to residential caravans which are the main residence of a person was restricted. These restrictions have now been relaxed, enabling local authorities to serve a temporary stop notice. A Temporary Stop Notice makes it an offence to do the activities specified in the notice for the duration of the Notice. Failure to comply with a Notice is a criminal offence, thus enabling action to be taken if the Notice is not complied with.

If you become aware of an unauthorised encampment you could consider contacting the local authority to ascertain whether these powers can be used.

If you are the owner of the land on which the encampment is located, you may want to take independent legal advice before going down this route, to ensure that you are aware of any potential risks that may be associated with this course of action. You should also ensure that it is clear to the Local Authority

that you have not given permission for the caravans to be stationed on your land, and that you are not responsible for the presence of the caravans on your land.

Ask the trespassers to leave.

Consider taking a member of staff or family or a friend along when making the request. You could consider getting someone to film what happens, but be aware that this may inflame the situation and only do it if you think it is safe to do so. If you have someone with you, they will be able to give evidence in court to verify that the trespassers were asked to leave and how they reacted to the request.

Although these situations are very frustrating, it is important that the request to leave is made calmly and politely, to avoid inflaming the situation. Also, if you do have someone recording what happens, it will be important that you are calm and reasonable.

Be extremely careful when approaching trespassers.

It goes without saying that you should not carry a firearm, or anything that could inflame the situation when you approach trespassers on your land. If you are out shooting at the time you discover the incident you should return your guns to a secure location before dealing with the trespassers.

If the situation starts to become volatile at any time, walk away. Do not do anything that would put yourself or your family, friends, neighbours or employees at unnecessary risk. You may want to consider your options for extracting yourself from the situation quickly, should the need arise, before approaching the trespassers, so that you have a plan in mind if things do not go to plan.

Take details of the vehicles and their registration numbers.

The police may ask for the number of vehicles illegally camped, descriptions of vehicles and their registration numbers. If possible photograph vehicles, registration numbers, the Travellers themselves and any damage done. Such photographs can be used as evidence in court when applying for a possession order.

Be aware, however, that openly taking photographs and noting down details may make you an instant target for aggression from the Travellers. Take care to avoid putting yourself in a dangerous situation. Motion activated recording equipment could also be considered in some situations, to help to capture information about vehicles visiting the site, without the need for people to be present recording the information.

If the trespassers do not leave when requested there are several options available:

1. Call the police who may exercise their powers under sections 61 and 62 of the 1994 Act, to direct the trespassers to leave as soon as is reasonably practicable (see Business Guide 008). In practice this can often be difficult to achieve as police resources are limited.
2. Inform your local authority immediately you discover an illegal encampment or unauthorised vehicular campers on your land. In these circumstances the local authority has powers under sections 77-79 of the 1994 Act to remove illegal encampments and unauthorised vehicular encampments (see Business Guide 008). Unfortunately, as these are powers rather than duties

the local authority does not have to take action, but it is still worth approaching them in the first instance.

3. Take legal action to regain possession of your land (see the section headed 'Legal Action' below).
4. The common law does allow for the use of reasonable force to eject trespassers but the NFU strongly advises members against personally using any physical force to compel trespassers to leave the property.

There are certain bailiffs' firms who will serve a Notice on trespassers on behalf of the landowner requesting that the trespassers leave by a specified time. If the trespassers fail to depart the bailiffs will return (possibly with police attendance) and eject them on behalf of the landowner.

This approach has benefits for landowners as it avoids any confrontation between the trespassers and the landowner, and bailiffs may have a better chance of securing the attendance of the police at the eviction. The bailiffs will also have practical experience in dealing with this type of situation, and know how to handle the situation if it becomes heated. If successful, this method could be quicker and cheaper than the conventional legal methods for the re-possession of land.

It is advisable to take steps to ensure that any bailiff used is from a reputable firm, so that you can be confident that they will deal with the situation appropriately. Please contact NFU CallFirst on 0370 845 8458 for details of the discount offered to NFU members by GRC Bailiffs in relation to evictions.

Never do anything which would lead a court to believe that you condoned the presence of the trespassers, e.g. supplying them with food etc., as this may make it harder to get rid of them. It may also encourage the trespassers to stay for longer than they otherwise would. If the word spreads around the Travelling community, it could also increase the likelihood of future trespasses on your land.

LEGAL ACTION

Possession claims are begun by issuing a claim form in the County Court for the district in which the land is situated. Occasionally a claim may be issued in the High Court where there are complicated disputes of fact or points of law of general importance, or the claim is against trespassers and there is a substantial risk of public disturbance or of serious harm to persons or property which require immediate determination. If a claim is issued in the High Court and the Court subsequently decides that it should have been started in the County Court, then the claim may be struck out or transferred to the appropriate County Court. This can lead to further delay and expense and normally the Court will disallow the costs of starting the claim in the High Court. A solicitor will be able to advise which court is suitable on the basis of the circumstances of an individual case.

You will also have to draft your “Particulars of Claim”. This is a document which sets out the basis of your claim. The particulars of claim must:

- be on the appropriate form, which can be obtained from the local County Court;
- state the claimant’s interest in the land or the basis of his right to possession;
- set out the circumstances in which the land is occupied without permission or consent; and
- be brought against any known defendants by name and also against “persons unknown” if the identity of some or all of the defendants is unknown.

The Court will issue the claim form and set a date for the hearing.

The defendants must be served with the claim form, particulars of claim, and any written statements not less than two days before the hearing date, unless the court specifies different time limits, in which case you should comply with the directions of the court.

Where the claim form has been issued against “persons unknown” the claim form and attached documents can be served on the “persons unknown” by attaching copies of the documents to some part of the land. This can be done by placing stakes in the land in places where they are clearly visible and attaching copies of the documents in a sealed transparent envelope to each stake. The claimant must then prove service has been effected by producing a certificate of service to the Court; it may also be worth taking photographs to show the notices being served if it is possible to do this without putting yourself at risk.

A defendant to a possession claim against trespassers does not need to acknowledge service or file a defence and may just turn up on the day and defend the claim. This means that you may have limited opportunity to prepare responses to their arguments. In these circumstances, experienced legal representation can be very useful.

Depending on the particular circumstances of the trespass there may be other possession proceedings which may be brought - again a solicitor will be able to advise on the available options. NFU members can also obtain free initial legal and professional advice from NFU CallFirst on 0370 845 8458.

After The Judgment

Where the defendant has entered as a trespasser and has not subsequently been given permission to remain on the land, the Court must order possession and will issue a possession order, although it may give the trespasser a little time to move.

The possession order can be enforced by a warrant of possession (which is obtained following an application to the court) which directs the bailiffs to recover the property and restore it to the rightful owner. A solicitor will be able to help you with these steps, should it be necessary.

Generally, the loser pays at least some of the winner's costs in litigation (if costs have been applied for) but only against a named defendant. In practice however, it is often very difficult to enforce such a court order against Travellers and a successful landowner may find that he is unable to recover his costs.

NFU members who subscribe to the Legal Assistance Scheme may be able to obtain support with their costs from the Scheme when making an application for an injunction. NFU members who subscribe to the Legal Assistance Scheme and would like to make an application to the Scheme for assistance with their legal costs should contact NFU CallFirst on 0370 845 8458.

CONCLUSIONS

Unfortunately, the nature of farmland, particularly empty pasture, often makes it an ideal site for Travellers looking to set up an encampment. There is usually good access to the land, due to the need to take farm machinery on to it, it is often out of sight of main roads/heavily populated areas and may be some distance from the farmhouse/farm yard.

As stated at the beginning of this Business Guide, where possible, prevention is the best option. Consider what steps you can take to ensure that Travellers do not see your land as an attractive site for their encampment. Where possible, make access to land difficult so that Travellers cannot easily get their vehicles on to your land, but avoid obstructing public rights of way.

Working with other local farmers/landowners and sharing information can help to ensure that you are all aware of any potential problems before they arise, can enable you to consider co-ordinated action to prevent trespass on land and to force the Travellers to move on.

If travellers have already set up an encampment on your land be careful to avoid consenting to their presence, either expressly or by implication, as doing so may make it more difficult to move them on.

Do not do anything that could put yourself or any other person (e.g. your family, friends or employees) in any potentially dangerous situation. Tensions can run high on both sides in these situations, and can easily get out of hand, so it is important that you try to avoid inflaming the situation. Consider what precautions you can put in place to prevent situations getting out of hand.

If in doubt, seek legal advice regarding your options as soon as possible and gather as much evidence as you can to support your case. When seeking legal advice, it will be beneficial if you go armed with as much information and evidence as possible, including taking proof of your interest in the relevant land and details of the trespass complained of and, if possible, the individuals involved.

Further information on fly-grazing can be found in NFU Business Guide 092 on Livestock Straying and Trespass to Land, as there are separate legal provisions relating to fly-grazing. This can be downloaded from NFU online or ordered from NFU CallFirst on 0370 845 8485.

The NFU can take no responsibility for any consequences arising from individual circumstances which cannot be fully accounted for in this document. It is advisable to seek professional advice based on the precise circumstances involved.

For free initial Legal & Professional advice NFU CallFirst 0370 845 8458