

October 2016

LTN 44

TRESPASS TO LAND AND THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994

Introduction

1. In general, trespass is a civil matter not a criminal offence (although a trespasser may commit the offence of criminal damage (see s.1 of the Criminal Damage Act 1971)). Legislation is required to “criminalise” trespass. For example, the Serious Organised Crime and Police Act 2005 (SOCPA) makes trespass on some government sites a criminal offence.
2. This Note concentrates on the provisions of the Criminal Justice and Public Order Act 1994 (CJPOA) that are of particular relevance to local councils, namely, the legal consequences of wrongful entry onto land and buildings and of wrongfully remaining on land or in buildings after being required to leave.
3. References to fines are made with reference to the “standard scale”. This scale is set from time to time by legislation. The current scale is as follows: level 1: £200, level 2: £500, level 3: £1,000, level 4: £2,500 and level 5: £5,000. Summary conviction means conviction by a magistrates’ court.
4. All section numbers refer to CJPOA unless otherwise stated.

Wrongful entry onto land

5. A person who enters another person’s land (whether privately or publicly owned), commits the tort of trespass unless (a) he has the consent of that person; or (b) he has a legal right to enter, for example if he has statutory authority. The tort of trespass is a civil wrong and not a crime.
6. A person will have the consent of the owner or occupier of the land if it is expressly or impliedly given. Consent can be expressly given orally or in writing; it can be given by implication by the owner’s previous conduct. For example, there is implied consent for

a member of the public to enter a public park. Implied consent can also include genuine visitors, postmen, refuse collectors, etc.

7. A person who lawfully enters someone else's land commits a trespass if he stays there after his right of entry has ceased. Thus a person becomes a trespasser if he refuses to leave following a withdrawal of permission by the owner or occupier. He must, however, be given a reasonable time to gather together his belongings if circumstances warrant. For example, a camper must be allowed a reasonable time to take down his tent before he is obliged to leave. A person can have statutory authority to enter premises. Examples include a meter reader, a court bailiff or a police officer with a valid search warrant.
8. A person has a legal right to enter land if he has a private right of way over it (an easement) or if there is a public highway over the land.

Criminal trespass

9. Section 61 enables a senior police officer to remove trespassers from land (who are there with the common purpose of remaining for any period) where the occupier has taken reasonable steps to ask them to do so and either:
 - they have damaged the land; or
 - they have used threatening, abusive or insulting behaviour to the occupier, the occupier's family, employees or agents; or
 - between them they have six or more vehicles on the land.

Failure to obey a direction to leave or returning to the land as a trespasser within three months is an offence.

10. It should be noted that the section applies to common land and to public paths which includes footpaths, bridleways, byways open to all traffic, roads used as public paths and cycle tracks. However, the section does not apply to other types of highway, principally roads.
11. Section. 62 provides a power for the police to seize vehicles of persons failing to comply with a direction under s.61.
12. Where the public has access to common land, a local council may be the occupier for the purposes of s.61 and thus in a position to ask the police to remove trespassers.

13. Section 62 gives supplementary powers to the police to seize vehicles.
14. Section.63 to s.66 give powers to the police to control illegal “raves”, defined as “a gathering on land in the open air of 20 or more persons (whether or not trespassers) at which amplified music is played during the night (with or without intermissions) and is such as, by reason of its loudness and duration and the time at which it is played, is likely to cause serious distress to the inhabitants of the locality”. The section does not apply to gatherings licensed by an entertainment licence. Pursuant to s.63, a police officer of at least the rank of superintendent may give directions to leave land where he reasonably believes that:

- two or more persons are making preparations for the holding of a rave; or
- 10 or more persons are waiting for a rave to begin there; or
- 10 or more persons are attending a rave which is in progress.

He may also direct the removal of vehicles or other property (e.g. sound and amplification equipment).

15. Failure to obey a direction to leave, or returning within seven days after leaving is a summary offence for which the maximum penalty on conviction is three months’ imprisonment or a fine not exceeding level 4 on the standard scale, or both. There is also power under s.64 for the police to seize equipment and vehicles involved in a rave.
16. Under s.65, a police officer has power to stop people (unless exempt – see next paragraph) on their way to a rave within a five mile radius of the site. The police officer must have a reasonable belief that the people are going to the rave
17. The power to stop people does not apply to “exempt persons”. i.e. the occupier, a member of his family, an agent or employee of his or a person whose home is situated on the land.
18. Under s.66, the courts have power to forfeit sound equipment belonging to a person convicted of an offence under s.63. Under s.67, vehicles that have been seized under s.62 and s.64 may be retained. See also the Police (Disposal of Sound Equipment) Regulations 1995 and Police (Retention and Disposal of Vehicles) Regulations 1995.
19. Section.68 creates the offence of aggravated trespass, which is aimed at persons who trespass on land in the open air for the purpose of disrupting lawful activities taking

place there. Specifically, the section makes it an offence for a person to do anything on land in the open air which is intended to have the effect of :

- intimidating the lawful activity of other persons on the land or on adjoining land; or
- obstructing that activity; or
- disrupting that activity.

20. "Land" includes rights of way as defined in paragraph 10 , but does not include other types of highway. The offence is a summary one and on conviction the maximum penalty is three months' imprisonment or a fine not exceeding level 4 on the standard scale, or both.

21. Section.69 empowers a senior police officer to direct persons he reasonably believes are committing, or participating in, aggravated trespass to leave the land. Where a direction is made, the persons concerned must leave as soon as practicable and are prohibited from returning as trespassers within three months (s.69(3)(b)). Failure to comply with a direction is an offence punishable on summary conviction by a maximum of three months' imprisonment or a fine not exceeding level 4 on the standard scale, or both.

22. Section 70 inserts new provisions in the Public Order Act 1986 (s.14A) to enable the chief officer of police to apply to a district council in England or a county borough council or a county council in Wales for an order prohibiting for a specified period a "trespassory assembly" in the district, or in a specified part of it. A "trespassory assembly" is an assembly of 20 or more persons on land in the open air to which the public have no right of access, or a limited right of access (i.e. restricted to a particular purpose, such as a highway, or subject to other restrictions), and which:

- is held without permission of the occupier, or is likely to exceed limits of any permission of his or of any public right of access, and
- may result in serious disruption to the life of the community, or
- may result in significant damage to the land or to a building or monument on it of historical, archaeological, architectural or scientific importance.

An order made under the section must be confirmed by the Secretary of State.

23. The organising of a trespassory assembly, participating in one or inciting person to do so are offences. The maximum penalty on summary conviction for organising an assembly is three months' imprisonment, or a fine not exceeding level 4 on the

standard scale, for incitement three months' imprisonment or a fine not exceeding level 4 on the standard scale, and for participating in one, a fine not exceeding level 3 on the standard scale.

24. Section 77 empowers a district or county council in England or a county borough council or county council in Wales to direct unauthorised campers residing in a vehicle or vehicles on:

- land forming part of a highway;
- any other occupied land; or
- any occupied land without the consent of the occupier

to leave the land and remove their vehicles and other property, if any. Notice of a direction must normally be served on the persons concerned but is sufficiently served if addressed to all the occupants of the vehicles on the land, without naming them.

25. Failure to comply with a direction as soon as practicable, or to return to the land within three months after having left it pursuant to a direction, is an offence. The maximum penalty on summary conviction is a fine not exceeding level 3 on the standard scale. It is a defence to show that failure to comply with a direction as soon as practicable or re-entry with a vehicle was due to illness, mechanical breakdown or other immediate emergency.

26. Under s.78, a magistrates' court may, on a complaint made by a district council in England or a county council or a county borough or a county council in Wales, order the removal of any vehicle or other property on the land and any persons residing in it, if satisfied that there is a contravention of a direction under s.77. Any such order is enforced by the relevant council. Wilful obstruction of a person carrying out an order is an offence; the maximum penalty on summary conviction is a fine not exceeding level 3 on the standard scale.

27. The Department for Communities and Local Government, the Home Office and the Ministry of Justice have produced a guidance booklet "Dealing with illegal and unauthorised encampments" that summarises the powers available to local authorities to help them remove illegal and unauthorised encampments on both public and private land.

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418139/150326_Dealing_with_illegal_and_unauthorised_encampments_-_final.pdf)

Remedies for trespass

28. The principal remedy for trespass is to take legal proceedings, although statutory remedies may be available under CJPOA as described above. Criminal behaviour orders ('CBOs') or civil injunction orders under the Anti-social Behaviour, Crime and Policing Act 2014 (the 2014 Act) may be the appropriate remedy to deal with persistent trespass. Local councils do not currently have the power to apply for CBOs or civil injunction orders. They should contact their principal authority if they think that they could be appropriate.
29. Legal proceedings can also take the form of an action for the recovery of land in the local county court. If the action is successful, the court will make an order for possession. The court also has power to issue an injunction requiring trespassers not to re-enter the land and to order the payment of compensation for any loss or damage caused.
30. It is lawful for the owner/occupier to take reasonable physical steps to remove trespassers, without obtaining a court order. Reasonable force may be used if the trespassers refuse to leave voluntarily. However, It is usually inadvisable to take such action, especially where the trespassers are numerous. It is likely that owners/occupiers will seek to take legal proceedings or the statutory powers under CJPOA described above as an alternative.
31. If a council intends to take legal proceedings against trespassers it should instruct a local firm of solicitors to handle the case as NALC's Legal Department does not represent councils in court proceedings.

Preventative action

32. It may be possible for a council to prevent trespassers gaining access to its property by means of gates, fences, etc Where land is subject to the rights of others (e.g. land subject to 'rights of common' and village greens), the creation of such barriers may not be possible. Specific advice should be sought from NALC in individual cases.
33. Where a large-scale incursion of trespassers is anticipated, the police and the district council should be asked to exercise appropriate powers under the CJPOA or the 2014 Act.

Law relating to gypsies and travellers

34. NALC has issued a legal briefing on the role of councils with regards to gypsies and travellers.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
42	Occupiers' Liability	Distinguishes between legal duties owed to visitors and trespassers.
43	Private Access Council Land	Sets out further circumstances in which individuals may trespass onto council land.
53	Protection of Common Land	Sets out the powers of local councils to combat trespass with particular reference to common land and to the Human Rights Act.
69	Anti-social behaviour and harassment	Explains criminal behaviour orders ('CBOs') and civil injunction orders under the Anti-social Behaviour, Crime and Policing Act 2014
77	Public rights of way	Explains the different types of rights of way

This Legal Topic Note is published by National Association of Local Councils

109 Great Russell Street

London WC1B 3LD

Tel: 020 7637 1865

Fax: 020 7436 7451

E-mail: nalc@nalc.gov.uk

Website: www.nalc.gov.uk

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