

*Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the
Northern Ireland Act 2000, for approval by resolution of each House of Parliament*

DRAFT STATUTORY INSTRUMENTS

2005 No.

NORTHERN IRELAND

The Unauthorised Encampments (Northern Ireland) Order 2005

*Made - - - - 2005
Coming into operation in accordance with Article 1(2)
and (3)*

At the Court at Buckingham Palace, the ** day of ** 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:ñ

Introductory

Title and commencement

1.—(1) This Order may be cited as the Unauthorised Encampments (Northern Ireland) Order 2005.

(2) This Article and Article 2 shall come into operation on the expiration of 7 days from the day on which this Order is made.

(3) The other provisions of this Order shall come into operation on such day or days as the Department may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) shall apply to Article 1 and the following provisions of this Order as it applies to an Act of the Assembly.

(2) In this Order—

“the Department” means the Department for Social Development;

“occupier” means the person entitled to possession of the land by virtue of an estate or interest held by him;

“trespass” means trespass as against the occupier of the land; and

“vehicle” includes—

- (a) any vehicle, whether or not it is in a fit state for use on roads, and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle and any load carried by, and anything attached to such a vehicle; and
- (b) a caravan within the meaning of the Caravans Act (Northern Ireland) 1963 (c. 17).

(3) A person may be regarded for the purposes of this Order as having a purpose of residing in a place notwithstanding that he has a home elsewhere.

Power to remove trespassers on land

Power to remove trespassers on land

3.—(1) If the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and—

- (a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his; or
- (b) that those persons have between them six or more vehicles on the land,

he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.

(2) Where the persons in question are reasonably believed by the senior police officer to be persons who were not originally trespassers but have become trespassers on the land, the officer must reasonably believe that the other conditions specified in paragraph (1) are satisfied after those persons became trespassers before he can exercise the power conferred by that paragraph.

(3) A direction under paragraph (1), if not communicated to the persons referred to in paragraph (1) by the police officer giving the direction, may be communicated to them by any constable at the scene.

(4) If a person knowing that a direction under paragraph (1) has been given which applies to him—

- (a) fails to leave the land as soon as reasonably practicable; or
- (b) having left again enters the land as a trespasser within the period of 3 months beginning with the day on which the direction was given,

he commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale, or both.

(5) A constable in uniform who reasonably suspects that a person is committing an offence under this Article may arrest him without a warrant.

(6) In proceedings for an offence under this Article it is a defence for the accused to show—

- (a) that he was not trespassing on the land;
- (b) that he had a reasonable excuse for failing to leave the land as soon as reasonably practicable or, as the case may be, for again entering the land as a trespasser; or

(c) that, at the time the direction was given, he was under the age of 18 years and was residing with his parent or guardian.

(7) For the purposes of this Article and Article 4—

“land” does not include—

(a) buildings other than—

(i) agricultural, livestock or poultry buildings within the meaning of paragraphs 2 and 3 of Schedule 1 to the [Rates \(Northern Ireland\) Order 1977 \(NI 28\)](#); or

(ii) scheduled monuments within the meaning of the [Historic Monuments and Archaeological Objects \(Northern Ireland\) Order 1995 \(NI 9\)](#);

(b) land forming part of a road within the meaning of Article 2(2) of the [Roads \(Northern Ireland\) Order 1993 \(NI 15\)](#);

“property”, in relation to damage to property on land, means property within the meaning of Article 12(1) of the [Criminal Damage \(Northern Ireland\) Order 1977 \(NI 4\)](#) and “damage” includes the deposit of any substance capable of polluting the land.

Failure to comply with direction under Article 3: seizure

4. If a direction has been given under Article 3 and a constable reasonably suspects that any person to whom the direction applies has, without reasonable excuse—

(a) failed to remove any vehicle on the land which appears to the constable to belong to him or to be in his possession or under his control; or

(b) entered the land as a trespasser with a vehicle within the period of 3 months beginning with the day on which the direction was given,

the constable may seize and remove that vehicle.

Power to remove trespassers: alternative site available

5.—(1) If the senior police officer present at a scene reasonably believes that the conditions in paragraph (2) are satisfied in relation to a person and land, he may direct the person—

(a) to leave the land;

(b) to remove any vehicle and other property he has with him on the land.

(2) The conditions are—

(a) that the person and one or more others (“the trespassers”) are trespassing on the land;

(b) that the trespassers have between them at least one vehicle on the land;

(c) that the trespassers are present on the land with the common purpose of residing there for any period;

(d) if it appears to the officer that the person has one or more caravans in his possession or under his control on the land, that there is a suitable pitch on a relevant caravan site for that caravan or each of those caravans; and

(e) that the occupier of the land or a person acting on his behalf has asked the police to remove the trespassers from the land.

(3) A direction under paragraph (1) may be communicated to the person to whom it applies by any constable at the scene.

(4) Paragraph (5) applies if—

(a) a police officer proposes to give a direction under paragraph (1) in relation to a person and land; and

- (b) it appears to him that the person has one or more caravans in his possession or under his control on the land.
- (5) The officer shall consult—
 - (a) the district council within whose district the land is situated; or
 - (b) where the trespassers are members of the Irish Traveller community, the Northern Ireland Housing Executive,
 as to whether there is a suitable pitch for the caravan or each of the caravans on a relevant caravan site.
- (6) In this Article—
 - (a) “caravan” and “caravan site” have the same meanings as in the Caravans Act (Northern Ireland) 1963 (c. 17);
 - (b) “relevant caravan site” means a caravan site which is—
 - (i) situated within a reasonable distance of the land; or
 - (ii) where the trespassers are members of the Irish Traveller community, provided by the Northern Ireland Housing Executive under Article 28A of the [Housing \(Northern Ireland\) Order 1981 \(NI 3\)](#) and situated within a reasonable distance of the land;
 - (c) any reference to the Irish Traveller community shall be construed in accordance with Article 5(2)(a) of the [Race Relations \(Northern Ireland\) Order 1997 \(NI 6\)](#).

Failure to comply with direction under Article 5: offences

- 6.—(1) A person commits an offence if he knows that a direction under Article 5(1) has been given which applies to him and—
- (a) he fails to leave the relevant land as soon as reasonably practicable; or
 - (b) he enters any land in the district of the relevant district council as a trespasser before the end of the relevant period with the intention of residing there.
- (2) The relevant period is the period of 3 months starting with the day on which the direction is given.
- (3) A person guilty of an offence under this Article is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.
- (4) A constable in uniform who reasonably suspects that a person is committing an offence under this Article may arrest him without a warrant.
- (5) In proceedings for an offence under this Article it is a defence for the accused to show—
- (a) that he was not trespassing on the land in respect of which he is alleged to have committed the offence;
 - (b) that he had a reasonable excuse—
 - (i) for failing to leave the relevant land as soon as reasonably practicable; or
 - (ii) for entering land in the district of the relevant district council as a trespasser with the intention of residing there; or
 - (c) that, at the time the direction was given, he was under the age of 18 years and was residing with his parent or guardian.

Failure to comply with direction under Article 5: seizure

- 7.—(1) If a direction has been given under Article 5 and a constable reasonably suspects that a person to whom the direction applies has, without reasonable excuse—

- (a) failed to remove any vehicle on the relevant land which appears to the constable to belong to him or to be in his possession or under his control; or
- (b) entered any land in the district of the relevant district council as a trespasser with a vehicle before the end of the relevant period with the intention of residing there,

the constable may seize and remove that vehicle.

(2) The relevant period is the period of 3 months beginning with the day on which the direction is given.

Articles 5 to 7: interpretation

8.—(1) Paragraphs (2) to (4) apply for the interpretation of Articles 5 to 7 and this Article.

(2) “Land” does not include buildings other than—

- (a) agricultural, livestock or poultry buildings within the meaning of paragraphs 2 and 3 of Schedule 1 to the [Rates \(Northern Ireland\) Order 1977 \(NI 28\)](#); or
- (b) scheduled monuments within the meaning of the [Historic Monuments and Archaeological Objects \(Northern Ireland\) Order 1995 \(NI 9\)](#).

(3) “The relevant district council” means the district council within whose district the relevant land is situated.

(4) “The relevant land” means the land in respect of which a direction under Article 5 is given.

Retention and charges for seized property

Retention and charges for seized property

9.—(1) Any vehicles which have been seized and removed by a constable under Article 4 or 7(1) may be retained in accordance with regulations made by the Department under paragraph (2).

(2) The Department may make regulations—

- (a) regulating the retention and safe keeping and the disposal and the destruction in prescribed circumstances of vehicles; and
- (b) prescribing charges in respect of the removal, retention, disposal and destruction of vehicles.

(3) Any authority shall be entitled to recover from a person from whom a vehicle has been seized such charges as may be prescribed in respect of the removal, retention, disposal and destruction of the vehicle by the authority.

(4) Any charges under paragraph (3) shall be recoverable as a simple contract debt.

(5) Any authority having custody of vehicles under regulations under paragraph (2) shall be entitled to retain custody until any charges under paragraph (3) are paid.

(6) Regulations under paragraph (2) shall be subject to negative resolution.

Clerk of the Privy Council

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Unauthorised Encampments (Northern Ireland) Order 2005 No. 1961*

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the removal by the police of trespassers on land in certain circumstances.