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