

UNAUTHORISED ENCAMPMENTS(NORTHERN IRELAND) ORDER 2005

S.I. 2005 1961

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Unauthorised Encampments (Northern Ireland) Order 2005 was made on 19 July 2005 under the Northern Ireland Act 2000.
2. This Explanatory Memorandum has been prepared by the Department for Social Development (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the Order.

BACKGROUND AND POLICY OBJECTIVES

3. Unauthorised camping is widespread in Northern Ireland and has long been a cause of complaint from both the public and elected representatives. It has given rise to concerns about environmental and public health issues as well as traffic hazards, and depending on location, the effect on the trade of local businesses. At present, there is no specific Northern Ireland legislation to control unauthorised encampments.
4. The Order will give the police the power to remove trespassers who intend residing on land, together with their vehicles and other property. The provisions of the Order are similar to those already in existence in Great Britain.

CONSULTATION

5. A consultation paper containing measures to control unauthorised encampments was issued in September 2003 to local government bodies and organisations representing equality interests. As the proposed measures are likely to impact significantly on the Irish Traveller community, who most frequently use unauthorised encampments, special arrangements were made to consult their representatives.
6. Responses from local government bodies welcomed the proposed control measures. However, the Equality Commission, NI Council for Ethnic Minorities, Traveller support groups and a number of other organisations opposed the measures on the grounds that they will have an adverse impact on Irish Travellers. The consultation paper and a summary of responses received have been published on the Department’s website www.dsdni.gov.uk

MAIN ELEMENTS OF THE ORDER

7. The Order contains 9 Articles. It creates a power for a police officer to direct a person to leave land and remove any vehicle or other property with him on that land. It also creates an offence and a power of seizure for non-compliance with a direction.

COMMENTARY ON PROVISIONS

8. Details of the purpose of each Article contained in the Order are set out below. Comments are not given where the wording is self-explanatory.

Article 1: Title and Commencement

This Article sets out the title of the Order and provides that Articles 1 and 2 are to come into operation 7 days after the Order is made. The Department is empowered to make a commencement order naming the day on which the remaining provisions will come into operation.

Article 2: Interpretation

This Article applies the Interpretation Act (Northern Ireland) 1954 to the Order and defines certain expressions used in it.

Article 3: Power to remove trespassers on land

Paragraphs (1) and (2) set out the conditions that the most senior police officer at the scene must reasonably believe are satisfied before issuing a direction to a person to leave and remove any vehicle or other property with him on the land. The conditions are:

- at least two persons must be trespassing or, although not originally, are now trespassing, on land with the intention of residing there;
- the occupier of the land has asked them to leave;
- any person trespassing on the land has behaved in a manner outlined in paragraph (1)(a) or the persons trespassing have six or more vehicles on the land.

Paragraphs (4) and (5) provide that a person commits an offence for which he may be arrested if he fails to comply with a direction under paragraph (1) or if, within 3 months of the direction given, he returns to the land as a trespasser. The maximum penalty is 3 months imprisonment or a level 4 fine (or both).

Paragraph (6) provides for defences which can be mounted in court proceedings for an offence under this Article.

Article 4: Failure to comply with direction under Article 3: seizure

This Article enables a constable to seize and remove any vehicle if he suspects that a person has, without reasonable excuse, failed to comply with a direction under Article 3 (1) to remove it, or if within 3 months of the direction he trespasses again on the land with a vehicle.

Article 5: Power to remove trespassers: alternative site available

Paragraph (1) creates a power for the most senior police officer at the scene to direct a person to leave land and remove any vehicle or other property with him on that land.

Paragraph (2) sets out the conditions that the police officer must believe are satisfied before he can give a direction. These are:

- at least two persons must be trespassing on land;
- they must have at least one vehicle on the land;
- they must be present on the land with the intent of residing there;
- where they have caravans there are relevant caravan sites with suitable pitches available for them to move to;
- the occupier of the land has asked the police to remove the trespassers.

Paragraphs (4) and (5) create a duty for the police officer to consult various bodies as to whether a suitable pitch exists where a direction to move is given to trespassers who have a caravan.

Article 6: Failure to comply with direction under Article 5: offences

Paragraphs (1) to (4) create an offence, for which a person may be arrested, if he fails to comply with a direction under Article 5(1) to leave land, or within 3 months, trespasses on any land in the district council area with the intention of residing there. The maximum penalty is 3 months imprisonment or a level 4 fine, or both.

*This Explanatory Memorandum refers to the Unauthorised
Encampments(Northern Ireland) Order 20051961*

Paragraph (5) provides for defences which can be mounted in court proceedings for an offence under Article 6.

Article 7: Failure to comply with direction under Article 5: seizure

This Article enables a constable to seize and remove any vehicle if he suspects that a person has, without reasonable excuse, failed to comply with a direction under Article 5(1), or within 3 months enters any land in the district council area as a trespasser with a vehicle.

Article 8: Articles 5 to 7: interpretation

This Article defines certain expressions used in Articles 5 to 7 of the Order.

Article 9: Retention and charges for seized property

This Article enables the Department to make regulations for the retention, safekeeping, disposal and destruction of vehicles seized and removed from land and for the recovery of costs.

COMMENCEMENT

9. The enabling provisions are to come into operation on the expiration of 7 days from the day on which the Order is made. The substantive provisions will be brought into operation on a day to be appointed by a commencement order.