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# **Guide to the Unauthorised Encampments (Northern Ireland) Order 2005**

**July 2019**

# GUIDE TO THE UNAUTHORISED ENCAMPMENTS (NORTHERN IRELAND) ORDER 2005

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## Introduction

This Guide to The Unauthorised Encampments (NI) Order 2005 (the Order) has been prepared for the information of public authorities or other parties that may be involved in dealing with issues relating to unauthorised encampments.

### ***Layout of Guide***

The Guide is in 2 parts.

**Part 1** sets out the overall context of the Order. Importantly, it highlights the need to use the powers available having regard to human right obligations under the Human Rights Act 1998. It also addresses other issues which should be considered before the powers are used.

**Part 2** explains the main provisions of the Order, although it should not be treated as an authoritative statement of the law. **No explanation is included for Article 1 which is introductory and provides for the title and commencement of the Order nor for Articles 2 and 8 which provide interpretations in the Order.**

Copies of the Order and The Unauthorised Encampments (Retention and Disposal of Vehicles) Regulations (NI) 2006 are on sale at the Stationery Office Bookshop, 16 Arthur Street, Belfast BT1 4GD. The Order and regulations may also be accessed at [www.statutelaw.gov.uk](http://www.statutelaw.gov.uk)

The Guide may be accessed at:

[www.dsdni.gov.uk/index/law\\_and\\_legislation/social\\_policy/social\\_law](http://www.dsdni.gov.uk/index/law_and_legislation/social_policy/social_law) and a limited number of copies are available from:

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## **PART 1      NEED FOR LEGISLATION AND WIDER ISSUES**

### **Background and need**

- 1.1 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.
  
- 1.2 Due to the lack of alternative accommodation the majority of unauthorised encampments are occupied by Irish Travellers. However, tourists also set up unauthorised encampments particularly during the Spring and Summer months.

### **Accommodation for Irish Travellers**

- 1.3 In late 2003 the Housing (NI) Order 1981 was amended by the Department for Social Development (the Department) to give the Northern Ireland Housing Executive (NIHE) the statutory responsibility of providing suitable accommodation for Irish Travellers. A number of serviced Traveller sites operated by district councils were transferred to NIHE ownership. District councils do not therefore have any statutory responsibility for the provision of sites.
  
- 1.4 NIHE is currently developing a programme of specific Traveller accommodation schemes prioritised on the basis of greatest need, land availability and Traveller family compatibility. The programme includes:
  - group housing schemes which cater for Travellers' desire to live in extended family groups;

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- serviced sites which cater for Travellers who wish to live on a permanent location but in temporary “mobile home” type accommodation; and
  - transit / emergency sites with specific facilities for travellers who wish to pursue a nomadic lifestyle.
- 1.5 An Inter Agency Working Group, established by NIHE to consider the need for and location of transit sites concluded that 5 transit sites located around Strabane, Londonderry, Belfast, Craigavon and Newry should be sufficient to cater for those still wishing to travel. As an interim measure, it is proposed to establish a programme of emergency sites to cater for the immediate needs of Traveller families who continue to live by the roadside. It is intended through this programme, to use a more proactive approach to the Co-operation Policy in respect of Travellers by identifying areas of land in NIHE ownership which could be managed under Co-operation Policy guidelines.
- 1.6 The Co-operation Policy permits Travellers to set up an unauthorised encampment on public land for which there is no current or immediate use and permits them to occupy the land provided this does not create a public health or traffic hazard and the land is maintained in a reasonable and orderly manner. It does not create a right to long-term occupation of the land and is seen as a humane requirement to address immediate need and not as a substitute for permanent accommodation.

### **Legislative remedies (other than the Order)**

- 1.7 In addition to civil action for the repossession of land, the following legislative remedies are currently available to control unauthorised encampments:

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- the *Roads (NI) Order 1993* where enforcement actions are available regarding unauthorised encampments which are established within the boundaries of public highways;
- car parking bye-laws provide remedies where an unauthorised encampment is located within a car park as scheduled in the *Off-Street Parking Bye-Laws (NI) 1996*;
- public Health legislation such as the *Public Health (Ireland) Act 1878* and the *Pollution Control and Local Government (Northern Ireland) Order 1978* provide remedies where there is a public health nuisance caused by a particular unauthorised encampment;
- the *Planning (NI) Order 1991*, provides the Planning Service with the power to issue an enforcement notice on the owner and occupier of land where an unauthorised encampment is located.

1.8 Experience has shown the above remedies can be ineffective, expensive, and cumbersome in responding to unlawful occupation of land. In view of this, in Autumn 2004, following earlier public consultation, the Department published for comment specific legislation to control unauthorised camping.

1.9 Responses to the consultation indicated support for the introduction of the Order which would bring the Northern Ireland law into line with the corresponding law in England and Wales. It was viewed as providing a straightforward and speedy remedy for controlling unauthorised encampments. Concerns were, however, expressed about the potential adverse impact on the Irish Traveller community due to the lack of suitable alternative sites.

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## **Main provisions of the Order**

- 1.10 The police may evict trespassers intent on residing on land in a vehicle provided there is a suitable alternative site for them to move to within a reasonable distance. Where trespassers are from the Irish Traveller community the police are required to consult with the NIHE, for other trespassers they must consult with the relevant district council. Reasonable distance is not defined in the legislation as it was considered impracticable to come up with an all-embracing definition.
- 1.11 Where a suitable alternative site is not available the police may only evict trespassers intent on residing on the land if they have 6 or more vehicles, or have used threatening, abusive or insulting language or behaviour, or caused damage to the land.
- 1.12 Those who refuse to leave may have their vehicles seized and, if prosecuted, face imprisonment and a fine of up to £2500.

## **Making decisions**

- 1.13 The powers available to the police under the Order are discretionary. Decisions requiring trespassers to leave land will be taken by the police in the light of all the relevant circumstances of each case.
- 1.14 PSNI will produce a policy statement and operational guidance setting out how it intends to respond to incidents of unauthorised camping. Such a document should contribute to clear, consistent and transparent decision making, ensuring decisions strike a balance between the needs of all parties.

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1.15 In all cases where unauthorised encampments are set-up by Irish Travellers there must be close working between the police and NIHE which has the statutory duty to provide suitable sites for caravans of members of this community.

1.16 In relation to unauthorised encampments set up by tourists it is likely that, following discussions between the police and the local council (about the availability of a pitch on an amenity site), a decision whether or not to issue a direction, will be relatively straightforward.

### **Human rights and welfare enquiries**

1.17 All public authorities need to be able to demonstrate that they have taken into account any welfare needs of unauthorised campers prior to making a decision to evict. The Human Rights Act 1998 (the 1998 Act) applies to all public authorities including the police, public bodies and the courts. Case law has determined that all enforcement measures must be 'proportionate' in the context of the 1998 Act. It is acknowledged that what is proportionate will vary according to the precise circumstances of each unauthorised encampment, including the nature of the location and the behaviour and needs of the unauthorised campers. Any particular welfare needs experienced by Travellers are material in reaching a balanced and proportionate decision.

1.18 Case law is still developing with regard to the type of welfare enquiries which the courts consider necessary to inform decisions on unauthorised Traveller encampments. It is important to take account of the personal circumstances of the Travellers; for example, the presence of elderly persons, invalids,

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pregnant women, children and other persons whose well-being may be jeopardised by an ill-judged move. A decision may be taken to explicitly exclude individuals or families with particular welfare needs from a direction to leave land.

1.19 NIHE has a well established process of dealing with Travellers who set up encampments in unauthorised sites. All travellers are visited and advised of their housing rights and are made aware of other services, such as health and welfare. The police may find it helpful to establish exchange of information protocols with NIHE and other relevant authorities that are compliant with Data Protection legislation.

### **Resorting to eviction**

1.20 Every effort should be made to avoid enforced eviction. Once a decision to evict an unauthorised encampment has been taken, the aim should be to act quickly and efficiently while ensuring that relevant policies and procedures are properly followed.

1.21 Case law (Fuller) has determined that unauthorised campers must clearly have failed to respond to requests from or on behalf of the landowner to leave by a certain date or time, before the police can act.

Also the fact that a landowner initially allows an encampment to remain does not preclude subsequent police action so long as it is clear that reasonable steps have since been taken by the owner to get the unauthorised campers to move, and that they have failed to do so.

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It is accepted in law that the fact that welfare enquiries are being made cannot be taken as an indication that the encampment is being allowed to remain since this is an essential precondition for enforcement. The decision to use eviction powers will be an operational one.

1.22 The Order does not require that the unauthorised campers are given a time limit to comply with a direction. It is sufficient to direct them to leave after which they will have an obligation to vacate the land as soon as reasonably practicable – what is reasonably practicable will obviously vary according to the precise circumstances of each unauthorised encampment.

## **Conclusion**

1.23 In the final analysis what action to take in connection with an unauthorised encampment must be made in the light of information gathered. Decisions must always be:

- 'Lawful' - that is in line with established policy and procedures, taking into account relevant considerations and not taking into account the irrelevant.
- 'Reasonable' in the legal sense of not being perverse or irrational in the light of the evidence available.
- 'Balanced' in that they take account of the rights and needs of both the settled community and the Traveller community.
- 'Proportionate' - what is proportionate will vary according to the precise circumstances of each encampment, including the nature of the location and the behaviour and needs of the unauthorised campers.

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## **PART 2      SUMMARY OF PROVISIONS**

### **Article 3 - Power to remove trespassers**

#### **General**

- 2.1 Article 3 sets out the conditions under which a police officer may direct a trespasser to leave land (*excluding* land forming part of the highway) and remove any vehicle or other property. It also makes it an offence for a person to refuse, without reasonable excuse, to comply with a direction or to re-enter the land again as a trespasser within three months.
- 2.2 An additional eviction power, with less restrictive conditions, is contained in Article 5.

#### **Conditions for issue of a direction**

- 2.3 Paragraph (1) provides that the senior police officer present at the scene may direct trespassers to leave if reasonable steps have been taken by the landowner / occupier to ask them to leave and there are two or more people intending to reside on the land. In addition any 1 of 3 further conditions must be met:
- any of the persons trespassing has caused damage to the land, or to property on the land; or
  - any of the persons trespassing has used threatening, abusive, or insulting words or behaviour towards the landowner, a member of his family, or an employee, or his agent;
  - the persons trespassing have six or more vehicles on the land.

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- 2.4 It should be noted that when stationary / parked up (ie not being driven down the highway), a towing vehicle and a caravan / trailer should count as 2 separate vehicles.

### **Unauthorised campers *initially* given permission to occupy land**

- 2.5 Paragraph (2) provides that where the persons were not originally trespassers (for example where a landowner initially gave them permission to reside on the land) it does not preclude subsequent police action if reasonable steps have since been taken by the landowner to get the unauthorised campers to move on, they fail to do so and the other conditions of paragraph (1) are met.

### **Communication of direction**

- 2.6 Paragraph (3) provides that where it is necessary for the senior police officer to leave the scene before giving a direction, for example to consult with another agency on a welfare matter or verify information given, he is not obliged to return to issue the formal direction. Instead, the direction to move on may be communicated by any police officer at the scene.

### **Offences**

- 2.7 Paragraph (4) makes it an offence, for a person to refuse to comply with a direction to leave land as soon as reasonably practicable, or re-enter the land again as a trespasser within 3 months of the date of the direction given. The maximum penalty on summary conviction is 3 months imprisonment or a level 4 fine, currently £2500 (or both).

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### **Power of arrest**

- 2.8 Paragraph (5) provides that a person may be arrested without warrant for an offence under Paragraph (4).

### **Defences in court proceedings**

- 2.9 Paragraph (6) provides for defences, which can be mounted in court proceedings for an offence under Paragraph (4).

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## **Article 4 – Failure to comply with a direction under Article 3: Seizure**

### **General**

2.10 Article 4 enables a police officer, to seize and remove any vehicle in the possession of a trespasser who fails, without reasonable excuse, to comply with a direction given under Article 3.

### **Conditions for seizure**

2.11 A police officer may seize and remove a vehicle, if he reasonably suspects that the person who owns or controls it has either failed, without reasonable excuse, to leave land as soon as reasonably practicable, or re-enters the land as a trespasser with a vehicle within 3 months of the issue of a direction. A ‘vehicle’ which includes a caravan may be seized, whether or not roadworthy, together with anything carried on it or attached to it.

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## **Article 5 – Power to remove trespassers (alternative site available)**

### **General**

2.12 Article 5 sets out less restrictive conditions than those in Article 3, under which a police officer may direct a trespasser to leave land (*including* land forming part of the highway) and remove any vehicle and other property. However, Article 5 powers can only be used where a suitable pitch on a relevant caravan site is available.

### **Conditions for issue of a direction**

2.13 Paragraph (2) sets out the conditions that the senior police officer present must believe are satisfied before he can give a direction. There must be at least two persons with a caravan trespassing on the land with the common purpose of residing there for any period and the landowner has asked the police to remove them. Additionally, there must be suitable pitches available on a relevant caravan site for them to move to. It is important to ensure that when a direction is issued those to whom it applies are made aware of the direction. This may include, for example, handing a copy of the notice to the occupiers of each vehicle and / or attaching a copy of the direction to each caravan as well as posting the direction on the site.

2.14 The police are required to consult with the local district council, or where the trespassers are Irish Travellers the Northern Ireland Housing Executive, as to whether there are suitable pitches available. The caravan site must be situated within a reasonable distance of the unauthorised encampment.

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2.15 In some circumstances it may not be considered appropriate to move trespassers on – for example where there are pressures on alternative accommodation locally, or where no suitable alternative sites exist. However, the police may consider it necessary to evict trespassers using Article 3 powers where there is evidence of unacceptable behaviour towards the landowner or his family, employee or agent or, where there is substantial damage to land or property or where the size of the unauthorised encampment causes significant disruption to the life of the surrounding community.

### **Definitions**

2.16 A ‘relevant caravan site’ means a caravan site situated within a reasonable distance of the unauthorised encampment, or where the campers are Irish Travellers, provided by the Housing Executive and situated within a reasonable distance. The term ‘reasonable distance’ is not defined. In deciding what is a reasonable distance the police, in consultation with the Housing Executive and any relevant authorities, should take into account all relevant factors including social, welfare or other needs of the campers, and having regard to prevailing local road and weather conditions, time of day, etc.

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## **Article 6 - Failure to comply with a direction under Article 5: Offences**

### **General**

2.17 Article 6 makes it an offence, for which a person may be arrested without warrant, if he refuses to comply with a direction under Article 5 to leave land or re-enters any land in the relevant district council area as a trespasser within 3 months.

### **Offences and penalties**

2.18 Paragraph (1) and Paragraph (2) provide that a person commits an offence if he refuses to comply with a direction (that he knows applies to him) given under Article 5 (1) to leave land as soon as reasonably practicable. A person also commits an offence if within 3 months of the date of the direction given he enters any land in the same district council area as a trespasser with the intention of residing there. The creation of the latter offence enables the police to deal with instances of 'hedge hopping' whereby trespassers simply move to a neighbouring field. The maximum penalty on summary conviction is 3 months imprisonment or a level 4 fine, currently £2500 (or both).

### **Power of arrest**

2.19 Paragraph (4) provides that a police officer in uniform may arrest a person without warrant where he reasonably suspects an offence has been committed.

### **Defences in court proceedings**

2.20 Paragraph (5) provides for defences, which can be mounted in court proceedings for an offence.

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## **Article 7 - Failure to comply with a direction under Article 5: Seizure**

### **General**

2.21 Article 7 enables a police officer, to seize and remove any vehicle in the possession of a trespasser who fails to comply with a direction given under Article 5, or who within 3 months of the issue of a direction trespasses on **any land in the district council area** of the unauthorised encampment, with a vehicle.

### **Conditions for seizure**

2.22 A police officer may seize and remove a vehicle, if he reasonably suspects that the person who owns or controls it has either failed, without reasonable excuse, to leave land as soon as reasonably practicable or enters any land in the district council area as a trespasser with a vehicle within 3 months of the issue of a direction. A 'vehicle' which includes a caravan may be seized, whether or not roadworthy, together with anything carried on it or attached to it.

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## **Article 9 - Retention and charges for seized property**

### **General**

2.23 Article 9 enables the Department to make regulations for the retention, safekeeping, disposal and destruction of vehicles seized and removed from land under Article 4 or Article 7 (1) and for the recovery of costs. These are contained in the '**Unauthorised Encampments (Retention and Disposal of Vehicles) Regulations (NI) 2006.**'

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