

Trespass on Protected Sites

Trident Ploughshares Briefing

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Introduction

There is a new Criminal Trespass law which will apply on 13 military sites from 1st April 2006 and all nuclear sites from 13th April 2006. This briefing attempts to explain what it is. If anyone has any experience with this new law, whether of its use or threatened use, please let us know at legalsupport@tridentploughshares.org Updates on this briefing can be found on www.tridentploughshares.org We are not lawyers.

Contents

Introduction.....	1
What is a Protected Site?.....	1
What is the Offence?.....	1
Do They Have to Put Up Signs?.....	1
What are the Penalties?.....	1
What About Possible Defences?.....	2
Statutory Defence.....	2
Other Defences.....	2
What Sites Does This Apply To?.....	2
What About the Bye-Laws that Used to Apply/Not Apply at that Site?.....	2
When Will They Use This Power?.....	2

What is a Protected Site?

There is a power under the Serious Organised Crime and Police Act 2005 which allows the government to designate any site in the UK “off-limits” on national security grounds. (This is s128 for England, Wales and Northern Ireland and s129 for Scotland.¹) All Designated Sites and **all nuclear licensed sites (as of 13 April 2006)** are Protected Sites.

What is the Offence?

Once a site is protected it becomes an offence to “*enter or be on*” the site “*as a trespasser*” (in England and Wales) or “*without lawful authority*” (in Scotland).

Do They Have to Put Up Signs?

There is no requirement for them to put up any signs or to in any other way inform anyone that the site has been designated². However, see the statutory defence below for if you don't know the site is designated.

What are the Penalties?

The maximum penalty is imprisonment for 51 Weeks in England or 12 months in Scotland and/or a £5,000 fine. This is much higher than previously for these situations such as bye-laws offences and even Aggravated Trespass. There is no right to a jury trial. Since this is a new offence we don't know what the likely sentences are.

The 51 weeks in England reflects the new regime for sentences under one year, so you would not normally serve more than three months actually in prison but this would be

1 They can also designate any Crown land in England, Wales or Northern Ireland for any reason they like.

2 Unlike under previous bye-laws regimes where the signs were required.

coupled with a longer period of supervision which could include unpaid work requirements, electronic tagging, etc.

In Scotland you normally serve half the sentence with the remainder being released on a form of bail.

What About Possible Defences?

Statutory Defence

The only defence explicitly given in the Act is if **you** can prove that you “*did not know, and had no reasonable cause to suspect,*” that the site in question was protected. This is potentially quite a stiff test for you to meet and, although one would hope it would be interpreted helpfully, this is a new law so we have no judgments to go on.

Other Defences

Clearly you could argue, depending on the circumstances, that you had lawful authority to be there (or, in England, that you were otherwise not trespassing) based on a Common Law, or International Law, right. However, these sort of arguments are very difficult to win in court.

Note that s131 of the Act explicitly overrides rights stemming from section 2(1) of the Countryside and Rights of Way Act 2000, Part III of the Countryside (Northern Ireland) Order 1983 and section 1 of the Land Reform (Scotland) Act 2003

What Sites Does This Apply To?

All sites with a Nuclear Site Licence (including Aldermaston, Burghfield, Devonport Royal Dockyard and Rolls Royce Raynesway in Derby) are protected from 13th April 2006.

The following sites are designated sites from 1st April 2006

Scotland:

- Her Majesty's Naval Base Clyde (Faslane)
- Royal Naval Armaments Depot Coulport

England:

- Northwood Headquarters
- RAF Brize Norton
- RAF Croughton
- RAF Fairford
- RAF Feltwell
- RAF Fylingdales
- RAF Lakenheath
- RAF Menwith Hill
- RAF Mildenhall
- RAF Welford
- Sea Mounting Centre Marchwood

What About the Bye-Laws that Used to Apply/Not Apply at that Site?

This new law has no effect on the bye-laws which continue to be as valid or invalid as they always were.

When Will They Use This Power?

This is very difficult to tell. The Explanatory Notes which accompany the Statutory Instrument (which actually designated these particular sites) initially claims that it is aimed at terrorists before admitting that it is actually aimed at peace protesters. The Notes also make it quite clear that this is intended to be a deterrent. Thus, it may be that it is not used very often but that when it is used they ask for quite heavy sentences. It may be that it is not used for quite a while or they may want a couple of early prosecutions to “set an example”

Prosecutions in England require the consent of the Attorney General, which could discourage them from using it too often.

Many of these bases were previously covered by bye-laws. Some of these bye-laws have been successfully challenged and some haven't. It may be that those bases where the bye-laws still work will prefer to still use the bye-laws, it may not.