

From: Shanks, Andrew (Procurator Fiscal, High Court, North of Scotland)
Sent: 30 April 2014 16:25
To: Martin Smith
Cc: McLeod, Nicola; Verena Dunnett
Subject: H&E/13/090 Proposed Byelaw Regarding Camping in Designated Places

Martin

Thank you for your email of 22 April 2014 and for sharing the draft report with me.

The comments attributed to the Procurator Fiscal at page 4 were made by my predecessor Andrew Richardson and I would be grateful if they could be removed and substituted with my own contribution, below.

I make no comment on the appropriateness of the new byelaw. That is a matter entirely for others to consider and I will restrict my comments to the practicality and enforceability of any new provision.

From an enforcement perspective therefore, I have no specific comment to make on the wording of the current draft. I am however bound to point out that the lodging in any premises or occupying or encampment on any land, being private property without the consent and permission of the owner or legal occupier of such premises, is an existing offence under section 3 of the Trespass (Scotland) Act 1865. As you will be aware, there is a general presumption against prosecution of travellers for unauthorised encampment in terms of section 3. However, the presumption may be rebutted by other public interest considerations in favour of prosecution. Therefore, in circumstances where there is sufficient evidence in law to establish that alleged conduct has contravened both the 1895 Act and any new byelaw, this presumption against prosecution would still apply. I should also point out that this presumption only refers to the physical occupation of land and not to other criminal offences. The criminal law applies equally to all members of the public and if a crime is reported to the police it will be investigated and where sufficient evidence exists reported to the Procurator Fiscal for consideration.

Of course, the presumption against prosecution outlined above is distinct from enforcement which is an operational matter for the police responsible for the area in question.

I hope this is helpful.

Andy

Andy Shanks
Procurator Fiscal, High Court, North of Scotland