

**ISLE OF WIGHT COUNCIL
SECTION 16 OF THE ISLE OF WIGHT ACT 1990**

NOTES FOR GUIDANCE

OBJECT

Vandalism and unauthorised usage can place a considerable strain on Council expenditure. Section 16 of the Isle of Wight Act 1990 was designed as a deterrent in an effort to reduce these kind of activities. The power contained in Section 16 is unique to this Council; as yet no other Council has been successful in promoting this type of legislation.

THE OFFENCE

In broad terms Section 16 in this context makes it an offence for any person to remain on school playing fields where a prescribed notice is displayed after being requested to leave them by the Authority, or to return to those premises within one month of being so requested. The "Authority" includes any person who is duly authorised by the Headteacher at the relevant school together with certain staff from County Hall.

COURT PROCEEDINGS – NECESSARY EVIDENCE

It will be seen, therefore, that there are 7 vital pieces of information that will be needed in court: (1) On a particular occasion; (2) a particular person was: (3) on the relevant premises; (4) where an appropriate notice was displayed; (5) he was asked to leave; (6) by the Authority; (7) he either refused or returned without lawful authority within one month of being so requested.

It is therefore vital that accurate records are maintained. A proforma Incident Sheet has been supplied to Headteachers. This should be completed as soon as practicable after a request to leave is made. Column 1 of the sheet shows the date on which the report is entered onto the sheet. This is important as it shows that the note was made sufficiently contemporaneously to be accepted as evidence in Court. Column 2 is headed 'Name and address or description of trespasser or any other useful information'. This should include such things as the registration number of a motorbike should the trespasser be riding one at the time. At column 3 the date and time that the trespasser is asked to leave is noted. At column 4 is noted the name of the person who requested the trespasser to leave. At column 5 will be noted whether the notice was displayed at the time of the request.

POLICE ASSISTANCE

Besides the fact that the penalty prescribed by the clause should act as a deterrent, the main advantage of this section is that police aid may now be sought. Previously the police were always reluctant to be involved. However, now this type of trespass has become a criminal offence and it is well established that the police constable must "take all steps which appear to him to be necessary for keeping the peace, for preventing crime and for protecting property from criminal injury". (Rice v Connolly).

CHILDREN

It will be noted that it is an offence for a person to return to the premises without lawful authority within one month of being requested to leave them. The term "without lawful authority" means that should a child who normally attends the school during the day be asked to leave outside school hours, he will still be entitled to return to them during normal school hours as he would have "lawful authority".

When asking children to leave school premises it should be noted that it is conclusively presumed that no child under the age of ten years can be guilty of a criminal offence. There is a rebuttable presumption that a child between the ages of ten and fourteen years does not possess sufficient capacity to know what he is doing wrong. A person over the age of fourteen years is presumed to have a degree of reason sufficient to make him responsible for his crimes. However, it should also be noted that Section 16 creates an offence of strict liability and the element of mens rea (knowing that one is doing wrong) is not an element of the crime.

SUGGESTED PROCEDURE

Naturally prevailing circumstances at different schools will require different approaches. However, it is suggested that the following basic procedure should be followed. An initial approach should be made to any trespasser asking him for his name and informing him that he is trespassing. He should be asked if he has seen the notice and told that special provisions apply to these premises, making it a criminal offence for any person to refuse to leave them when requested to do so or to return to them within one month of being so requested. A card showing that the person making the request is duly authorised should, if available, then be shown to the trespasser (this is not a requirement of the Act).

The next step will depend on the trespasser's reaction. If he leaves the premises no criminal offence is committed. However, the relevant information should be noted on the Incident Sheet in case the trespasser returns within the one month period, thereby committing an offence. If however the trespasser refuses to leave, reasonable force may be used to eject him; however, this course of conduct is not normally to be recommended. Police aid should now be sought as mentioned above stating that an offence is being committed under Section 16 of the Isle of Wight Act 1990. When the police arrive assistance should be given to them, although no other action should be taken except the completion of the Incident Sheet and if appropriate, a further report which should also be dated. No matter what then happens to the trespasser, a criminal offence has been committed and he may be prosecuted, with the Council's approval, once the relevant information has been forwarded to me at County Hall.

ISLE OF WIGHT ACT 1990 SECTION 16 – INCIDENT SHEET

SITE **IWC EDUCATION & COMMUNITY DEVELOPMENT**

DATE OF INCIDENT	NAME AND ADDRESS OR DESCRIPTION OF UNAUTHORISED USER, OR ANY OTHER USEFUL INFORMATION	DATE AND TIME REQUESTED TO LEAVE	REQUESTED TO LEAVE BY	WHETHER IW ACT NOTICE DISPLAYED