Neizer v Rhodes

Case Report: 1995 GWD 39-2000

Key points: Criminal Justice and Public Order Act 1994 - definition of trespass - intention to reside on land - disputed ownership of land.

The facts: This was a prosecution in terms of the Criminal Justice and Public Order Act 1994. Three accused persons were charged, with others, with encamping on land and failing to remove from it as soon as reasonably practicable, in breach of section 61 of the Act, after having been directed to do so by representatives of the proprietor and by a senior police officer.

Decision: There was a dispute between the two parties as to who was the owner of the land in question, and the Sheriff held that as there was no clear evidence as to who was the owner of the land, the prosecution case was without legal basis. On appeal, however, it was held that it was not necessary for the Crown to prove who owned the land, as both of the two possible owners had given evidence that they had not consented or given lawful authority for the accused to enter or to remain on the land.

Comments: For a prosecution under this Act, the element of ‘a common purpose to reside on the land’ is essential. The definition of ‘trespass’ in the Act is particular to and only applicable for the purposes of this Act.

Although ‘wild camping’ is now acceptable provided that the guidance in the Scottish Outdoor Access Code is followed, it would still theoretically be possible for a prosecution to be brought under the 1994 Act. However, prosecutions of people using rights of way or exercising their access rights under the Land Reform (Scotland) Act 2003 are unlikely, according to a statement in a Scottish Office Circular (HHD 17/1994): “While there may be circumstances in which it could be alleged that hill-walkers, etc., are disrupting a lawful activity merely through their presence on land, the Crown Office has indicated that procurators-fiscal are likely to confine themselves to taking proceedings against persons who can be said to have acted with the specific and ulterior motive and intention of obstructing or disrupting, or intimidating persons engaged in lawful activities”.