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Prime Minister <sup>①</sup>

Agree that officials should do further work on possible civil action against the Greenham women?

Yes

Or would you like a word with the Home Secretary first?

No. m

DMB  
18/1

PRIME MINISTER

GREENHAM COMMON

.... You agreed that a number of other interested colleagues and I should consider possible options for action in respect of the protesters at Greenham Common. On 16 January, I chaired a meeting with Michael Heseltine, Nicholas Edwards, Patrick Jenkin, Nicholas Ridley and Michael Havers; Nicholas Scott represented Jim Prior, and Douglas Hurd was with me. We had before us the attached paper agreed by officials which, we think, provides an admirably comprehensive and clear analysis of the factual and legal background and the possible options.

We concluded that primary legislation to amend the criminal law because of the current situation at Greenham does not appear to be either necessary or desirable. Michael Heseltine is, however, actively considering the making of byelaws under the Military Lands Act 1892, to create a criminal offence of trespass on the base.

We did agree, however, that, at this stage, there seems to be a strong case for concerted action under the civil law to remove the protesters as trespassers. The protesters have had more than enough time to make their demonstration and state their case, at considerable expense to central and local government which shows every sign of continuing. There could be considerable public and political support for moves to end this persistent mischief, and the civil law seems to offer effective remedies.

What would be required would be co-ordinated action, by the Department of Transport, Newbury District Council, Berkshire County Council and possibly the Ministry of Defence. There could be

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parallel or joint actions for possession of land, backed up if necessary by injunctions. One possibility would be that such actions on the part of the local authorities and the Ministry of Defence might be co-ordinated with the plan which the Department of Transport already has in hand to clear their land in order to effect a road improvement scheme, and either the District Council, or if necessary the Attorney General, could apply for an injunction restraining persistent breaches of the byelaws which already ban structures such as tents on their land.

It was clear to us, however, that although the attractions of concerted action of this kind are very considerable, this course should not be taken without more work and analysis by officials, on the basis of which Ministers would take a final view. The analysis would need to chart the possible progression of steps through the courts and the various stages of enforcement action and its potential consequences. The precise timescale and the management of co-ordinated action need particular consideration. The two local authorities would have key parts to play in both. Berkshire County Council could present a particular problem given that whilst the Conservatives form the largest party on the Council there is no overall majority. We would not envisage making approaches to either local authority unless and until Ministers agreed to that as part of an approved analysis and plan for action. At the moment, we envisage that the Home Office might co-ordinate the implementation of such a plan.

As the scale of resistance is not predictable there can be no complete guarantee that court orders would be readily enforced, although I am confident that the police will do everything within their power to assist, and the prospects of effective enforcement seem reasonably good. The alternative is to allow a forcible occupation of public property to continue virtually indefinitely. The merits of concerted civil action seem to warrant the further work on it which I have indicated, although we should not rule out the possibility that work could lead to a less encouraging view of the prospects of success.

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3.

For the moment I should be grateful to know if you agree that the further work should be undertaken and reported for collective consideration. I would, of course, be happy to discuss this with you.

I am copying this minute to Willie Whitelaw, Quintin Hailsham, Geoffrey Howe, Jim Prior, Michael Heseltine, George Younger, Nicholas Edwards, Patrick Jenkin, Nicholas Ridley and Michael Havers, and to Sir Robert Armstrong.

L.B.

17 January 1984

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FILE

HL



10 DOWNING STREET

cc: LPOV ✓ DoEV ✓  
 LCOV ✓ D/Trans ✓  
 FCO ✓ LOD. ✓  
 NIO ✓ CO  
 MOD ✓  
 SO ✓  
 WO ✓

*From the Private Secretary*

19 January 1984

Greenham Common

The Prime Minister was grateful for the Home Secretary's minute of 17 January about the possible options for action in respect of protesters at Greenham Common.

The Prime Minister is content for officials to undertake further work on possible concerted action under the civil law. She has also noted that the Secretary of State for Defence is considering the making of by-laws under the Military Lands Act 1892. The Prime Minister would be grateful to be kept closely in touch.

I am sending copies of this letter to the Private Secretaries to the recipients of your Secretary of State's minute.

David Barclay

Hugh Taylor, Esq.,  
Home Office.

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## PROTESTORS AT GREENHAM COMMON : POSSIBLE OPTIONS

## PAPER BY OFFICIALS

Introduction

In a letter of 16 December 1983 to the Secretary of State for Defence, the Home Secretary said he had come to the clear view that there were a number of threads relating to the continued presence of the protestors at Greenham Common which needed to be pulled together. He suggested that it would be helpful for a number of colleagues to meet, to assess the possible options within the existing law, to assess the ways in which the law might be changed by primary or secondary legislation, and to agree on the best strategy in the light of the wider considerations.

2. The meeting has been arranged to take place at the Home Office at 10.00 am on Monday 16 January. The Home Secretary proposed that the meeting should have before it a paper by officials bringing together the relevant information about the legal and factual background. This is that paper: it has been agreed by officials of the Home Office, the Ministry of Defence (MoD), the Department of Transport (DTp), the Law Officers' Department, the Lord Chancellor's Department and the Department of the Environment.

3. The paper:

(i) describes the background including the current situation at Greenham Common, and action by DTp and Newbury District Council which is in prospect; and

(ii) sets out a range of options, beginning with the remedies available under the existing law and procedures and then identifying various changes which might be made to the law.

4. As an index to the second part:

(a) remedies which may be available under the existing law in respect of the presence of the encamped women are:

- self help (paragraphs 16 and 17);
- the use of the provisions of highways legislation (paragraphs 18 and 19);

- an order for possession of land (paragraphs 20-22);
  - an injunction restraining those encamped from further trespass (paragraph 23);
  - action in respect of a public or private nuisance (paragraphs 24 and 25); and
  - the enforcement of Newbury District Council's byelaws, possibly followed by an injunction restraining further contravention of the byelaws (paragraphs 26-29).
- (b) other provisions of the existing law, which may be relevant depending on the actions of protestors are:
- section 193 of the Army Act 1955 and the same section of the Air Force Act 1955 (paragraphs 30-32);
  - section 1 of the Official Secrets Act 1911 and section 3 of the Official Secrets Act 1920 (paragraphs 33-38); and
  - section 77 of the Explosive Act 1875 (paragraphs 39-41).
- (c) options involving subordinate legislation or procedures are:
- an Order in Council to extend to members of visiting forces (such as the US personnel at Greenham) the protection of certain provisions of the law (paragraph 42); and
  - the making of byelaws under the Military Lands Act 1892, to create a criminal offence of trespass (paragraphs 43 and 44).
- (d) options requiring primary legislation are:
- increase of the maximum penalties and enhancement of the enforcement powers of existing provisions (paragraphs 45-50);
  - the introduction of a new criminal offence of trespass (paragraphs 51-54); and

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- the introduction of a power to prohibit or limit the presence of people within a specified area (paragraphs 55-60).

The current situation at Greenham Common

5. At annex A is a map of RAF Greenham Common and the area immediately surrounding the nine-mile perimeter. Most of the land immediately outside the perimeter fence is common land (Greenham and Crookham Commons), in the possession of Newbury District Council. Some of the land by the side of the roads running by the base is owned by Berkshire County Council, as highway authority. A comparatively small area of land, either side of the access road linking the A339, which runs by the south of the base, to the main gate on that side, is owned by DTp as highway authority (see map at annex B).

6. The first "peace camp" outside the base was established in 1981. The Thames Valley police report that on 5 January there were a number of camps:

- the main camp, situated either side of the access road from the A339. There are 49 tents and other structures (consisting of shelters constructed from plastic sheeting) and eight vehicles. There are on average 30 campers. The camp is sited principally on DTp land, with some spillage on to the contiguous common land;
- a camp at Gate L. South of this gate, on common land between the fence and the road, are nine structures. On common land on the opposite side of the road are a further twelve tents and other structures and one vehicle. On average, twelve people occupy the two sets of structures; the numbers have from time to time swelled to 40-50;
- a camp at Gate H. On common land on the opposite side of the road from the fence are four structures, used by four or five people;
- a camp at Gate F. To the west of the gate by the fence, there are five tents or other structures, with four - five occupants. The camp is situated on land owned by Berkshire County Council. On the opposite side of the road, on common land, adjacent to the golf course, a further three people use three structures.

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- a camp at Gate D. East of this gate, on land owned by the County Council, are five tents and structures and one vehicle, with only one occupant;
- a camp at Gate A. East of the gate between the fence and the road, on land owned by the County Council, are 22 tents and other structures, one vehicle and an average of 20 people;
- a camp at Gate N. On common land six people are encamped in six structures;
- a camp between Gate N and the contractor's gate. On common land four people are encamped in two tents;
- a camp at the contractor's gate. 50 yards east of the gate, on common land, there are 28 tents and structures, four vehicles and an average of 15 people.

The presence and activities of protestors

7. As the description above of the current camps indicates, not all the tents and other structures are continually occupied. The numbers can swell quickly on particular occasions; they increase to about 200 with weekend supporters, and more when the weather is pleasant.
8. The character of the 1983 campaign and demonstrations was essentially to oppose the installation of cruise missiles at the base. The major demonstrations at Easter and in the summer and early autumn often involved mass attempts to blockade the base. There were also attacks on the perimeter fence, and incursions by small numbers of women. The major attacks were on 29 October, when some hundreds of women cut down over 1,000 yards of the fence altogether, and on 11 December, when again hundreds of women among 20-25,000 demonstrators cut and grabbed at sections at different points: the longest breach was about 50 yards. A continuing problem is the cutting of the fence by one or more campers, often at night.
9. The first cruise missile equipment was delivered to Greenham in November/December 1983, but there will be a continuing programme of deliveries from March 1984. In 1984, convoys of vehicles are expected to leave and return to the base on training exercises. It is likely that protestors will seek to prevent these operations. The proliferation of the camps at the gates of the base is



part of a "cruise watch" being mounted by the women, to be ready for the first convoy movement.

Prospective action by the Department of Transport and Newbury District Council

10. DTp has in hand a road improvement scheme which, in widening and curving the access road from the A339 to the base, will consume part of their land on which the principal camp is at present sited. The remaining part of DTp's land is not covered by the scheme. The intention had been that that part of the land would be exchanged with the District Council for a piece of common land, for use as a bus bay. On 10 January, the District Council informed DTp that they were not prepared to make this exchange. Once the road has been improved, any attempt to camp on the land covered by it will be a criminal offence (of obstruction of the highway); but there will remain on either side DTp land to which that will not apply. Whilst the road is being improved, however, all the DTp land would be cleared of campers and structures and fenced off.

11. The scheme is at present due to start in mid-March, with completion possibly in late May/early June. Efforts to clear the land of protestors and structures would not be needed until the day on which work on the scheme was to begin.

12. As is explained in paragraphs 26 and 27 below, Newbury District Council have, apparently, recently decided to take continuous action under new byelaws to remove tents and structures from the common land.

13. There may therefore be some prospect that, at least during the period in which contractors are engaged on the road improvement and the whole of DTp's land is consequently cleared and fenced off, the DTp scheme and action by the District Council might make it increasingly difficult for peace campers to maintain a foothold immediately outside the base perimeter. This will depend very much on the persistence and effectiveness of the action taken by the Council, whether under the byelaws or otherwise. In the past when the Council have used self-help powers (see paragraphs 16 and 17 below) to remove structures, they have simply been re-erected by campers, often on other areas of the common as well as on DTp land.

Other land: Berkshire County Council

14. However effective action taken by DTp and Newbury District Council may prove to be, there is other land, owned by neither, which is close to the base and onto which, as the list of camps in paragraph 6 above records, some people

are already sited, ie land owned by Berkshire County Council. The prospect could be of further displacement on to such land. If it were decided in principle to take or to try to encourage further action against the peace camps, to clear them from the surrounding area as a whole, it would be necessary to approach the County Council to establish if they would be prepared to participate in a co-ordinated exercise. Officers of the County Council are understood to be considering what advice they should give the Council about taking action in respect of the camps which are already sited on the Council's land. The political composition of the County Council is finely balanced (the Conservative Party holds 42 of 87 seats).

Some general considerations

15. Among general considerations which might be borne in mind are:

(i) the Greenham Women and some of their supporters are determined and ingenious and have access to advice and guidance from sympathetic lawyers. They may be expected to try to devise tactics to circumvent on the ground action taken against them rather than give up camping, and to try to challenge in the courts any loophole they or their advisers identify in the legality of moves to remove them;

(ii) so far the number of protestors imprisoned for criminal offences at Greenham has not been large. Persistent offending, or the commission of grave offences, could lead to more custodial penalties. That could also be one result of increasing confrontation between the authorities and the women. For example, if an injunction were granted but not obeyed, the court would find it difficult not to commit for contempt scores or more women. This could present serious difficulties for the female prison system, the capacity of which is inelastic and which can be put under strain by what are only marginal increases in the total size of the prison population. The result could be that those women, or others, would have to be held in police cells;

(iii) Greenham Common is the principal focus of "peace camping". But there are minor camps, and have been incursions into and demonstrations at, other military bases, in England and in Scotland. Action which removed protestors from the Greenham area could displace them to other sites, with even less effective fencing or no fencing at all. The women have already announced that they intend to move in this direction in 1984. This is not, of course, necessarily an argument for not taking action at Greenham. It could equally argue for general action, for example in respect of all military bases or

categories of base and surrounding land. But if the camping phenomenon were further spread rather than dissipated, there could be an increase in the operational demands on the police and on military personnel.

REMEDIES AVAILABLE UNDER THE EXISTING LAW IN RESPECT OF THE  
PRESENCE OF THE ENCAMPED WOMEN

Self-help

16. The common law recognises the right of a person with a right to occupy land to remove trespassers and their property, using reasonable force if necessary. It is therefore open to the owners of land on which the peace campers and their structures are or may be sited to remove them by 'self-help' without the need for recourse to the civil courts or reliance on a statutory power. In the past, Newbury District Council have removed structures (but not people), relying on self-help, not an injunction or their byelaws.

17. This is, however, a potentially controversial measure, particularly if people are removed and force is used. The use of violence is undesirable in itself, and may provoke a breach of the peace, leading both to injury and litigation. As a matter of public policy, it seems preferable for central or local government which decides to act in circumstances such as the trespass at Greenham to obtain in advance the backing of an order from the court or to rely on a statutory provision if that is available. Self-help might be all that is needed if women were asked to move, for example, from DTp land because work was about to begin and there was no attempt to stop them moving to other land nearby. But it seems dangerous for a concerted effort at removal to rely on self-help.

The provisions of highways legislation

18. Highways legislation includes various provisions designed to deal with obstruction of the highways which includes, for these purposes, the verges such as those on which the main peace camp is situated. The expression "highways authority" means DTp in respect of the A339 and Berkshire County Council in respect of the other roads in the area. The following would seem to be the most relevant provisions;

- (a) section 130 of the Highways Act 1980 imposes a duty on each highway authority to assert and protect the right of the public to use and enjoy any highway for which they are the responsible authority;

(b) by virtue of section 137 of the 1980 Act a person who, without lawful authority or excuse, wilfully obstructs free passage along a highway commits an arrestable offence with a maximum penalty of level 3 on the standard scale (£200). This section provides adequate powers for the police to arrest anyone encamped on the verges of the road if they obstruct free passage along the highway, but actual obstruction of traffic would have to be proven;

(c) section 143 of the 1980 Act gives a highway authority power to serve a notice requiring any person having control or possession of a structure, including anything capable of causing an obstruction, which has been erected on the highway without authority to remove the structure within a specified period (of not less than 1 month). If the notice is not complied with the authority may remove the structure. The length of the notice required combined with the fact that a notice can be frustrated by removing the offending item for a short period or to another location, or by transferring control or possession, suggests that this power would not be effective in the context of the peace camps;

(d) section 333 makes it clear that the 1980 Act does not affect other statutory and common law powers.

(e) section 12 of the Road Traffic Regulation Act 1967 allows a highway authority to make an order temporarily prohibiting vehicles or foot passengers from making use of part of the highway in circumstances where road works are to be executed. Contravention of such an order is an offence with a maximum penalty of level 3 on the standard scale (£200), but there is no power of arrest without warrant.

19. It should be noted that any exercise of the powers conferred by the highways legislation in circumstances where there was no genuine 'highways' nuisance such as obstruction might well be open to successful challenge in the courts. However, in the context of the need to clear the DTp land to make way for the road improvement scheme such a nuisance would arise.

#### Proceedings for possession of the land

20. A number of aspects of the civil law concerning trespass would appear to bite in the context of the Greenham peace camps. The women encamped on highways authority land are trespassing as their use of the land goes beyond the legal right of passage and repassage along the highway and its verges. The encampments of the protestors on common land may also amount to trespass because it goes

beyond any rights which exist over the common land. But the powers available to Newbury District Council under the byelaws (paragraphs 26 to 27) are likely to be a more straightforward avenue to pursue. The presence of the protestors on MoD land, or land owned by anyone else which was not highway or common land, would also involve trespass. But the shifting character of the population of the camps would make it difficult to proceed via a standard action for trespass, as this would involve naming the individual trespassers and would take a considerable time. The women are often difficult to identify - giving false names when questioned - and an individual who was identified in proceedings could drop from the scene to be replaced by others. A streamlined procedure is, however, available in the county court under Order 24 of the County Court Rules 1981 and in the High Court under Order 113 of the Rules of the Supreme Court.

21. Under both procedures a person claiming possession of land which is occupied solely by persons who entered or remained without his consent may apply to the court for an order for possession. It is not necessary for the landowner to be able to name the trespassers (although he would need to declare that he could not name any trespasser not named, and the protestors might try to make this difficult) and only five days notice need be given of the proceedings (either to named defendants or by displaying notices on the land concerned). In urgent cases the five days notice can be shortened. Where an order is granted the landowner is able to obtain a warrant of possession for enforcement by the bailiff (in the County Court) or a writ for enforcement of the order by the sheriff (in the High Court). In such a situation the police could attend in order to prevent a breach of the peace and to assist the bailiff or sheriff if the warrant or writ is resisted.

22. In a leading case (University of Essex v Djemal and Others) it was decided that the jurisdiction of the court to grant an order for possession extended beyond the area actually in wrongful occupation to the whole of the property of the legal owner - particularly where there was a threat of further adverse possession. And such an order would be enforceable against any person who might be in wrongful occupation of any part of the premises. If the protestors returned after the order for possession had been executed the landowner could obtain a writ of restitution to remove them again without new proceedings.

An injunction in respect of trespass

23. An order for repossession of land ought to provide an adequate remedy against any trespasser. But if it were thought necessary the landowner could apply for

an injunction restraining the protestors from trespassing. If a permanent injunction were granted failure to comply would amount to a contempt of court which could, ultimately, involve imprisonment. The difficulty here is that proceedings for an injunction would involve naming the trespassers. Even if particular protestors present at the camps could be identified they could leave the camp to be replaced by others. Two possibilities present themselves. First, in theory it ought to be possible to bring proceedings for an injunction against one or two named persons using terms which extend to any person helping or accompanying the named individuals. The injunction could then be enforced against any such persons. It cannot, however, be certain that this form of injunction would be effective in the circumstances at Greenham Common, where people might act independently rather than in groups demonstrably assisting those who were subject to the injunction. Secondly it might be possible to proceed via representative proceedings under rule 12 of Order 15 of the Rules of the Supreme Court. This would allow proceedings to be brought against one named protestor if the court were satisfied that the named defendant was representative of numerous persons having the same interest in the proceedings. An injunction issued after proceedings under rule 12 could be enforced against a person who had not been a party to the proceedings, but only with the leave of the court. There must be some doubt as to whether representative proceedings could be invoked in the case of Greenham Common protestors, and representative proceedings for an injunction should be regarded as a last resort, available once other remedies had been exhausted.

#### Action in respect of nuisance

24. The encampment of female protestors on DTp land will amount to a public nuisance if it inflicts damage, injury or inconvenience on the public, or on all members of a class of the public (such as service personnel) who come within the neighbourhood. Thus if the camps create an obstruction of the highway this will amount to a public nuisance. Obstruction of the gates of Greenham Common air base by protestors who declined to move until forced to do so would probably also be a public nuisance, since it would inconvenience the service personnel who probably constitute a sufficiently large and readily identifiable class of persons. The courts are more likely to class acts as a public nuisance if they are committed intentionally rather than negligently. A public nuisance is a criminal offence at common law triable either way and carrying a maximum penalty of a fine of £1,000 or six months imprisonment on summary conviction. It is also a civil wrong, but proceedings for damages or an injunction (or both) can be brought by an individual or body only if he can show that he has suffered particular damage over and above the damage suffered by the public generally.

In this case MoD might argue that it suffers particular damage by the obstruction of the section of the highway in question. Similar arguments might be put by other landowners. In other cases an individual or body can usually only sue if the Attorney General consents to being named as a plaintiff in the case (a relator action). Alternatively the Attorney General could bring proceedings independently, or the local authority could do so under section 222(1) of the Local Government Act 1972 where it considered it expedient to do so for the promotion or protection of the interests of the inhabitants of its area to do so. (The policy of the Attorney is that now local authorities can bring proceedings in their own name under section 222(1) they should be encouraged to do so, rather than involving him in a relator action. But the case establishing the ability of local authorities to bring actions in this way is the subject of an appeal to the House of Lords, and if the decision were adverse a different situation would arise).

25. As an alternative a landowner might bring proceedings for private nuisance (which can be for damages or an injunction) if the presence of camp(s) interferes with his use or enjoyment of the land at Greenham Common air base. It should be noted that if proceedings for an injunction were successful this would not necessarily allow the camps to be removed if those encamped could abate the nuisance involved, for example obstruction, without actually leaving the land.

#### The Greenham Common byelaws

26. Under a scheme of regulation made under the Commons Act 1899 Newbury District Council has made byelaws which apply to Greenham and Crookham Commons (which is owned by Newbury District Council), were confirmed on behalf of the Home Secretary on 7 November 1983, and came into effect on 21 November. The scheme provides that the Council shall maintain the common free from all encroachments and not permit any trespass. It also states that all inhabitants have a free right of access to every part of the Common, subject to any byelaws made by the Council. The following byelaws are relevant to the position of the female protestors encamped on the common land;

byelaw no 12: A person shall not without lawful authority camp or light any fire on any part of the common.

byelaw no 13: An officer of the Council may after due warning remove any structure etc erected or placed on the common in contravention of the byelaws.

byelaw no 15: A person shall not, without the consent of the Council or other lawful authority, erect on the common any building, shed, tent, fence post, railing or other structure or fix bills placards or notices on trees, fences, erections or notice boards on the common.

byelaw no 16: A person shall not intentionally obstruct or hinder any officer of the Council in the exercise of his powers or duties under the byelaws.

byelaw no 17: Any person who contravenes the byelaws commits an offence with a maximum penalty of a fine of fifty pounds. (There is no power of arrest).

27. One problem which might arise is whether the byelaws could be enforced in the case of structures erected before the byelaws came into force. But most structures will have been erected since then and the initiative would rest with a person whose property was removed to establish that the structure was not covered by the byelaws. At a meeting of Newbury District Council on 13 December the Council was informed that there had been an increase in the number of camps on the common land, and that these could be expected to increase once DTp took action to clear its land in connection with the road improvement scheme. The Council then decided to take action under byelaw 13 to remove the structures concerned. An existing employee is to take on the role of enforcement officer for the Council, whilst two wardens are to be employed to patrol the common and report infringements. Prior to Christmas encampments near gates A and H were removed by the Council's officers. The police were present, but there was no trouble. The protestors immediately began to reassemble their camps on other land. As indicated in paragraph 3 the structures near gate H have now been moved back onto common land, whilst those near gate A are on land owned by Berkshire County Council. The District Council now intend to take continuous action to enforce the byelaws.

An injunction restraining further breaches of the byelaws

28. It is possible, given the nature of the peace camps and the byelaws, and the resources available to Newbury District Council, that breaches of the byelaws will continue despite the enforcement measures to be taken. Structures removed by Council officers may be replaced, and any prosecutions brought are unlikely to be a significant deterrent given the penalties available. In such circumstances it would be possible to apply to the courts for an injunction restraining those



involved from further breaches of the byelaws (although it is not yet clear that the Council would wish to take such action). If an injunction were granted contravention would constitute contempt of court. One difficulty with such proceedings is that the person pursuing the case would normally need to show a sufficient interest or locus in the issue before the court. This difficulty can be overcome if the Attorney General consents to being named as a plaintiff in a relator action, or the local authority brings the action in its name under section 222(1) of the Local Government Act 1972 (see paragraph 23 above). Of course, any proceedings for an injunction would face the same difficulties in identifying those involved as are set out in paragraph 23 above, and representative proceedings might have to be considered.

29. It should be noted that the Department of the Environment has no powers in respect of common land which would be relevant to the present position at Greenham.

#### OTHER REMEDIES AVAILABLE UNDER EXISTING LAW

##### Army Act 1955

30. Section 193 of this Act makes it an offence wilfully to obstruct or otherwise to interfere with any member of the regular forces acting in the execution of his duty. The offence is not arrestable. The maximum penalty is a fine of £200 and three months' imprisonment. Section 193 of the Air Force Act 1955 makes corresponding provision in relation to the RAF. Cases decided in the context of obstructing the police seem to indicate the section would cover conduct such as lying down in front of military vehicles.

31. The protection afforded by these provisions does not extend to members of visiting forces. As to the possibility of extending this see paragraph 42 below.

32. The offence will be arrestable as a result of the enactment of clause 22 of the Police and Criminal Evidence Bill as currently drafted if any of the general arrest conditions set out in that clause are satisfied. These are broadly: if a police officer could not ascertain the offender's name or address, or for the purpose of preventing physical harm to the offender or anyone else, or damage to property or preventing an obstruction of the highway. (See also paragraphs 46-50 below about powers of arrest and the Police and Criminal Evidence Bill).

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Official Secrets Act 1911

33. Section 1 of the Act provides that:

"If any person for any purpose prejudicial to the safety or interests of the State -

a. approaches, inspects, passes over, or is in the neighbourhood of, or enters any prohibited place within the meaning of this Act ... he shall be guilty of an offence".

"Prohibited place" is defined in section 3. A military base such as Greenham Common is a prohibited place within this definition. The offence is arrestable and carries a maximum penalty of 14 years imprisonment.

34. In Chandler v DPP (1964) members of the Committee of 100 were convicted of conspiring together and with others to commit a breach of section 1 of the 1911 Act, where they intended to enter an operational airfield and by obstruction, prevent any aircraft taking off for a number of hours, their object being to prevent nuclear war and to get the facts about it known to the public. By a majority decision the House of Lords took the view that if the jury are satisfied that the "immediate purpose" of demonstrators is to obstruct the operation of such a place then they have to consider whether that purpose is prejudicial to the interests of the State and disregard the demonstrators' long-term purpose or motive. Moreover, the defendants in such a case will not be entitled to adduce evidence on whether it is prejudicial to the interests of the State to have nuclear armaments since this is for the Government and cannot be tried in a court of law.

35. The advantages of using this legislation are that it already exists and that a conviction in a relevant case has been upheld by the highest Appellate authority. But a successful prosecution would need to satisfy the courts that the "immediate purpose" of the women was prejudicial to the interests of the State. Where this involves simple trespass or perhaps merely damage to the perimeter fence it must be open to question whether these circumstances meet the legal requirements. Thus it appears that so far the actions of the protestors have not amounted to a section 1 offence. Furthermore, the use of this provision against peaceful demonstrators unconnected with any foreign power may be seen as draconian and lead to criticism of the provision of the Act itself and to pressure for change. Its use would be particularly difficult if the activity which appeared to be caught by section 1 were committed by large numbers of people.

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Official Secrets Act 1920

36. Section 3 of this Act makes it an offence for any person in the vicinity of a prohibited place to obstruct, interfere or impede the police or members of Her Majesty's Forces engaged in guard, sentry or other similar duties. The offence is not at present arrestable and carries a maximum penalty of two years' imprisonment. It will, however, become a full arrestable offence under clause 21 of the Police and Criminal Evidence Bill, and carry unconditional powers of arrest accordingly.

37. The protection of this provision does not extend to members of visiting forces. Paragraph 42 below deals with the feasibility of so extending this. This point arose in the recent Warner case where the Solicitor General consented to prosecution under this provision. Warner drove his vehicle through one of the entrances to Greenham Common at a time when sensitive equipment was being unloaded from a Galaxy aircraft. Consent was granted on the basis of obstruction of two MoD police officers on guard duty at the entrance but all other personnel involved in the incident were US personnel. The case is sub judice.

38. There are similar sensitivities to the use of the 1920 Act as to the use of the 1911 Act. But while the Attorney General has indicated a reluctance to invoke such provisions in relation to peaceful protest and those responsible for simple trespass, the Attorney General (as in the Warner case) would be ready to consider (under both the 1911 and the 1920 Acts) applications for fiats in the case of more serious assaults and obstructions.

Explosives Act 1875

39. Section 77 of this Act creates an offence of trespassing upon any "factory, magazine or store" (a widely-drawn definition in the Act) wherein explosives are kept. The provision is specifically applied (by virtue of section 97) to premises in the occupation of the Crown or of the Secretary of State or other Government Department. Prosecutions can be instituted only by or with the consent of the DPP or the Health and Safety Executive. The offence is triable either way and carries a maximum penalty of 2 years' imprisonment. There is a power to remove trespassers, but unless the offence falls within section 78 of the Explosives Act 1875 (which makes it an arrestable offence to commit an act likely to cause an explosion or fire within any factory etc) there is at present no power of arrest. (See also paragraph 50). The offence will carry a power of arrest under clause 22 of the Police and Criminal Evidence Bill in the same way as an offence under section 193 of the Army Act 1955 if the general grounds for arrest are satisfied.

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40. The provision extends also to "land immediately adjoining" the stores and accordingly it would be a matter of degree as to the extent of trespass necessary at Greenham to constitute the offence. For example it would be for the courts to decide whether it was necessary for a defendant to be very near the missile silos for the provision to bite or whether successful prosecutions could also be brought against those just inside the perimeter fence.

41. The advantage of using this provision is it seems apt and neither trivial nor draconian. There may, however, be some sensitivity about any associated need to confirm where and when explosives are stored.

#### OPTIONS INVOLVING CHANGES IN THE LAW FALLING SHORT OF PRIMARY LEGISLATION

The extension of section 193 of the Army and Air Force Acts and section 3 of the Official Secrets Act 1920 to visiting forces.

42. There have been instances of intrusion into Greenham Common where those principally affected have been US personnel and this may also be the case as and when GLCMs are deployed, although on such occasions MoD personnel, and perhaps civil police, will also be present. If sections 193 of the Army and Air Force Acts 1955 and section 3 of the Official Secrets Act 1920 were thought to provide useful remedies (see paragraphs 30 to 32 and 36 to 38 above) it might seem sensible that their protection should be extended to US personnel. Section 8(3) of the Visiting Forces Act 1952 enables any enactment which prohibits the doing of anything in relation to any of the home forces to be applied to visiting forces. There is therefore the power to apply section 193 of the Army and Air Force Acts and section 3 of the Official Secrets Act 1920 to visiting forces although section 8 has not previously been used to extend the application of the criminal law in this way and any extension of the Official Secrets Act is bound to be controversial.

#### Military Lands Act 1892

43. Section 14 of the Military Lands Act empowers the Secretary of State to make byelaws "for regulating the use of land [used for military purposes] for the purposes to which it was appropriated, and for securing the public against danger arising from that use, with power to prohibit all intrusion on the land and all obstruction of the use therefore". There are at present no byelaws made under this Act for Greenham Common. The maximum penalty for contravening byelaws made under the Military Lands Act is a fine not exceeding Level 2 on the standard scale, currently £50, and the offence is arrestable.

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44. Full use could be made of the byelaw making powers in order to prohibit trespass and obstruction within the base. The advantages of making byelaws are that they use an existing local remedy, which quite clearly covers intrusions and trespass, for a local problem; the procedure, while cumbersome, is likely to be less difficult and time consuming and no more controversial than primary legislation on trespass; and there is a power of arrest without a warrant for breach of the byelaws. The disadvantages of making byelaws are that it can be a fairly lengthy procedure: that the penalties are fairly low (but see paragraph 45) and that the need to consult locally may cause some controversy.

#### OPTIONS INVOLVING PRIMARY LEGISLATION

##### Increased penalties under existing legislation

45. The maximum fines for offences under the Highways Act 1980, Road Traffic Regulation Act 1967, Army Act 1955, Air Force Act 1955 and Military Lands Act 1892 will double in April when a general inflation proofing order comes into effect and will thereafter be increased automatically by similar general orders. Such orders will not raise maximum fines contained in byelaws but will amend provisions in primary legislation which specify the maximum penalties byelaws may impose. Therefore, although the penalties in the existing byelaws under the Commons Act 1899 will remain at £50 after April, it will then be possible to make new byelaws carrying penalties up to £100. However, the Military Lands Act 1892 exceptionally specifies the penalty for contravention of byelaws made under it: if any were made, their penalties would be increased automatically by inflation proofing orders. Any increase in fines beyond such general increases would require amendment of the relevant primary legislation. It is at present unusual for byelaws to carry maximum penalties of more than £50, or in the case of byelaws affecting public safety £200, (there are, however, anomalous byelaws under which levels up to the normal summary maximum, currently £1,000, are preceded). Any increase in maximum sentences of imprisonment or the introduction of imprisonment for any offence would require amendment of the relevant primary legislation. The Home Office is not aware of any byelaw offence which currently attracts imprisonment and its introduction to a byelaw would be likely to be particularly controversial. The principal argument for increasing penalties would be the hope of increasing their deterrent effect. It is, however, doubtful whether deterrence would be achieved by increased penalties; the special circumstances of Greenham Common in particular make this unlikely. A particular reason for increasing the maximum sentence of imprisonment under section 193 of the Army Act 1955 would be to make the offence arrestable. But this would entail a drastic

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increase of the penalty from 3 months to 5 years; would have to be accompanied by the right to trial on indictment, making prosecutions for obstruction potentially protracted and difficult; and the offence could in any case be made arrestable by more direct means (see paragraph 49).

Changes in the powers of arrest available

46. Clause 22 of the Police and Criminal Evidence Bill empowers a constable to arrest for any offence (including an offence against byelaws) if a) he has reasonable grounds for believing that an arrest is necessary to prevent the offender from causing injury to himself or others, damage to property or affront to public decency or an obstruction of the highway; or b) it is impossible to proceed by way of summons because he fails to give his name or an address at which a summons may satisfactorily be served.

47. Clause 23 in addition preserves certain powers of arrest whose exercise is not dependent on the above conditions, including the power to arrest for an offence against byelaws made under the Military Lands Act 1892. Clause 21 confers a full unconditional power of arrest (exercisable by members of the public as well as police officers) in respect of all offences punishable with at least 5 years imprisonment together with a small number of offences carrying lesser maxima.

48. There are three ways in which the Bill might be amended to give additional powers of arrest. First in a letter of 9 August to the Home Secretary the Solicitor General suggested the amendment of clause 22 so as to empower a constable to arrest for any offence in order to prevent continued obstruction of himself or other officers in the execution of their duty. Under clause 22 as at present drafted a constable may not arrest someone for the offence of obstructing him in the execution of his duty (maximum penalty 1 month or £200 fine) unless any of the specified arrest conditions applies or the situation involves an actual or apprehended breach of the peace. The offence carries no power of arrest under the present law. This change would be intended to deal with the situation in which a trespasser, by refusing to leave a military base on request, commits the offence of obstructing a constable in the execution of his duty. Unless a breach of the peace is apprehended or the general grounds for arrest set out in clause 22 apply, the position under the Bill as drafted will be that a constable will have to eject the trespasser and prosecute for the offence by way of summons. The advantage of the option is that the constable would be able to arrest the person, so that he or she may be taken to a police station and charged at once. The disadvantages are as follows: i) the power to arrest would not arise where a

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trespasser was willing to leave on request and it appears many at Greenham have been willing to do so. ii) The creation of what amounts to a power of arrest for the offence of obstruction would catch a wide variety of circumstances unconnected with military bases and where the summons procedure would provide an adequate means of enforcement. iii) There would be no power to detain an arrested person at the police station pending appearance in court unless the detention conditions in Part IV of the Bill were satisfied. Those conditions do not include the prevention or the repetition or continuation of the offence concerned, so a person arrested for obstruction would have to be released after charge unless Part IV of the Bill were also amended. The Bill as drafted already allows arrest for the offence and subsequent detention if there is reason to fear that the offender would go on to damage property unless arrested or detained. The difference in practice between releasing a trespasser at the boundary of the base and at the police station might be slight. The necessary amendments to the Bill would be very controversial.

49. The second option would be to amend clause 22 of the Bill so as to empower a constable to arrest for any offence in order to prevent continuing obstruction of or interference with any member of the regular forces acting in the execution of their duty. Such obstruction or interference is an offence under the Army Act 1955 (see paragraphs 30 to 32) but again there is no power of arrest. To make this option effective it would be necessary also to empower members of the forces themselves to arrest in these circumstances, which would probably require an amendment to clause 102 of the Bill. To an extent this option is consequential upon the first. If it were decided not to make the continuing obstruction of a constable a ground for arrest it would be very odd to do so in the case of a member of the armed forces. If on the other hand the first option were accepted, the advantage of the second would be that it would provide a power of arrest not only in the situation where protestors invade a base but also where they interfere with off-base deployment. Where interference takes the form of obstructing the highway then the police would in any event be present and would be able to arrest under clause 22 as drafted. But interference might occur on land where the police were not present, in which case the forces would be able to arrest protestors in their absence and deliver them into police custody when this was possible. This option would only make a difference to the first option in the situation where the police were not present: where they were present then it would be possible under that option for the police to arrest protestors for obstructing them in the execution of their duty to prevent the obstruction of members of the forces in theirs. The disadvantage is therefore that it would extend the role of the

forces into the enforcement of relatively minor offences under the criminal law against members of the public as opposed to their removal as trespassers.

50. Lastly the Bill could be amended so as to confer an unconditional power of arrest in respect of the offence under section 77 of the Explosives Act 1875 of trespassing on any magazine or adjoining land. Clause 22 as drafted would already allow the police to arrest for the offence of trespassing in or near a magazine if an arrest were reasonably considered to be necessary to prevent injury to any person or damage to any property. On the face of it the nature of the offence would normally permit arrest on this ground. The advantage of attaching a specific power of arrest to this offence would be to allow arrests in all circumstances in which it was committed. The disadvantage would be that it would be difficult to explain to Parliament why arrest was necessary where there was no risk to persons or property and where the trespassers could be ejected and prosecuted by way of summons. As in the case of the first option an amendment to the detention as well as to the arrest provisions of the Bill would be needed if the prevention of a trespasser's return to the base by means of detention at the police station were to be secured in the absence of a risk to persons or property.

#### Criminal offence of trespass in defined areas

51. With the exception of trespass on diplomatic missions and section 77 of the Explosives Act 1875 (see paragraphs 39-41 above), there is no criminal offence of trespass as such where intrusion is not associated with other criminal or violent conduct. In England and Wales trespass has traditionally fallen within the province of the civil rather than the criminal law. Very recently the Government has announced its conclusion that there is a need for a new criminal offence of trespass on residential premises. (The relevant extract from Hansard is at annex C). However, the Government has so far seen considerable difficulties in formulating a sufficiently precise and enforceable offence of trespass on land, either generally or adjacent to residential premises. It is for consideration whether these difficulties apply with equal force to the relevant military bases and to whether an offence of trespass could be formulated in acceptable terms and in relation to defined areas.

52. The arguments which point to the exclusion of land from the scope of a generally applicable offence of criminal trespass are broadly that: it would be technically difficult to exclude from the scope of the offence people other than those against whom the offence is directed, eg people entitled to use rights of way or who may have acceptable reasons for being present; given this there would be considerable opposition from many quarters to the framing of such an offence;



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and that there is no clear need for such an offence in the context of the general law (whatever may be said about the specific problem at Greenham or other military bases).

53. However, legislation aimed only at trespass on military bases could be more specific in its area of application and therefore less open to objection than, for example, proposals to extend a general criminal offence of trespass to all privately owned land. But such a provision would require controversial primary legislation and might not have a broader scope than that now available under the Military Lands Act byelaw making powers; neither would it extend to the land outside the base on which the Greenham Common demonstrators camp. The precise area covered by the offence would have to be defined although it might be possible to define this in subordinate legislation. There would also be the awkwardness of the relationship between a new criminal offence of trespass on a military base which did not involve proving a purpose prejudicial to the safety or interests of the State, and section 1 of the Official Secrets Act 1911, which does.

54. All that said, however, a case in principle for such legislation can be made out. What is at issue is whether the scope of such an offence could be sufficiently defined or restricted to avoid an unacceptable extension of the criminal law to the public generally and to catch the mischief at which it is aimed. Further consideration would need to be given to the best ways of achieving the latter.

A new power to prohibit or limit the presence of people in the area

55. A combination of factors which lead to special problems at Greenham have prompted consideration of a special measure. One factor is the continuing presence of the "peace camp". Day by day the number of women camping outside the perimeter fence is small and the principal mischief is trespass and, where they are on the common land, contravention of the byelaws. Unless the women choose the tactic of blockading the offence of obstruction does not arise nor generally is there any reason to fear a breach of the peace. Other factors are the weakness of the perimeter fence, the fact that it is the women who have shown that it can easily be cut, and the (symbolic rather than operational) importance of whether or not the fence is breached. The inter-action of these factors has led to the increasing determination of demonstrators to attack the fence, requiring the expensive deployment of large numbers of police and servicemen, particularly for 3/4 weeks from 29 October.

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56. The police have, of course, powers to deal with people equipped to commit criminal damage or attempting or committing the offence. The problem is that bolt-cutters can easily be concealed in the camps or wooded areas of the common, or quickly brought to the scene, and the women in the camps can act as a forward base or nucleus for attacks by larger groups.

57. Added to that is the development experienced on 11 December, when people among the many thousands of peaceful demonstrators attacked the fence. On occasions, their actions almost certainly amounted to breach of the peace as well as criminal damage (and assaults on officers). In theory, the police would therefore have had a power to disperse the women; but the presence of the thousands of other demonstrators would have made that impracticable. Because of the permanent camp there is constant uncertainty about whether the fence will be attacked and this uncertainty is heightened on the larger, set-piece occasions.

58. On one analysis, therefore, what may appear to be needed or justified (if it could be devised) would be a means of (i) keeping the area round the fence free of campers and (ii) limiting if not prohibiting the presence of people in the area. Before 11 December, the exercise of such a means might have been limited to the purpose of the prevention of crime (ie criminal damage). The experience of 11 December suggests that a broader criterion might be necessary, to catch large groups whom those intent on crime might otherwise use for cover.

59. The model for the means might be the arrangements which apply in the area round Parliament by virtue of the Sessional Order and Commissioner's directions under the Metropolitan Police Act 1839. (The Sessional Orders are passed by each House at the beginning of each session, and in effect require the Commissioner to prevent obstruction or disorder in the areas surrounding the Palace of Westminster. To give effect to the Orders, the Commissioner issues directions under section 52 of the Metropolitan Police Act 1839, requiring his officers to disperse all assemblies or processions causing or likely to cause obstruction and disorder within a specified area of the Palace.) Thus the new provision would confer a power to declare that within a specified area round a particular site, the police should have the power to disperse all assemblies and processions.

60. Evidently, such an arrangement would involve formidable problems of formulation and possibly of enforcement, and could be highly controversial. It would for example be necessary to try to avoid creating what would in effect be a criminal offence of trespass, ie a total prohibition on simply being on the land to which the power applies, whilst at the same time having a criterion

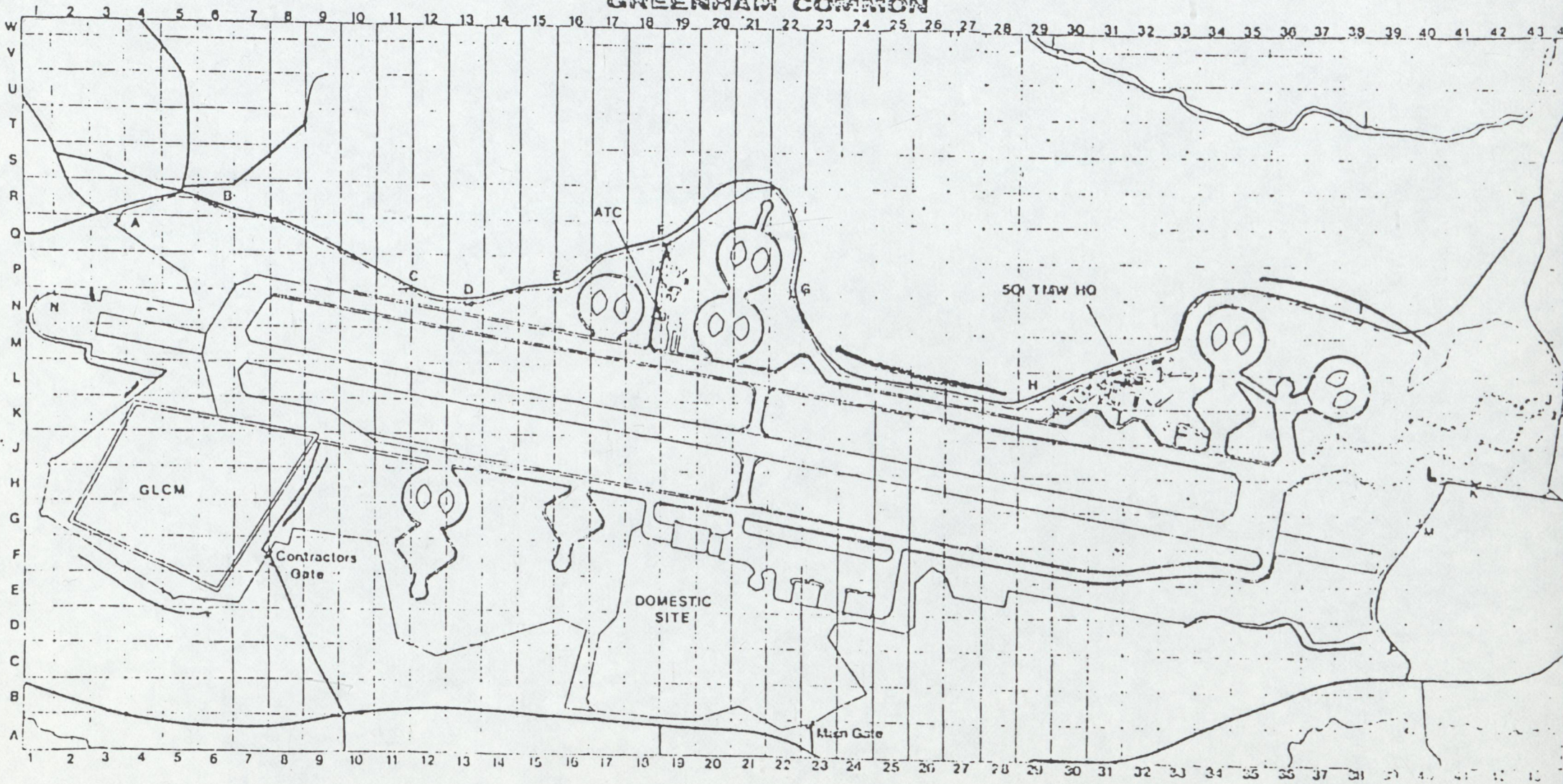
of application sufficiently broad to catch those intent on mischief. The Sessional Order arrangements are workable because they allow people generally to move about and gather in the area round Parliament, providing for the dispersal of groups only if they cause or are likely to cause obstruction and disorder and they do not, of course, apply to private land. It would be necessary to explore in greater depth whether this would be sufficient for the purposes at Greenham Common. However the criterion were expressed, to be effective the power would represent a considerable erosion of the freedom of assembly and it would be necessary to circumscribe it with effective safeguards. One arrangement might be that (possibly consulting the chief officer of police of the area concerned) a Secretary of State could by order declare that the power applied within a specified area round a particular site. There could be pressure to provide that such an order should be subject to Parliamentary resolution (possibly affirmative rather than negative). Even so a measure along these lines would be fought every inch of the way and would certainly be very controversial.

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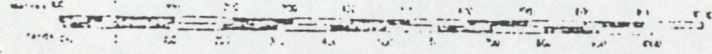
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ANNEX A

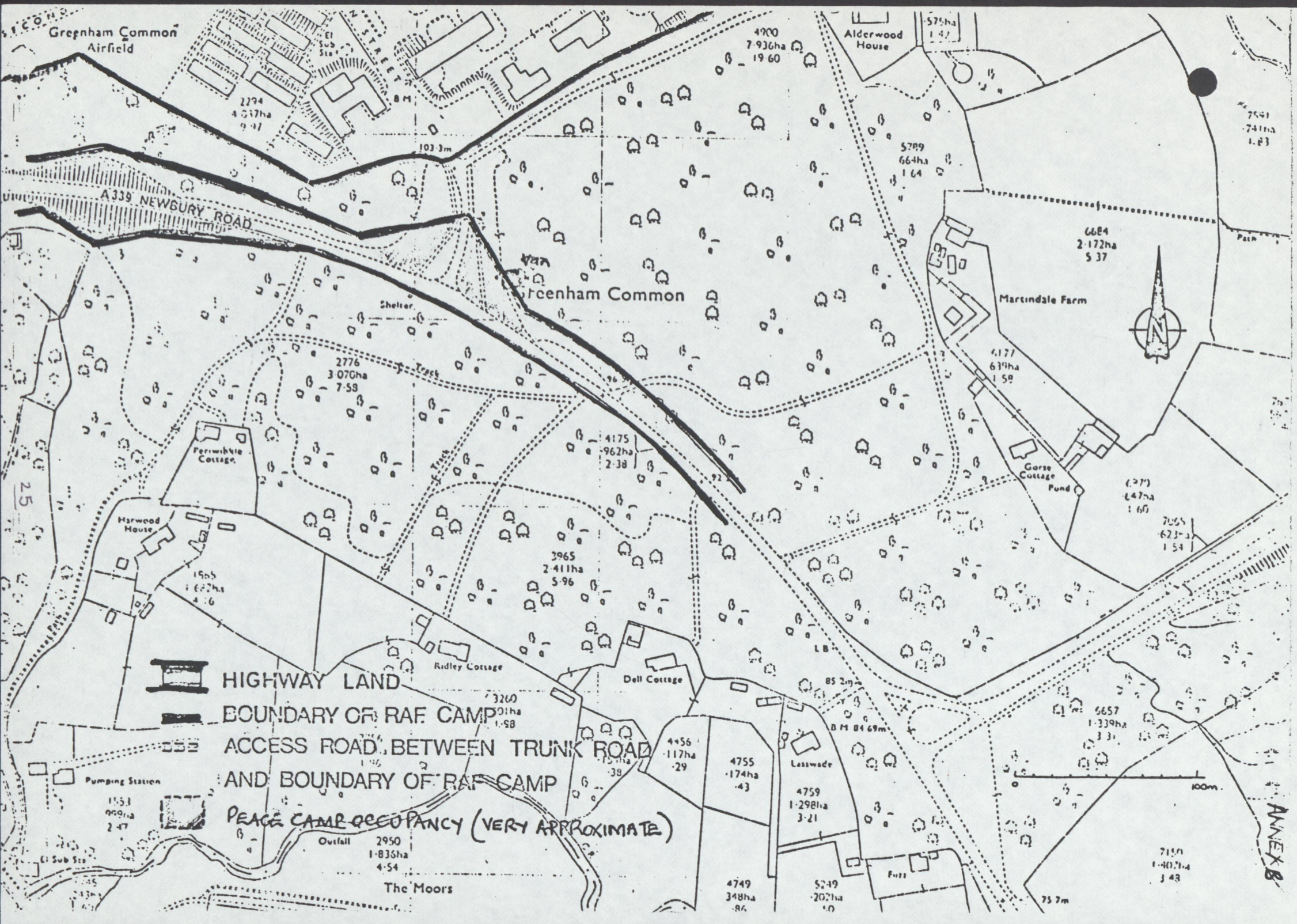
GREENHAM COMMON



SCALE



RESTRICTED



Greenham Common  
Airfield

Alderwood House

A339 NEWBURY ROAD

Greenham Common

Marcindale Farm

Perwinkle Cottage

Harwood House

HIGHWAY LAND

BOUNDARY OF RAF CAMP  
ACCESS ROAD BETWEEN TRUNK ROAD  
AND BOUNDARY OF RAF CAMP

PEACE CAMP OCCUPANCY (VERY APPROXIMATE)

Pumping Station

Ridley Cottage

Dell Cottage

Losswade

The Moors

ANNEX B



100m

2294  
4.017ha  
9-11

4900  
7.936ha  
19-60

5789  
664ha  
1-64

7541  
741ha  
1-83

6684  
2.172ha  
5-37

2776  
3.070ha  
7-58

4175  
962ha  
2-38

4171  
639ha  
1-58

6271  
647ha  
1-60

7055  
623ha  
1-54

1965  
1.622ha  
4-16

3965  
2.411ha  
5-96

3260  
0.1ha  
1-58

4456  
1.17ha  
-29

4755  
1.74ha  
-43

85 21ha

4759  
1.298ha  
3-21

6657  
1.339ha  
3-31

1153  
999ha  
2-47

2950  
1.836ha  
4-54

4749  
348ha  
-86

5249  
2021ha  
-0

7151  
1.407ha  
3-48

1 DECEMBER 1983

### Trespass

Mr. Sims asked the Secretary of State for the Home Department what conclusions he has reached on the need for a criminal offence of trespass on residential premises in the light of the comments received on the consultative document issued earlier in the current year.

Mr. Brittan: I have given careful consideration, in consultation with my noble and learned Friend the Lord Chancellor and my right hon. and learned Friend the Attorney-General, to the considerable number of comments received in response to the consultative document on trespass on residential premises in England and Wales.

The response has shown a broad consensus that criminal sanctions should be available against uninvited intrusions into people's homes. It is clearly, too, the general wish that if there is to be a new criminal offence, it should afford protection to all citizens in their homes and not be confined, for example, to royal residences. There is, however, also concern that any new offence should apply only to those who trespass intentionally and have no reasonable excuse for their behaviour.

I have therefore asked officials to draw up proposals for a new offence of trespassing on residential premises which achieves this result. The scale of the problem as indicated by our consultations was not such as to suggest that legislation is needed urgently. Proposals will be brought forward as soon as the details have been fully worked out and other commitments allow.

17 JAN 1984

