HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number 00355, 9 June 2017

Evicting squatters

By Wendy Wilson

Contents:

Contents

Contributing Authors: Alexander Bellis

Summary

This Library briefing paper outlines the legal remedies (both civil and criminal) that are available to landlords and homeowners to evict squatters from their properties in England and Wales. The paper also explains the process through which squatters can claim title over land by occupying it adversely or 'squatting' for a period of time.

Civil remedies to evict squatters from residential premises in England and Wales have existed for some time. The Coalition Government consulted on possible ways of strengthening the law in this area in 2011. Subsequently, the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* was amended to introduce a new offence of squatting in a residential building (section 144).

Section 144 was brought into force on 1 September 2012 by the *Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 1) Order 2012* (SI 2012/1956). This provision applies in England and Wales. Squatting in Scotland has been a criminal offence for over 100 years – squatting is not a criminal offence in Northern Ireland.

Definitive information on the number of squatters in England and Wales is not available. In 2010 the Government estimated that there were 20,000 squatters at any one time. The lack of definitive information on squatter numbers has made assessing the impact of criminalisation difficult.

There is some suggestion that squatting in commercial premises has increased as a direct result of the introduction of section 144. The 2015 Government rejected calls to extend criminalisation to cover commercial premises.

Advice for squatters and property owners who wish to evict squatters in England and Wales can be found on the Citizen's Advice website.

1. The extent of squatting

Definitive information on the number of squatters in England and Wales is not available. The Ministry of Justice (MOJ) consultation paper, Options for dealing with squatting (July 2011) confirmed that "there is no data held by central Government about the number of people who squat or their reasons for doing so." The MOJ estimated that around 20,000 people are squatting at any one time. Information *is* collected on the number of possession orders granted against trespassers:

> What the Government does know is that the civil courts granted 216 interim possession orders in 2010 under Part 55(3) of the Civil Procedure Rules. An interim possession order is an accelerated process, specifically designed for evicting trespassers from premises. A further 531 ordinary possession orders were granted against trespassers under Part 55(1) of the Rules, although it is unclear from the court proceedings database what percentage of these related to trespassers in premises as opposed to land. These figures provide an indicator of how many properties may be affected by squatting each year, but we recognise they may represent only a proportion of the true problem.[1]

[1] Ministry of Justice, Options for dealing with squatting, July 2011

2. Legal remedies for dealing with squatters

Both civil and criminal law procedures can be used against squatters. Before section 144 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (LASPO) came into force, squatters were defined in housing law terms as 'trespassers' as they have no rights of occupation. Trespass is a civil offence, thus in England and Wales prior to 1 September 2012, entry into private property without authority, and without any accompanying criminal conduct or intent, was **not** a criminal offence.

In contrast, by virtue of section 3 of the *Trespass (Scotland) Act 1865* (which is still in force) lodging in premises without permission has long been a criminal offence in Scotland.

Despite the changes introduced by LASPO, the civil remedies against squatters are still relevant. They may be used against squatters in non-residential premises and where the owner prefers not to go down the criminal route.

The Department of Communities and Local Government (DCLG) produced joint guidance with the Ministry of Justice, Advice on Dealing with Squatters in Your Home (updated September 2012). The Government's webpages have a section on Squatting and the law, explaining rights from both a landlord and occupant's perspective.

2.1 Civil law procedures

Part 55 of the Civil Procedure Rules

When pursuing possession procedures against trespassers landowners need prove only their title and an intention to regain possession.[2]

Proceedings may be issued as ordinary possession summonses, claiming possession on the ground that the defendants are trespassers. However, it is far more common for landlords to use special speedy proceedings that enable landowners to regain possession in cases where there is no dispute about occupancy rights.[3] These proceedings used to be invoked under either County Court Order 24 (CCR Ord 24) or Order 113 proceedings in the High Court (RSC Ord 113). From 15 October 2001 these Orders were replaced by Part 55 of the Civil Procedure Rules which cover all possession proceedings, including those against tenants, mortgagors, and squatters.[4]

The procedures specify that landlords are not required to identify the occupiers against whom they are seeking possession. A summons may be issued against a named person or against persons unknown stating the landlord's interest in the property, that the property has been

2 *Portland Managements Ltd v Harte* [1976] 1 All ER 225.
3 These rules were introduced in 1970 to assist landowners against the resurgence of the squatting movement.
4 See Part 55 rules on the Ministry of Justice website.

occupied without his/her consent and, if the summons is against persons unknown, that the landlord does not know the names of some or all of the people in the property. The summons can be served by personal service or by fixing it to the door of the premises.

Once the summons is served, five clear days must elapse before the court hearing to allow service on the defendant(s). If the court finds that the occupiers are trespassers it is obliged to make an order for possession – the order will specify a date on which the trespasser must leave. This is usually 14 days after the hearing but may take effect forthwith.[5] Once an order for possession has been made landlords will still normally have to enforce eviction by using court bailiffs. This may delay the process.

If occupiers wish to claim a right of occupation which amounts to a defence, for example a continuing tenancy, the burden of proving its existence lies with them. If a triable issue is raised over occupancy rights judges have wide discretion either to dismiss the application or allow the affidavits which have already been filed to stand as pleadings, or try the case by hearing oral evidence. Such issues arise in only a small minority of cases under these orders.

These procedures cannot be used against a tenant or former tenant or against sub-occupiers where the head tenancy has not been terminated.[6]

Where ordinary possession procedures are used against squatters it is open to the landowner to seek an order for damages for trespass. Under the speedy procedures the court can make an order for costs against an occupier, but there is no provision for awarding any monetary compensation by way of damages to a landlord.

Interim Possession Orders

The *Criminal Justice and Public Order Act 1994* amended CCR 24 to create a new form of interim possession order (IPO) which can only be granted against trespassers. The new rules came into force on 24 August 1995.[7]

Landlords can only use this procedure if:

- they are only claiming possession;
- the applicant has an immediate right to possession and has had this right throughout the period of unlawful occupation;
- the respondents entered the premises as trespassers; and
- the application is issued within 28 days of the date when the owner first knew, or ought reasonably to have known, that the respondents were in occupation.

On discovery of an unlawful occupant the owner of the premises may, within 28 days, serve a notice of intention to commence proceedings on the alleged squatter(s) before applying to the county court for an IPO;

---

5 *McPhail v Persons Unknown* [1973] 3 All ER 393.
6 *Wirral BC v Smith* [1982] 43 P & CR 312
7 *The County Court (Amendment No 2) Rules 1995* SI 1995/1582

occupiers must be given at least 48 hours' notice. The occupier(s) may make written representations to the court. Their arguments will be taken into account before an IPO is granted but if they do not file an affidavit to defend the proceedings they lose the right to attend the hearing. The hearing date for an IPO must be set not less than three days after an application for an IPO is made. If an IPO is refused the case will be referred to the existing summary possession procedures. If an order is granted it must be served on the occupiers within 48 hours, at that point the occupiers will have 24 hours to leave the premises. An occupier with a right of occupation may apply to the court to have the order set aside, provided he or she has obeyed the order and left the premises.

Section 75 of the 1994 Act made it an offence to make a false or misleading statement in order to obtain an IPO in civil proceedings to remove squatters from premises. This provision is intended to protect lawful occupiers from unscrupulous landlords who try to use the interim possession procedure to evict them. Section 76 of the Act also made it a criminal offence for a person who is the subject of an interim order to fail to leave the premises concerned with 24 hours of the order being granted, or to enter the premises again as a trespasser within one year. The maximum penalty for failing to leave, or re-occupying within one year, is six months' imprisonment. If squatters refuse to leave the premises the landlord may ask the police to arrest them - there is no need to apply for a warrant or wait for county court bailiffs to remove them.

The consultation paper, Options for dealing with squatting, identified some disadvantages associated with the IPO process:

> There can be disadvantages too, however. Because an IPO is an interim remedy, a subsequent hearing is required for a final order, and the court will in deciding whether to make the IPO have regard to whether the claimant has given or is prepared to give undertakings not to re-let the premises or to damage the premises or the defendant's property before the final order and to reinstate the defendant and pay damages should it subsequently be determined that the claimant was not entitled to the IPO. Also, because the IPO is intended for urgent repossession by a displaced occupier, the application must be made promptly (within 28 days of when the claimant knew or ought to have known that any of the defendants were in occupation); and must involve a claim for possession alone, and cannot be made along with a claim for another remedy, such as damages.[8]

The 1994 Act did not make squatting in either residential or commercial premises an automatic criminal offence.

2.2 Criminal law procedures

Criminal Law Act 1977

Strictly speaking, there used to be no need for landowners to bring court proceedings to evict trespassers as they were entitled to use 'self-

[8] Ministry of Justice, Options for dealing with squatting, July 2011, para 17

help' to evict them without a court order.[9] However, this course of action was not recommended because of the 'possible disturbance' that might be caused.[10]

Entry into private property without authority, but without any accompanying criminal conduct or intent, was, prior to 1 September 2012, not a criminal offence. Section 6 of the *Criminal Law Act 1977* provided that if violence was used or threatened for the purpose of securing entry to premises when someone was present on those premises, this could amount to a criminal offence. However, the *Criminal Justice and Public Order Act 1994* made it clear that this offence would not apply to a person who is a "displaced residential occupier" or a "protected intending occupier" (or someone acting on their behalf).

A displaced residential occupier is any person, other than another trespasser, who was using the premises or part of them as a residence immediately before the trespasser entered.[11] This exception was designed to permit an owner-occupier or tenant who was absent from his/her home for a short period, and who returned to find the premises squatted, to take direct action to evict trespassers without any need to initiate court proceedings and without fear of committing an offence. A displaced residential occupier must still take care not to commit other offences such as assault or actual bodily harm.

The *Criminal Law Act 977* introduced a major new criminal offence against would-be squatters. It is an offence under section 7 for any trespasser who enters as a trespasser to fail to leave premises if asked to do so by a displaced residential occupier or a person who is a protected intending occupier (PIO). PIOs are those who have been designated to occupy a property by a local authority or housing association, or those who find that a property that they have just bought has been occupied while the sale was being transacted.[12] There is no offence of failing to leave until a request has been made to do so. PIOs must produce statements proving their status; if this is done satisfactorily the police can be requested to remove the trespassers.

The *Criminal Law Act 1977* introduced other criminal offences in connection with squatting. It is a criminal offence for a person on the premises as a trespasser, having entered as such, to have with him any weapon of offence, i.e. anything which has been made or adapted for causing injury to another.[13] Section 9 made it an offence for a trespasser to enter diplomatic or consular buildings unless he can show that he does not believe them to be diplomatic or consular premises. It is also an offence to resist or intentionally obstruct any person who is an officer of the court executing a possession order issued by the county or High Court.[14] Section 10 is worded so that it applies to resistance or

---

9 *R v Blankley* [1979] Crim LR 166; *McPhail v Persons Unknown* [1973] 3 All ER 393.
10 *McPhail v Persons Unknown* per Lord Denning MR at p 396.
11 Section 12 of the *Criminal Law Act 1977*
12 Section 7 of the 1977 Act
13 Section 8 of the 1977 Act
14 Section 10 of the 1977 Act

intentional obstruction of an officer executing any order which could have been brought under Part 55 of the Civil Procedure Rules, even if the landowner used ordinary possession proceedings.

LASPO 2012

Having signalled an intention in March 2011 to take steps to make squatting a criminal offence[15] the Ministry of Justice published a consultation paper, Options for dealing with squatting, in July 2011.

Subsequently, during Commons Report Stage of the *Legal Aid, Sentencing and Punishment of Offenders Bill 2010-11,* the Government moved that New Clause 26 (now section 144 of the Act) be added to make squatting in residential buildings a criminal offence.[16] Section 144 was brought into force on 1 September 2012 by the *Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 1) Order 2012* (SI 2012/1956).

The offence is committed if a person enters the building as trespasser and lives there, or intends to live there, for a period of time. To commit the offence the person must know or ought to have known that they are a trespasser. For the purposes of the offence a residential building includes "any structure or part of a structure that has been designed or adapted for use as a place to live prior to its occupation by squatters." This includes permanent structures such as brick-built houses or flats and temporary or moveable structures, such as residential prefabs, park homes or caravans.

The offence is only committed by someone squatting in residential premises on or after 1 September 2012. The offence does not apply to legitimate tenants who fall behind with rent payments or refuse to leave at the end of their tenancy.

The penalty for the offence is imprisonment for a term of not more than 51 weeks or a fine not exceeding level 5 on the standard scale (or both).

Media reports indicated that Westminster Council was the first to use the new provision against a long standing squatter in a block of flats.[17]

---

15 DCLG, Grant Shapps signals an end to squatters' rights, March 2011
16 HC Deb 1 November 2011 c864
17 BBC, Squatter evicted from Lisson Green estate using new law, 12 September 2012

3. Section 144 (criminalisation): background and debate

The Written Statement reproduced below explains the thinking behind the Options for dealing with squatting consultation exercise:

> Crispin Blunt (Parliamentary Under Secretary of State (Prisons and Probation), Justice; Reigate, Conservative)
>
> The Government have become increasingly concerned about the distress and misery that squatters can cause. Law-abiding property owners or occupiers who work hard for a living can spend thousands of pounds evicting squatters from their properties, repairing damage and clearing up the debris they have left behind.
>
> I have met with hon. Members and corresponded with members of the public who have expressed concern about the appalling impact squatting has had on their properties or local neighbourhoods.
>
> The Government do not accept the claim that is sometimes made that squatting is a reasonable recourse of the homeless resulting from social deprivation. There are options open to those who are genuinely destitute and who need shelter which do not involve occupying somebody else's property without authority. No matter how compelling or difficult the squatter's own circumstances are claimed to be, it is wrong that legitimate occupants should be deprived of the use of their property.
>
> There should be no doubt about the seriousness with which the Government treat this problem or our determination to tackle it. The Housing Minister and I have already published new guidance on the direct.gov website for property owners on evicting squatters under existing legislation.
>
> The consultation paper we are publishing today invites views on whether more should be done to strengthen the criminal law or its enforcement. We could do this, for example, by introducing a new offence of squatting; by strengthening existing offences that currently apply to squatters; or by working with the enforcement authorities to identify and overcome barriers to enforcement of existing offences that may be committed by squatters.
>
> The Government acknowledge that some of the options they are proposing may have an impact on the enforcement authorities, local authorities, homelessness charities and other organisations. Any option we decide to pursue as a result of this consultation will need to be workable and affordable, taking account of the current economic climate and reduction in Government expenditure.
>
> Of course, we must also tackle problems affecting the wider housing market and bring more empty homes back into productive use. The Government intend to publish an empty homes strategy over the summer and a wider housing strategy in the autumn, setting out the overall approach to housing policy, including how we are supporting an increase in the supply and quality of new private and social housing, helping those seeking a home of their own, whether to rent or buy. The Government have already made available £4.5 billion to help deliver new affordable

> housing through the affordable homes programme and as part of that, £100 million to bring empty homes back into use.[18]

The options over which the Government consulted included:

Option 1: The creation of a new offence of squatting in buildings.

Option 2: Expanding existing offence in section 7 of the *Criminal Law Act 1977.*

Option 3: Repealing or amending section 6 of the *Criminal Law Act 1977.*

Option 4: Leaving the criminal law unchanged but working with enforcement authorities to improve enforcement of existing remedies.

Option 5: Do nothing – continue with existing sanctions and enforcement activity.

The impact assessment on the new squatting provision set out the rationale for intervention:

> The consultation process revealed that squatting was prevalent in large cities like London, Birmingham and Bristol in residential and non-residential buildings. Organisations and individuals who responded to the consultation were divided on whether squatting was a 'problem'. Property owners who had encountered squatters in their properties generally felt that tougher criminal sanctions were required to address this problem. Squatters and those responding to the consultation on their behalf argued that squatting was merely a manifestation of a housing crisis. They said that if the government did more to tackle the root causes of homelessness and to address the shortage of affordable homes, levels of squatting would decline.
>
> Having considered the consultation responses, the government is persuaded that more needs to be done to protect owners and lawful occupiers of residential property from squatters, whilst continuing to address the root causes of homelessness, provision of affordable housing and social deprivation through existing policy initiatives.[19]

Additional costs were identified:

> The creation of a new criminal offence of squatting, limited to residential properties, would be less costly than option 1, but is still likely to result in an increase in police, CPS, legal aid, prison, and probation costs, due to additional squatting cases going through the criminal justice system. It is difficult to estimate the precise impact as there is no consensus on the true extent of squatting, or the proportion of squatting that is in residential buildings. Our best estimate of costs to the CJS is around £5m per year. However, given the many uncertainties, we have estimated a range of potential costs of between £1m and £9m per year.
>
> Local authorities and homelessness (and other related) charities may face increased pressure on their services if more squatters are arrested/convicted and/or deterred from squatting. Local authorities may be required to provide alternative accommodation for these individuals and could also face costs related to increases in rough sleeping in their areas. An increase in demand for

---

18 HC Deb 13 July 2011 c30WS

19 MOJ, Impact assessment on the criminalisation of squatting, October 2011

> charities' services (food/shelter etc) may negatively impact current charity service users. There may also be a cost to society if this option is perceived to be unfair and/or leads to increases in rough sleeping. It has not been possible to quantify these costs.[20]

The benefits of the measure were identified as:

> As a result of criminalisation, it is likely that cases that are currently heard in the civil courts (applications for Interim Possession Orders and Possession Orders) will instead go through the criminal courts. This will result in savings on the civil side. These savings have not been quantified, but it is likely that they will partially offset the estimated increase in criminal costs.
>
> The creation of a new offence, limited to residential properties, should allow residential property owners to regain possession of their property from squatters more quickly and easily, which should reduce costs and provide greater security for residential property owners. This may reduce any serious direct financial and emotional impact suffered by residential property owners/occupiers, with potentially large benefits. Society may also prefer squatting to be more robustly tackled through criminal sanctions. It has not been possible to quantify these benefits, but they may be significant.[21]

An Equality Impact Assessment, Options for dealing with squatting, was also published in which some potential for indirect discrimination against people with certain protected characteristics was identified:

> Although the proposed new offence will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to squat, and therefore more likely to be criminalised, with the attendant consequences of criminalisation. Although clear conclusions are difficult to draw from the available data, we have identified in particular potential differential effects in respect of age, disability, race and sex. However, even if it were established that these effects constituted a particular disadvantage, we believe that the new offence represents a proportionate response to the problem of squatting and the aim of protecting the legitimate rights of residential property owners.[22]

A couple of amendments to New Clause 26 (now section 144 of the Act) were tabled and debated at Report Stage – these amendments would have:

- provided that no offence of squatting would be committed where a property had been empty for at least six months and no attempt to refurbish, sell or let the dwelling had been made at the time it was squatted; and
- provided that no offence would be committed if the person initially entered the building as a trespasser before the commencement of New Clause 26.[23]

---

20 Ibid.
21 Ibid.
22 EIA, Options for dealing with squatting, 2011
23 HC Deb 1 November 2011 c864

The Minister, Crispin Blunt, explained the Government's reasons for not extending the offence to commercial premises:

> As my hon. Friend the Member for Chatham and Aylesford (Tracey Crouch) said, there are others who will say that any new offence should extend to squatting in commercial premises. As I said to her, I remain concerned about squatting in those properties and will work with other Departments and the enforcement authorities to see whether action against existing offences such as criminal damage and burglary could be enforced more effectively in those cases.
>
> The Metropolitan police acknowledged, in response to our consultation, that a lack of training and practical knowledge regarding the law on squatting may be a barrier to effective enforcement. My officials will work with the Home Office and the wider police service to address these issues and fill any gaps in current police practice. We will keep the situation under review in relation to non-residential property and are not ruling out further action in the future if it is needed.[24]

The Minister also set out the Government's position in relation to the proposed amendments:

> On amendment (a), many squatters claim that they do not cause any harm to anybody because they look for empty properties to occupy. In the responses to our recent consultation exercise, that point was made by squatters and squatters groups, but respondents who made that argument were missing one rather important point: the houses are not theirs to occupy. There are many reasons why a house might be left empty for more than six months without any steps being taken to refurbish, let or sell the building. For example, somebody might decide to do charitable work in another country for a year, or they might visit their second home during the summer months only. It is the owner's prerogative to leave the house empty in those circumstances. To say that property owners or occupiers should not be protected by the criminal law in these circumstances would be unjust and it would considerably weaken our proposed new offence.
>
> Consultation responses highlighted a concern about the number of properties that are left empty on a long-term basis. They argued that such properties can crumble into disrepair and might be seen as a blight on the local neighbourhood. But permitting squatters to occupy derelict, crumbling, unsafe houses cannot be the answer. We are doing a number of things to encourage absent owners to make better use of their properties.
>
> We want to increase the number of empty homes that are brought back into use as a sustainable way of increasing the overall supply of housing, and to reduce the perception of neglect that can blight neighbourhoods. Reducing the number of empty homes will also help to reduce the incidence of squatting. That is why we have announced £100 million of capital funding within the affordable homes programme to tackle problematic empty homes—that is properties that are likely to remain empty without extra direct financial assistance from the Government. This programme will deliver at least 3,300 affordable homes by March 2015, as well as engaging local communities in dealing with empty homes in their area.

---

24 Ibid.

> Amendment (c) is designed to exempt squatters from the offence if they occupy residential buildings before the date of commencement. Let me be clear that we have no plans to punish people retrospectively. If they have squatted in the past but are no longer squatting when the offence comes into force, the offence will not apply. However, we would be creating a significant loophole if we exempted squatters who initially entered the building as a trespasser in the run-up to commencement even though after commencement of the offence they remain in the building as a trespasser, they know or ought to know that they are a trespasser and that they are living there or intend to live there. Such an occupation would be no less painful for the property owners concerned.[25]

Andy Slaughter, for Labour, raised the possibility of increasing homelessness[26] while John McDonnell questioned the extent of squatting and the evidence on which the need for legislation in this area was based.[27] He went on to question the impact of the new offence on police resources:

> If the current problem is with police resources, the question—which has been raised by the High Court enforcement officers, the Criminal Bar Association and the Law Society—is whether the police would have the resources to enforce the law if a new offence is created, when they appear to be unable to enforce it against the existing offences. The Met has acknowledged that and is seeking to address it, as my hon. Friend the Member for Hammersmith and the Minister have said. The Metropolitan Police Service said in its statement that there was a lack of training and practical knowledge on the law on squatting, particularly section 7 of the 1977 Act, which may be a barrier to effective enforcement, and that it was conducting further training to address the issue.
>
> By criminalising squatting, the new clause certainly does not appear to be needed, but it will have consequences if introduced, some of them unintended. The new law will have consequences for those who will be brought into the criminal justice system for the first time, and it is worth repeating who those people are likely to be. The housing charity Crisis commissioned research into squatting from the centre for regional, economic and social research at Sheffield Hallam university, which was published only a month ago, in September. It found that, by and large, squatters were homeless people.[28]

The amendment to exempt properties that have been empty for at least six months was pressed to a vote – it was defeated by 23 votes to 300.[29] The House agreed that New Clause 26 (un-amended) should be added to the Bill by 283 votes to 13.

Baroness Miller sought to amend the squatting clause (clause 130 of HL-Bill 109) during its committee stages in the House of Lords. Her amendment would have provided that no offence of squatting would be committed where a property had been empty for at least six months and no attempt to refurbish, sell, or let the dwelling had been made at

---

25 HC Deb 1 November 2011 cc867-8
26 HC Deb 1 November 2011 c871
27 HC Deb 1 November 2011 cc874-5
28 HC Deb 1 November 2011 c877
29 HC Deb 1 November 2011 c889

the time it was squatted.[30] The Baroness questioned the cost of criminalising squatting and raised issues around its impact on vulnerable homeless people. She argued that the current law provided adequate protection when properly applied and that the focus of the Government should be on tackling the number of empty properties.

Responding for the Government, Lord McNally said:

> The whole point of creating this offence is that the Government want to send a clear message to existing and would-be squatters that occupying someone else's house without permission is unacceptable, whatever the circumstances of the rightful owner or the state of the building. It does not suddenly become acceptable to squat if the owner of a property happens to go away for six and a half months. Amendment 188 is designed to protect people who squat in residential buildings that have been empty for more than six months, where no significant steps are being taken to refurbish, sell or let the property.
>
> The Government's view is that the proposed new offence is entirely proportionate. There are many reasons why a residential building might be left empty for longer than six months without any steps being taken to sell, let or refurbish the property. As the noble Baroness has acknowledged, the Government are bringing more empty homes back into use and addressing the shortage of affordable housing as a top priority. Allowing squatters to occupy other people's properties cannot be part of that answer. I urge the noble Baroness to withdraw her amendment.[31]

Baroness Miller withdrew her amendment but said she would return to the matter on Report.[32] At Report stage she moved an amendment to provide that the offence would not be committed where the property concerned had been empty for at least 12 months and was not subject to a current planning application (amendment 36).[33] She moved a further amendment (41) to ensure that the offence would not be brought into force until consultation had been carried out with "representatives of local authorities and other such persons as considered appropriate."

Baroness Northover responded for the Government – she gave a commitment that, before the new criminal offence was commenced, the Government would work closely with relevant bodies "to ensure that they are aware of the new offence."[34] Baroness Miller withdrew amendment 36 but pressed amendment 41 to a vote – it was defeated by 107 votes to 21.[35]

The *Legal Aid, Sentencing and Punishment of Offenders Act 2012* completed its parliamentary stages and obtained Royal Assent on 1 May 2012. As previously noted, section 144 was brought into force on 1 September 2012.

---

30 HL Deb 15 February 2012 cc905-8
31 HL Deb 15 February 2012 c911
32 HL Deb 15 February 2012 c912
33 HL Deb 27 March 2012 c1353-4
34 HL Deb 27 March 2012 c1364
35 HL Deb 27 March 2012 c1378-9

Comment

Homelessness charities raised the potential impact of criminalising squatting on vulnerable individuals, such as those who have mental health problems or who are reliant on alcohol or drugs. The Government said it would take responses from those with protected characteristics under the *Equality Act 2010* into account when deciding the best way forward.

Shelter, the housing charity, did not support further criminalisation of squatting:

> Shelter does not support further criminalisation of squatting, nor the repeal or amendments of relevant sections of the Criminal Justice Act, due to possible undermining of legitimate tenant protection and other unintended consequences, and due to the fact that criminal law already exists to deal with squatting in residential premises.
>
> We believe that legal changes should be based on robust, quantifiable evidence to ensure they are proportionate to the scale of the problem and unintended consequences are minimised.[36]

Several respondents to the consultation exercise referred to the proposals as "media driven" – for example the Law Society's response said:

> We are concerned that the proposals in this consultation are based on misunderstandings by the media of the scale of the problem and a misunderstanding of the current law.
>
> The consultation proposes to create a new criminal offence of squatting. This is unnecessary. It is our experience that squatting is not a significant problem and that where it does occur there is a range of laws both civil and criminal that are adequate to deal with it.
>
> Paragraphs 3 and 12 of the paper acknowledge a lack of statistical evidence. We object to changes to the law that are not evidence based. It is entirely disproportionate to create a new offence without obtaining evidence to assess the scale of the problem. We urge the government to conduct statistical research rather than reacting to media heightened public concern created by the media. This is a question of education and administration not legislation.
>
> The consultation has partly been prompted by the media interest in the cases such as that of Dr Oliver Cockerell and his pregnant wife, Mrs Cockerell. The media reported that the police told the Cockerells that the law did not allow them to remove the squatters. This is legally incorrect. Criminal offences already exist for a squatter occupying a residential home. Under the Criminal Law Act 1977, it is a criminal offence for a squatter to remain if they have been informed of a displaced occupier or a protected occupier. The police can arrest a squatter who does not leave, as a trespasser. Squatting in a commercial property is a criminal offence once the interim possession order is made and served and the squatters have not left within 24 hours. The current law is comprehensive and effective.[37]

---

[36] Shelter's response, October 2011

[37] Law Society's response, October 2011 [link now broken]

Crisis commissioned research by the Centre for Regional and Economic Research at Sheffield Hallam University into the issue of squatting. The findings were published in September 2011. In Squatting – a homelessness issue the researchers concluded:

- squatting is a common response to homelessness;
- most homeless people who squat try other avenues to resolve their housing problems before squatting;
- squatting reflects a lack of other options and limited support for single homeless people;
- many squatters have significant welfare needs;
- most squatters who are homeless squat in empty, disused dwellings and not other people's homes;
- squatting is a homelessness and welfare issue not a criminal justice issue; and
- criminalising squatting will criminalise a vulnerable homeless population.

The Housing Law Practitioners Association sent a letter signed by 158 members and non-members to all major newspapers and news organisations on 26 September 2011. The letter concerned the misrepresentation of squatters' rights in the press and by politicians. Mike Weatherley MP, who campaigned for the criminalisation of squatting, responded with his own letter.

Research commissioned by Squatters' Action for Secure Homes Can We Afford to Criminalise Squatting? (March 2012) argued that the cost of criminalisation could reach £790m in the first five years, wiping out the £350m of savings the 2012 Act was aimed at achieving through legal aid reductions.

Concerns around the potential to increase homelessness were reiterated by homelessness charities when section 144 was brought into force in early September 2012.[38]

[38] *Inside Housing*, "Charities fear squatting law will increase homelessness," 31 August 2012

4. Impact of section 144

4.1 Arrests, convictions and sentences under section 144

The exact numbers of those affected by the change in law is not clear, national crime statistics are not routinely published at a level of detail which enables squatting offences to be identified.

Most convictions under section 144 do not lead to imprisonment. In an answer to a WPQ on 18 November 2013, Jeremy Wright, Parliamentary Under-Secretary at the Ministry of Justice, said:

> **Jeremy Wright:** The offence of squatting in a residential building has been actively enforced since it was commenced on 1 September 2012. We do not hold data on the number of arrests but data for just the first four months shows 38 defendants had been proceeded against at magistrates courts for this offence by the end of December 2012. Over the same period, 32 offenders were found guilty of and sentenced for the offence. Of these offenders:
>
> 14 were fined. The average fine was £113.79;
>
> 10 were given a conditional discharge;
>
> Five were given a community sentence;
>
> One offender was sentenced to immediate custody of seven days;
>
> Two were otherwise dealt with.[39]

Squatters' Action for Secure Homes (SQUASH), in its report of June 2016, estimated that 736 people had been arrested, 326 prosecuted and 260 convicted since section 144 came into force. These estimates are based on responses to Freedom of Information (FOI) requests.

This report estimated that

> […] there were 69 convictions in 2015, with the most popular sentences being Fines (51%), Conditional Discharges (20%) and Community Sentences (10%). However 3 people were imprisoned for section 144 in 2015, and the figure since 2012 is estimated to be 11 sent to prison.[40]

SQUASH acknowledges that these figures are not exact because only 20 institutions provided information in response to 37 FOI requests.

The latest figures from the MoJ[41] show that there were 59 convictions in 2016, with the most common sentence being Conditional Discharges (37%), Fines (22%) and Community Sentences (19%). 8 people were sentenced to imprisonment in 2016 compared to the 11 estimated by SQUASH to have been imprisoned in the previous four years.

---

39 HC Deb 18 November 2013 cc814-5W
40 SQUASH, Squatting Statistics 2015, updated 27 June 2016
41 MoJ, Criminal Justice System statistics quarterly: December 2016: Criminal justice statistics outcomes by offence tool, 18 May 2017

4.2 Impact on the incidence of squatting

In a blog for Legal Action Group (2013), Andrew Arden QC and Annette Cafferkey concluded that impact of section 144 was unclear:

> What difference has this made in terms of reducing the incidence of squatting? The Government does not know: it did not know how extensive the problem was before it implemented the new offence and it does not know now; it has not asserted – because it cannot assert – that the offence has made the slightest difference.[42]

The lack of systematic evidence on the extent of squatting prior to section 144 coming into force presents challenges for any assessment of its impact. The Arden and Cafferkey blog suggested that criminalisation was being used as a means of regaining possession more quickly:

> Anecdotally, it appears that social landlords and the police are commonly 'co-operating' to use the existence of the offence to achieve repossession without needing to take the matter all the way to trial – criminal or civil.[43]

4.3 Concerns over squatter wellbeing

SQUASH has published a number of reports criticising the impact of criminalisation, these criticisms are summarised below:

- section 144 targets vulnerable homeless people, often with mental health issues and learning disabilities, who use squatting as a last resort;
- evictions under section 144 lead to greater levels of homelessness and associated risks;
- since September 2012, evictions have become quicker, leading to shorter squatting periods and a more unsettled lifestyle for squatters;
- the law is used by the police to make arrests and/or evict squatters when the alleged illegality may be subject to dispute. SQUASH fears that police staff and magistrates lack the legal training to identify when a breach of section 144 has taken place: for instance, deciding what constitutes a 'residential' property;
- section 144 is proving more expensive to the taxpayer than envisaged in the impact assessment from the Ministry of Justice. This is because it did not factor in the cost of policing the law, nor those costs related to after-effects such as an increase in rough sleeping, rehabilitation and new Housing Benefit claims;
- criminalisation has led to a poorer public perception of squatters, leading to greater intimidation and violence towards them; and
- criminalisation, and keeping more homes empty, may be contributing to a rise in property prices.[44]

---

42 A Arden, and A Cafferkey (on behalf of Arden Chambers), Squatting and the extending reach of the criminal law: effective or not?, Legal Action Group, 21 March 2013

43 Ibid.

44 For more information, see SQUASH, The Case Against Section 144, March 2013, SQUASH, Homes, Not Jails: 28-Month Review of Section 144 of the Legal Aid,

5. Devolved administrations

Section 144 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* applies to **England and Wales only**.

The *Trespass (Scotland) Act 1865* made squatting in **Scotland** a criminal offence. Part 3, article 1 provides:

> Every person who lodges in any premises, or occupies or encamps on any land, being private property, without the consent and permission of the owner or legal occupier of such premises or land, and every person who encamps or lights a fire on or near any road or enclosed or cultivated land, or in or near any plantation, without the consent and permission of the owner or legal occupier of such road, land, or plantation shall be guilty of an offence punishable as herein-after provided.

For more information on Scottish law and procedures for tackling squatting see:

DWF, The best jurisdiction for squatting: England or Scotland? April 2016

Lindsays, Squatting in Scotland - Is it already an offence? 2012

Squating is not a criminal offence in **Northern Ireland**. Housing Rights Northern Ireland and NI Direct provides further information.

Sentencing, and Punishment of Offenders Act, April 2015 and SQUASH, Squatting Statistics 2015 The link between rising homelessness and the criminalisation of squatting, May 2016

6. Claiming good title (adverse possession)

The law of adverse possession[45] provides a means by which people can claim title over land by occupying it adversely or 'squatting' for a period of time. The broad principle underlying the law of adverse possession is the rule that no action may be brought for the recovery of land after the expiration of a statutorily prescribed period of time running from the date when the right of action first accrued. The *Limitation Act 1980* provides that "no action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him".[46] The *Limitation Act* reflects the policy that "those who go to sleep upon their claims should not be assisted by the courts in recovering their property".[47]

Where adverse possession is used as a means to gain ownership of land, the occupiers have to show either:

(i) a discontinuance by the paper owner followed by possession; or

(ii) a dispossession (or ouster) of the paper owner.

Action for the recovery of land by a paper owner must be brought before the expiration of the limitation period.

From October 2003 the *Land Registration Act 2002* created new rules in relation to registered land which conferred greater protection against the acquisition of title by persons through adverse possession:

> The essence of the new scheme is that a squatter will be able to apply to be registered as proprietor after 10 years' adverse possession. However, the registered proprietor will be notified of that application and will, in most cases, be able to object to it. If he or she does, the application will be rejected. However, the proprietor will then have to take steps to evict the squatter or otherwise regularise his or her position within two years. If the squatter is still in adverse possession after two years, he or she will be entitled to be registered as proprietor. We consider that this new scheme strikes a fairer balance between landowner and squatter than does the present law. It also reflects the fact that the basis of title to registered land is the fact of registration, not (as is the case with unregistered land) possession.[48]

Occupiers who had been in adverse possession for 12 years when the Act came into force on 13 October 2003 were covered by transitional provisions set out in Schedule 12 to the 2003 Act, i.e:

- rights acquired under the *Limitation Act 1980* subsist against the registered proprietor; and
- for 3 years, the right to be registered had overriding status.

---

45 Commonly referred to as 'squatters' rights'
46 Section 15(1)
47 *RB Policies at Lloyd's v Butler* [1950] 1 KB 76 at 81
48 Lovells Property Newsletter, September 2001 para 1.13

Occupiers in this position could protect their rights by applying for registration within 3 years of 13 October 2003.[49]

Guidance on adverse possession can be found in the Land Registry's Practice Guides:

Practice Guide 4 – adverse possession of registered land; and

Practice Guide 5 – adverse possession of unregistered land and registered land where a right to register was acquired before 13 October 2003.

49 Land Registry Legislation Update 5, Adverse Possession

7. Squatting in commercial premises

Several newspapers and specialist news outlets have indicated that since squatting in residential property was made illegal, squatters have refocussed their attention on commercial buildings.[50]

This has resulted in calls for legislation to criminalise squatting in commercial premises. In September 2013, senior Labour politicians reportedly wrote to the then Justice Secretary, Chris Grayling, asking for an extension of the law to commercial premises.[51] A number of PQs on the matter have been tabled, for example by Mike Weatherley, Philip Davies, Mary Macleod and Dr Matthew Offord.[52] In an answer from 26 February 2014, Damian Green said:

> **Damian Green**: We have received several letters from MPs and members of the public about this issue. Some have described the financial impact that squatting can have on commercial property owners, including the costs they might incur through loss of revenue, legal fees and building repairs. Others have expressed concern about the impact criminalisation could have on people who squat in dilapidated commercial buildings to avoid rough sleeping. We are considering these issues carefully and have not made any final decisions about whether to criminalise squatting in commercial buildings.[53]

In March 2014, the *Evening Standard* reported that Chris Grayling was supportive of expanding the scope of the squatting law to include commercial property.[54] The 2015 Government decided not to take this forward:

> **Dawn Butler:** To ask the Secretary of State for Justice, if he will bring forward legislative proposals to extend the provisions preventing squatting in residential buildings to non-residential premises.
>
> **Dominic Raab:** The Government has no plans to bring forward legislative proposals to extend the offence of squatting in the way suggested.[55]

---

50 For instance, see Financial Times, Squatters target commercial buildings, Nov 2012; FM World, The True Cost of Squatting, 7 April 2016; Building.co.uk, Section 144: What about commercial property? 4 October 2013

51 Evening Standard, Make squatting in commercial property a crime, ministers told, 10 September 2013

52 HC Deb 5 February 2013 c110 (PQ 141250) ; HC Deb 6 September 2013 c558-9W (PQ 165181) ; HC Deb 26 February 2014 c385W (PQ 188344) ; PQ 228568 [on Squatting] 25 March 2015

53 HC Deb 26 February 2014 c385W

54 Evening Standard, Chris Grayling: 'Ban squatting in offices and pubs to protect owners', 28 March 2014

55 PQ 41664 [on Squatting] 12 July 2016

BRIEFING PAPER
Number 00355
9 June 2017

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer