

Consultation response

Ministry of Justice

Options for Dealing with Squatting

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Introduction

Squatting is a highly divisive, politicised and sensitive issue. Legitimate concerns about incidents of squatting must be addressed, but we urge the government not to rush through new criminal laws in a knee-jerk reaction to high profile media stories. We believe that the current law is sufficient to protect most homeowners and tenants, i.e. 'displaced residential occupiers' and 'protected intending occupiers'. Squatters who are asked to leave premises by these occupiers and refuse to do so are committing a criminal offence.

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. We are glad that the MoJ has pro-actively sought evidence through this consultation process. If it is the case that incidents of squatting have risen, this should be a clear signal to government that there is dysfunction within the housing system and that some people are taking desperate measures in their search for somewhere to stay. Considerable political attention is being devoted to the issue of squatting based on a handful of cases, while higher-priority housing issues which affect many more people are not receiving such attention.

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.

In particular, we oppose the proposal to repeal or amend Section 6 of the Criminal Law Act 1977, which provides a safeguard against violent eviction. Repeal of this legislation would be a gift to rogue landlords. Despite the attempt to separate tenancy law and squatting law we are concerned that any legislative change could have unintended consequences and undermine protections available to:

- Tenants: legitimate tenants who cannot easily prove their tenancy status, because for example:
 - they have no tenancy agreement or rent book
 - their assured shorthold tenancy has rolled over to a periodic tenancy and the landlord wrongly believes they no longer have a valid tenancy
 - they are sub-letting (knowingly or unintentionally)
 - they are 'unauthorised' in the eyes of the law – the landlord does not have permission to let¹
 - they are the victims of other rogue landlord activity such as a landlord claiming that they are not valid tenants because they are in rent arrears, or simply that the landlord wants to evict tenants without recourse to the courts and will use this legislation as a justification to do so
- Previous occupiers: vengeful ex-partners could try and evict as squatters estranged exes who do not have their name on the title deeds, for example.
- Gypsies and travellers, who are covered by separate law.

Rather than consulting on only punitive legislation, we would like to see the government considering more positive action to reduce squatting, including mechanisms for filling empty homes such as 'property guardian' or 'short-life' housing schemes.

Of the options presented in the consultation, and in the absence of more robust evidence, our initial preferred proposal is '*Option Four: leave the criminal law unchanged but work with the authorities to improve enforcement of existing offences*'. The options are discussed in full below.

¹ Prior to the introduction of the Mortgage Repossession (Protection of Tenants etc) Act 2010, tenants who lived in a property where the landlord had no permission to let were seen in the eyes of the law as trespassers after the mortgage defaulted and lenders took possession of the property. This resulted in evictions with very little notice for legitimate tenants.

Extent of the problem

Q1: Is squatting a particular problem in your area and where does it occur the most e.g. in residential or non-residential property? Were these properties empty/ abandoned/ derelict before they were occupied or were they in use?

Shelter does not collect this information. We note that many of the stories reported in the press have been buy-to-let rather than owner-occupied properties. Qualitative research suggests that the types of properties accessed by squatters can vary greatly.²

Q2: Please provide any evidence you have gathered on the number of squats and the nature of squatting in your area or nationwide.

Shelter does not collect this information. Shelter's online advice page on squatting has had over 11,400 unique page views over the last year. By way of comparison, our online advice page on sleeping on the street had nearly 13,200 unique page views over the same period.

The studies of Dutch sociologist Hans Pruijt provide some insight into the nature of squatting.³ Pruijt writes that "researchers who tried to establish why people were squatting found that unmet housing needs were an important motive for all squatters" and sets out five 'configurations' of squatting :

- Deprivation based squatting
- Squatting as an alternative housing strategy
- Entrepreneurial squatting
- Conservational squatting
- Political squatting

That squatting is most reported in times of housing crisis (including post-WW2) would suggest that deprivation, or severe housing need, is a key motivation towards squatting.

Shelter advises clients that squatting is "best avoided"⁴ and our website explicitly recommends that homeless people should seek help from a local authority. Nonetheless, we do take some issue with the minister's statement that "there are avenues open to those who are genuinely destitute". Single homeless people are not always able to access temporary housing via local authorities⁵ and may struggle to find available spaces in hostels or shelters.⁶ Caught between two undesirable and potentially dangerous choices - sleeping on the street exposed to the elements, or sleeping in an unoccupied building – it is understandable that some choose the latter. If there were genuine, accessible and affordable 'avenues open', it is doubtful that such people would choose a precarious alternative instead.

Q3: Do you have any data or other information on the demographic profile of people who squat – e.g. do they share any of the protected characteristics set out in the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation). Do they live alone or with others?

Shelter does not collect this information. As the consultation document readily acknowledges there is a dearth of reliable information about the profile of people who squat. Research from the early 1990s, when a similar consultation paper was launched, is badly out of date.

²Reeve, K. *The Hidden Truth About Homelessness: Experiences of single homelessness in England*, Crisis 2011; Reeve, K. *Life on the Margins; The experiences of homeless people living in squats*, Crisis & The Countryside Agency 2004.

³ Erasmus University Rotterdam [online], *Squatting in Europe*, http://www.eur.nl/fsw/staff/homepages/pruijt/publications/sq_eur/ , (accessed September 2011)

⁴ See http://england.shelter.org.uk/get_advice/homelessness/squatting

⁵Rice, B. et al, *Reaching out: A consultation with street homeless people 10 years after the launch of the Rough Sleepers Unit*, Shelter (in partnership with Broadway), 2007

⁶ Broadway & RIS, *Accommodation for single homeless people in London: Supply and Demand*, Broadway 2006

Shelter does not wish to speculate or use anecdotes alone to answer this question; claims from both the pro- and anti-squatting lobbies have tended to be based on perceptions, perhaps exacerbated by media coverage, or on a handful of cases.

However we do note evidence that:

- In a recent survey of 364 non-statutory homeless single people, 39 per cent report that they have squatted, a similar proportion to those reporting that they had lived in private rented housing (32 per cent) or social housing (36 per cent).⁷
- The same research also suggested that men were slightly more likely than women to have squatted and that A8 nationals may form a large proportion of the squatting population.⁸
- A Shelter consultation with 257 homeless people in 2007 also found that squatting was a fairly common accommodation option.⁹

The existing law

Q4: Do you think the current law adequately deals with squatting? Please explain your reasons.

We believe that the current law is sufficient to protect most homeowners and tenants, i.e. displaced residential occupiers and protected intending occupiers. Section 7 of the Criminal Law Act 1977 is quite clear that squatters asked to leave by these occupiers who fail to do so are committing a criminal offence. If this law is badly enforced or misunderstood by the police or public that does not imply that a change to the law is necessary. Civil law provides a clear route for eviction of squatters from other types of property.

Q5: If you have taken steps to evict squatters from your properties, what difficulties have you encountered (if any) in removing squatters from your property using existing procedures? Have you had any positive experiences of using existing procedures?

Shelter is not in a position to answer this question.

Option One

Q6: Do you think there is a need for a new criminal offence of squatting?

No. Shelter does not believe that a case can be proven that criminalisation is a necessary or proportionate response, above all because the current law is largely sufficient and already contains an element of criminality.

Unless significant and robust evidence to the contrary is produced during the course of the consultation, we will remain concerned that creation of a new offence will simply criminalise homeless and vulnerable people,¹⁰ risk unintended consequences, and create new bureaucracy and cost. In addition:

- To progress this law would take a significant amount of parliamentary and government time which would be better spent addressing the root causes of homelessness. We are not convinced that the government's current strategy is sufficient to tackle the housing crisis.
- Although the potential costs are not yet clear this law would also place a strain on the criminal justice system and public finances, money that could more usefully be spent investing in housing provision and services.

⁷ Reeve, K. *The Hidden Truth About Homelessness: Experiences of single homelessness in England*, Crisis 2011

⁸ Ibid.

⁹ Rice, B. et al, *Reaching out: A consultation with street homeless people 10 years after the launch of the Rough Sleepers Unit*, Shelter (in partnership with Broadway), 2007

¹⁰ A concern expressed by homelessness services charities: see http://homeless.org.uk/sites/default/files/Joint_letter_on_squatting.pdf

- Criminalisation would shift responsibility from property owners onto the police, who are ill-equipped to deal with complex tenancy law. Landlords should be encouraged to make use of property and secure it appropriately – not to leave it empty for long periods.
- There are positive alternatives to new legislation which have not been adequately explored.
- A criminal offence would be difficult to enforce.
- Comparisons to Scottish squatting law are ill-founded. The ban on trespass in Scotland was introduced in 1865 in response to squatting following the highland clearances; it was not a modern response to the problems of a modern housing market. There have been very few prosecutions under the Trespass (Scotland) Act 1865 - just 26 over 2005-06 - 2009-10 - and it is probable that these are largely prosecutions of gypsies and travellers rather than squatters.

Q7: If so, do you agree with the basic definition of squatting set out above (i.e. the unauthorised entry and occupation of a building)?

We do not agree with further criminalisation. However, any definition of squatting in the context of a criminal offence must include reference to *mens rea* or intentionality, in order to avoid prosecution of those who did not purposefully intend to squat. For example, victims of fake landlord scams are not wilfully squatting, but believe they have a valid tenancy. Ex-partners who have lived in a property for a long time but do not have their name on the title to the property would not consider their entry to be 'unauthorised'.

Addition of a word such as 'wilful' to the definition would help to capture this. With this addition, we think that the definition would be suitable, broadly capturing the fact that squatters are entering a building without permission or invite to do so and with knowledge that they are not entitled to be there.

Q8: How should the term 'occupation' be defined? Should it cover those who occupy a building for a short period (e.g. a couple of hours)?

Again, we do not agree with further criminalisation. Occupation is a term that is currently ill-defined in housing law, and carries different definitions across different policy areas. Deciding what constitutes occupation is for this reason often better suited to the deliberative process of a civil court. A definition could seek to grasp that the occupants clearly intend to stay in the property, or that their occupation is causing immediate displacement of another household. Twenty-four hours occupation of a property might signify intention to stay.

Q9: What buildings should be covered by the offence? Should it cover all buildings or only some (e.g. should it cover public and private buildings, outbuildings, abandoned or dilapidated buildings, or buildings that have been empty for a long time)?

We do not think that the offence should be created. However, should the law go ahead 'buildings' would need to be defined as distinct from land to ensure harmonisation with existing laws for gypsies and travellers. In our view the law should seek to focus on the type of occupier displaced by squatting and the detriment caused rather than the building *per se*. Occupied, residential homes would be the obvious choice for prioritisation, but these are already covered by existing criminal law

Q10: Do you think there should be any exemptions to any new offence of squatting? If so, who should be exempt and why?

As per previous questions, we oppose the creation of a new criminal offence. If such a law were to proceed – which we would consider a mistake - it must be framed in such a way that minimises unintended consequences and must not further dilute tenants' rights. In the introduction we highlighted the possible unintended consequences of a new law on tenants and others. These groups should not be included in the definition of 'unauthorised entry' in the first place, so should not require exemptions.

Q11: Do you agree that the existing law provides adequate protection against false allegations?

The existing law is poorly understood. Shelter advisers cite cases of rogue landlords threatening use of the law to harass and evict legitimate tenants as squatters. In the absence of effective regulation of

landlords and mandatory written tenancy agreements, and with many tenants simply unaware of their rights or unable to access legal advice, the existing law can be a boon to rogue landlords who wilfully exploit vulnerable tenants.

Housing law is complex. It will not be easy for a policeman, let alone an eyewitness, to determine the true ownership of a property. This is evident in the work of empty homes officers who can spend many months identifying and finding property owners. A legitimate House of Multiple Occupation (HMO), with low-income shift workers coming and going, could easily be mistaken for a squat. Relatives or friends who are 'house-sitting' as a favour to a property owner who is away or in hospital might be accused. A property may be bequeathed to a relative following death of the owner, and the legal paperwork in such cases can take time to finalise. Reporting such groups as squatters is more likely to be a result of benevolent intent based on mistaken assumptions than of deliberate accusation.

Alongside such ignorant interference, however, it is possible that false allegations could be deliberately aimed at discriminated minorities. Neighbours who do not like a particular household, for example because of excessive noise, may suspect and report squatting. Neighbours who harbour racial prejudices may accuse new migrants to the area of being squatters.

Q12: If not, what other steps could be taken to protect legitimate occupiers from malicious allegations?

We are unclear as to whether this question relates to existing law or potential future laws. In either case, legitimate occupiers need full and impartial advice, including about their housing options. The suggestion that a counter-balancing offence (of knowingly or recklessly accusing a legitimate tenant of being a squatter) be created has merit, but also goes to show just how complicated criminalisation would be.

Q13: What do you think would be the most appropriate maximum penalty for a new squatting offence?

Again, we oppose the creation of a new criminal offence. If an offence were created we do not think that fines would be realistic as squatters are unlikely to be able to pay them. The proposal to deduct fines from benefits is also unworkable - in order not to drive offenders into utter destitution, deductions would have to be so low that any fine would take many years to repay. A low fine might be an insufficient deterrent, and we agree that imprisonment is a costly and disproportionate punishment that will likely throw offenders into further housing difficulty.¹¹ Community service may be a more realistic punishment, or the threat of a criminal record may in itself be a deterrent.

Option Two

Q14: In your experience (e.g. as a displaced residential occupier or protected intending occupier or as a law enforcer), how effective is the existing offence in section 7 of the Criminal Law Act 1977?

We do not have experience of using this offence, but it is clear from media and public opinion that the existence of the offence is not widely known about or understood.

Expansion of Section 7 provisions may help to deter squatting in commercial premises, but should only be pursued if there is strong evidence that civil procedures are not sufficient for those who are not displaced residential occupiers or protected intending occupiers. For example, if landlords or business owners can demonstrate significant loss to livelihood incurred by the extra time it takes to evict through the courts.

¹¹ Ex-offenders often have difficulty finding new housing and are more likely to reoffend if they cannot find suitable accommodation, see Wilson, W. *Standard note: Housing ex-offenders*, House of Commons library 2011; *Shelter campaigns briefing: housing and reoffending*, Shelter 2010

The need to obtain a court order allows a court to decide who the rightful occupier of a property is, in line with the fair and consistent application of justice. While Section 7 procedures are quicker, inevitably the decision lies with the police and requires more immediacy. Therefore extending Section 7 could put greater pressure on the police to make difficult decisions and potentially increase the likelihood of illegal evictions.

Expansion of Section 7 would, in effect, have a very similar outcome to criminalisation - all those who refused to leave a property (residential or not) would be committing a criminal offence.

Q15: How does the definition of ‘displaced residential occupier’ and ‘protected intending occupier’ work in practice?

The definitions suitably capture those who we believe should be protected by the more immediate protections of criminal law - the occupiers of a home. It is possible that there are some loopholes which could be closed - for example owner-occupiers who had temporarily let out their home on licence and were therefore not in occupation immediately before the trespasser entered.¹² Intending private tenant occupiers are not covered: this aspect of the definition should be retained as it helps to stop rogue landlords evicting tenants as squatters by moving new tenants in.

Q16: If we were to expand section 7 so that it covered squatters who refused to leave other types of building when required to do so by the rightful occupier, what type of buildings and what types of occupier should be specified?

The current provisions give additional protection to people who need the buildings to house themselves, which is a sound rationale. Extension to other types of building would presumably be to further protect the livelihoods of other building owners, who might be business owners, landlords, or other property investors, including companies.

The guiding principles for any extension should be that the building will be, or could be, put to better use, particularly in the immediate term. A long abandoned and derelict building, which the owner has no intention to use or sell, is simply wasted if left empty. Flats left empty by foreign investors could be put to better use. On the other hand, an empty social home which has been squatted could be re-allocated to a family in housing need (although in practice social landlords can use civil procedure or access section 7 by allocating a tenant and using them as the protected intending occupier). This distinction may, however, be difficult to encode into law.

Option Three

Q17: If section 6 were amended to exempt additional categories of people from the offence, which categories should be exempted? Are there any categories of people that should not be exempted?

We strongly oppose outright repeal of Section 6 of the Criminal Law Act 1977. This section protects private tenants, who now make up some 16 per cent of households in England, from forcible eviction and violence. To repeal the Section would be a gift to rogue landlords. It protects people from violence at their doorstep - including victims of domestic violence - and is not applicable to displaced residential occupiers or protected intending occupiers, so still allows those deprived of a home the right to re-enter their homes using force where necessary.

We do not think there are any amendments which would result in beneficial outcomes. Extensions could lead to increased incidents of violence. Non-resident landlords should not be exempted, for the sake of protecting legitimate tenants. Section 6 has a strong symbolic value as a final defence against violent eviction. Exempting additional categories of people would severely weaken this.

¹² In practice we do not believe this to be a major problem as owners should be able to demonstrate that they were intending to return and had not created an Assured Short hold Tenancy.

Amending to exempt owners of commercial premises could help some business owners to regain possession more quickly but would put an end to political sit-ins; Shelter is not best placed to address these issues as they are not principally housing issues.

Q18: Do you know of circumstances where the section 6 offence has been used – was it used to protect a tenant from forcible entry by a landlord or was it used for other reasons, e.g. to stop a violent partner from breaking back into his home? Please describe the circumstances.

We do not have any cases available.

Option Four

Q19: What barriers (if any) are there to enforcement of the existing offences and how could they be overcome?

Anecdotally, we would suggest that inaccurate media reportage and a lack of police experience and/or training mean that existing offences are not always well understood or effectively enforced. Some landlords also report that they find the existing civil offences too slow, or the costs of legal fees prohibitive, but this is refuted by some landlord lawyers.¹³ Landlords may perceive risks to using an Interim Possession Order (IPO); these can be appealed and tenants compensated. But if landlords are sure of their grounds and have a genuine claim, we see no reason why IPOs could not be used more widely to ensure swifter eviction of squatters. We would like to see enforcement agencies who are dealing with squatters making active links with local authorities and homeless charities, so that squatters can access adequate support services and appropriate housing advice.

Option Five

Q20: Are you aware of the Government's new guidance on evicting squatters under existing laws? If so, is it helpful? Do you think the guidance could be improved in any way?

The guidance covers all the key legal issues and could be more widely promoted to homeowners who are concerned about their rights.

Wider impacts

Q21: If any of the proposals in this document were to be adopted, what impact would this have on you, your organisation or those whose welfare you promote?

The consultation document notes the potential costs to the state. Impacts of all the options aside from option 5 ('do nothing') to Shelter clients and Shelter as an organisation could include:

- Increased demand for advice about squatting from both owners and squatters, placing additional burdens on both voluntarily and statutorily funded housing advice services.
- Potentially an increase in rough sleeping and street homelessness, with knock-on impacts for homeless services providers and advice agencies.
- Potentially an increase in landlord/ tenant disputes (aspects of the proposals that we believe could have this unintended consequence are detailed in relevant sections above), with knock-on impacts for courts and advice agencies.
- Direct detriment to displaced squatters, including those with children.

¹³ See <http://www.landlordlawblog.co.uk/2010/11/30/urban-myth-evicting-squatters-is-difficult-and-takes-a-long-time/>

Q22: Do respondents who identify themselves as having a protected characteristic (listed in paragraph 39) or who represent those with protected characteristics think any of the proposals would have a particular impact on people who fall within one of the protected characteristics? If so why?

We have no comments on this question.

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Until there's a home for everyone

In our affluent nation, tens of thousands of people wake up every day in housing that is run-down, overcrowded, or dangerous. Many others have lost their home altogether. The desperate lack of decent, affordable housing is robbing us of security, health, and a fair chance in life.

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More than one million people a year come to us for advice and support via our website, helplines and national network of services. We help people to find and keep a home in a place where they can thrive, and tackle the root causes of bad housing by campaigning for new laws, policies, and solutions.

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