



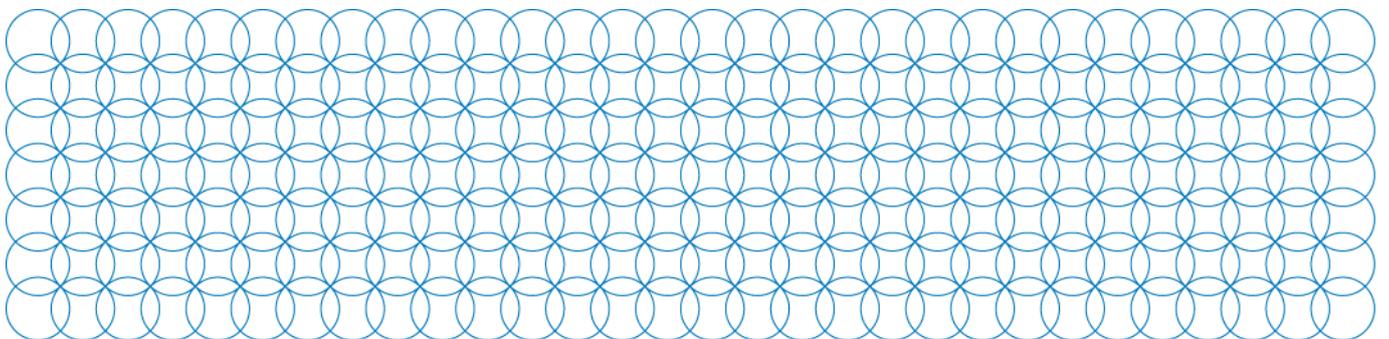
Ministry of
JUSTICE

Options for dealing with squatting

Consultation Paper CP12/2011

This consultation begins on 13 July 2011

This consultation ends on 5 October 2011





Ministry of
JUSTICE

Options for dealing with squatting

**A consultation produced by the Ministry of Justice. It is also
available on the Ministry of Justice website at www.justice.gov.uk**

About this consultation

- To:** The consultation is aimed at anyone who might be affected by these proposals; anyone who has been the victim of squatting; and anyone who has experience (positive or negative) of using the current law or procedures to get squatters evicted. The views of the law enforcement agencies, local authorities, housing associations, homeless charities or other organisations which might be affected by these proposals would be particularly welcome.
- Duration:** From 13 July 2011 to 5 October 2011
- Enquiries (including requests for the paper in an alternative format) to:** Robin Edwards or Yvonne Murray
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7th Floor (7.42)
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- Tel: 020 3334 5007 or 020 3334 5008
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- How to respond:** Please send your response by 5 October 2011 to:
- Squatting Consultation
Ministry of Justice
7th Floor (7.42)
102 Petty France
London SW1H 9AJ
- Fax: 020 3334 5051
Email: squatting.consultation@justice.gsi.gov.uk
- Response paper:** A response to this consultation exercise is due to be published in Autumn 2011 at:
<http://www.justice.gov.uk>

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Foreword

The Government has 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 Members of Parliament and corresponded with members of the public who have expressed concern about the appalling impact squatting has had on their properties or local neighbourhoods. I am also aware of reports in the media about squatters occupying residential properties in London, although I know the problem is not confined to the capital nor to affluent residential properties.

The Government does not accept the claim that is sometimes made that squatting is a reasonable recourse of the homeless resulting from social deprivation. There are avenues 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, it is wrong that legitimate occupants should be deprived of the use of their property.

Of course, we must also tackle problems affecting the wider housing market and bring more empty homes back into productive use. The Government intends 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 has 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.

The Government acknowledges that some of the options it is proposing in this paper may have an impact on the enforcement authorities, local authorities, homeless charities and other organisations. Any option we decide to pursue as a result of this consultation will need to be necessary and proportionate, based on evidence of the scale of the problem and the effectiveness of current sanctions. It would also need to be workable and affordable, taking account of the current economic climate and reduction in government expenditure.

But there should be no doubt about the seriousness with which the Government treats this issue or our determination to tackle this problem. 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 Government also recently announced, as part of its proposals for reform of legal aid, its plans to stop squatters getting legal aid to fight eviction. This consultation seeks evidence on the scale of the problem caused by squatters and invites views on a range of options for tackling it, including strengthening the criminal law or working within existing legislation to improve enforcement.

Crispin Blunt
Parliamentary Under-Secretary of State

Introduction

1. Squatting is a form of trespass. It usually involves the deliberate entry and occupation of a building without the consent of the owner or the occupier of that property. At present there is very little information held centrally about the number of people who squat, their reasons for doing so or the types of buildings that tend to attract squatters, but the level of public concern about this issue has led the Government to believe this may be a growing problem in residential and non-residential property.
2. Although trespass is not in itself a criminal offence (it would normally be regarded as a civil wrong) there are already a range of offences in place to deal with the criminal activities of squatters. Owners and occupiers of property can also pursue civil procedures to get them evicted. The Government recently published new guidance on the Direct-Gov and Department for Communities and Local Government websites for people seeking to evict squatters from their properties (see Annex A), but it recognises that more may need to be done to reassure the public that the law is on their side.
3. The purpose of this consultation is therefore twofold: to gather more information about the nature and extent of squatting in England and Wales; and to invite views on whether, and how, existing criminal and civil mechanisms should be strengthened to deal with it.
4. Criminalising squatting is one option that the Government is considering, but depending on the views of consultees there may be other options that could be explored. For example, the Government could consider whether existing offences and civil mechanisms relating to squatting could be strengthened or whether the problems caused by squatters would diminish if existing offences, such as criminal damage and burglary, were rigorously enforced.
5. The extent of the problem caused by squatters is discussed in more detail in chapter 1. The existing law is summarised in chapter 2; possible options for dealing with squatters are set out in chapter 3; and the potential impact of these options on the enforcement authorities and other organisations is discussed in chapter 4.
6. The consultation focuses on squatters who occupy buildings and their immediate surroundings. It does not concern unauthorised encampments on open land which raise different questions of law and practice and are already subject to legislation – in particular, sections 61-62E of the Criminal Justice and Public Order Act 1994 (see Annex B).
7. The consultation is aimed at anyone who might be affected by these proposals; anyone who has been the victim of squatting; and anyone who has experience (positive or negative) of using the current law or procedures to get squatters evicted. The views of the law enforcement agencies, local authorities, housing associations, homeless charities or other organisations which might be affected by these proposals would also be particularly welcome.

8. This paper is concerned only with the law as it affects England and Wales. Criminal justice matters in Northern Ireland and Scotland are the responsibility of the devolved administrations.
9. This consultation is conducted in line with the Code of Practice on Consultation and falls within the scope of the Code. The consultation criteria, which are set out on page 35, have been followed.
10. An Impact Assessment indicating the various groups that may be affected by these proposals is being published alongside this paper. Comments on the Impact Assessment would be very welcome.

Chapter 1 - Extent of the problem

11. There is no data held by central Government about the number of people who squat or their reasons for doing so. Although some research has been conducted by homeless charities and other organisations, research tends to be based on a relatively small number of interviewees who have stated that they may have squatted at some point in their lives. Some of these estimates suggest there may be as many as 20,000 people squatting at any one time, though these figures are difficult to verify. It is also unclear what proportion of squatters tend to occupy empty, abandoned or derelict buildings where they are unlikely to come to the attention of the property owner and what proportion occupy properties that are in use or are in a good state of repair where the unauthorised occupation is likely to inconvenience the owner the most. We would welcome the views of respondents on all of these points.
12. 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 land¹. 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. The Government hopes this consultation exercise will provide a clearer picture about the scale of the problem and allow it to develop affordable and workable proposals to deal with it.

Questions:

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

¹ The figures quoted include number of possession orders against trespassers and number of interim possession orders made in all county courts in England and Wales, except for Edmonton county court. Data from Edmonton county court is currently going through additional quality assurance checks and is therefore excluded from the totals.

Chapter 2 - The existing law

13. The existing law is set out in detail in Annex B, but what follows is a summary of the main offences and civil procedures related to dealing with squatters in buildings.

Criminal offences

14. Although the act of squatting is not a criminal offence, there are offences which criminalise the activities of squatters in certain circumstances. For example, the criminal law already recognises that occupiers of residential premises are particularly in need of protection because they could conceivably be left homeless by the actions of squatters. It is therefore a criminal offence (under section 7 of the Criminal Law Act 1977) for any person who is on residential premises as a trespasser after having entered as such to fail to leave those premises on being required to do so by or on behalf of "a displaced residential occupier" or "a protected intending occupier" of the premises.
15. The offence in section 7 of the 1977 Act does not apply to squatters who refuse to leave non-residential property, but squatters who break into any type of property may be guilty of other offences, such as criminal damage, burglary or the unauthorised abstraction of electricity. It is open to the police to bring charges for these offences where there is sufficient evidence.

Civil procedures

16. It is also open to the occupier of residential or non-residential premises to pursue a civil procedure to regain possession of their property. Owners can seek to remove squatters from their property by applying in the civil courts for a possession order against the squatters as trespassers. The procedure is set out in Part 55 of the Civil Procedure Rules. In claims against trespassers the claim may be brought against "persons unknown" if the claimant does not know the names of the person or persons in occupation. The claimant will need to be able to demonstrate that the persons in occupation are trespassers (which does not include any tenant or sub-tenant whether or not the tenancy has been terminated, or a person occupying by virtue of a licence or some other right), but otherwise need prove only their title to and an intention to regain possession of their property. In these circumstances the court will list the case for hearing as soon as practical but must allow a minimum of five days for service on the defendant/s in the case of residential property or a minimum of two days in the case of other land. If the courts grant a possession order, they will also specify a date for the tenant to leave - usually 14 days after the court hearing. As a general rule, cases will proceed in a county court, but may be brought in the High Court if there is a substantial risk of public disturbance or of serious harm to persons or property which requires immediate determination.

17. Alternatively, a property owner seeking to evict squatters more quickly may decide to apply for an Interim Possession Order' (IPO). An application for an IPO will be heard as soon as possible after issue although there must be a minimum of three days between service on the defendant(s) and the hearing. It has further advantages in that it is backed up by criminal sanctions provided in section 76 of the Criminal Justice and Public Order Act 1994. Squatters who refuse to leave the property within 24 hours of service of the order or return to the property within a year are committing a criminal offence. The maximum penalty for both offences is six months' imprisonment. 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.
18. In view of public concerns, the Government believes it is right to consider whether the laws described above and the way they are enforced should be strengthened.

Questions:

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

Chapter 3 - The options

19. Most people would agree that the act of occupying somebody else's property without permission is wrong, particularly where the occupation causes the property owner to become homeless or impacts negatively on the owner's business. There might be more than one way of addressing this problem, however, and the Government would welcome your views on the five options set out below, which range from the most to the least expansive. These options are included for the purpose of discussion and do not represent settled Government policy. Ministers will take a final view on which options, if any, to pursue once the consultation process is complete.

Option 1 – Create a new offence of squatting in buildings

20. This option would send a clear message that squatting in people's homes, business property or any other type of private or public building is wrong. Creating and implementing any new offence would be subject to the evidence showing that this is both a necessary and proportionate response.
21. If we were to adopt this proposal, we would need to define precisely what is meant by 'squatting' for these purposes. We would appreciate views on this, but broadly we think the definition could cover anyone who enters a residential or non-residential building as a trespasser and occupies it without the authority of the rightful owner/occupier of the property.
22. We do not think any offence should extend to tenants who occupy a property with the permission of the owner, but later refuse to leave (e.g. following a dispute about rent payments). We think that such people are not squatters and that landlord-tenant disputes should continue to be resolved using established eviction processes.

Questions:

- *Do you think there is a need for a new criminal offence of squatting?*
- *If so, do you agree with the basic definition of squatting set out above (i.e. the unauthorised entry and occupation of a building)?*
- *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)?*
- *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)?*

23. We would also appreciate views on whether certain types of squatters should be exempt from any new offence. The basic definition set out above could conceivably cover squatters who thought they had permission to occupy the property – for example, where a bogus letting agent invites them to enter a property without the knowledge of the owner. It could also cover student protests in academic buildings, workers who stage sit-down protests in commercial buildings and squatters who occupy the home of political figures as a form of protest. Some may argue that the

disruption this causes to the property owner may justify criminal sanctions while others may argue that certain types of squatters should be exempt.

Question:

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

24. We would also need to think carefully about practical issues of enforcement. Although in some cases the police could gather evidence from the displaced occupier, neighbours and eyewitnesses about who was the rightful occupier of the property, in others it might not be so clear cut, especially if the squatters said they had permission to occupy the property.
25. Conversely, we would need to ensure that legitimate tenants who had permission to occupy the property were not falsely accused of being squatters. There are no legal requirements for formal, written tenancy agreements and some tenants may have agreed verbally that they could stay in a property. One possible solution may be to create a counter-balancing offence of knowingly or recklessly accusing a legitimate tenant of being a squatter. The offence could be established, for example, if the occupier were able to point to the existence of a tenancy agreement or could provide evidence of rent payments being made. A similar safeguard exists in relation to the making of false or misleading statements for the purpose of obtaining an interim possession order (see section 75 of the Criminal Justice and Public Order Act 1994). We currently think that this safeguard is unnecessary as the conduct described here would be caught by the offence of perverting the course of justice but would appreciate views on whether this is an adequate safeguard.

Questions:

- *Do you agree that the existing law provides adequate protection against false allegations?*
- *If not, what other steps could we take to protect legitimate occupiers from malicious allegations?*

26. Finally, we would need to think carefully about what would be the most proportionate maximum penalty for any new offence. In some cases a fine may be an effective punishment, but in others the squatter may not have any funds available to pay. For the latter group the court could impose a collection order requiring the offender to pay the fine over a period of time, and where the offender was in receipt of state benefits it would be possible for courts to make a deduction from benefits order. As with any fine, default could result in a number of measures including issue of a distress warrant. However, persistent squatters are likely to move regularly from place to place, making fines potentially difficult to enforce however they are collected. A maximum penalty of a term of imprisonment would give courts more options when considering sentences, including fines and community orders. Imprisonment itself may also provide a deterrent, but this may be a potentially disproportionate and costly sanction in many cases.

Question:

- *What do you think would be the most appropriate maximum penalty for a new squatting offence? Please explain*

Option 2 – Expand existing offence in section 7 of the Criminal Law Act 1977

27. Section 7 of the Criminal Law Act 1977 currently states that it is an offence for a person who is on residential premises as a trespasser having entered as such to refuse to leave a residential property when required to do so by a displaced residential occupier or a protected intending occupier of the property. The definitions of a 'displaced residential occupier' and a 'protected intending occupier' are in sections 12(3) and 12A of the Criminal Law Act 1977 (see Annex B). Option 4 below discusses whether this offence could be enforced more effectively, although this may not provide a complete solution, as section 7 of the Act offers no protection to the owners/occupiers of non-residential property. This option therefore looks at possible changes to the law.
28. An alternative to the criminalisation of squatting (i.e. option 1) would be to extend the offence so that it also applies to squatters who refuse to leave other types of property. Again this would need to be on the basis of evidence demonstrating that this is a necessary and proportionate change. This would allow specified owners of non-residential property, such as commercial property owners, to call the police if squatters refused to leave after being required to do so. This would give commercial property owners a similar level of protection to displaced residential occupiers and protected intending occupiers. It would avoid criminalising the simple act of squatting and squatters would have the opportunity to vacate the property before the police were called. As in option 1, however, there might be difficulties for the police in identifying who was the rightful occupier of a property and we might also need to develop a safeguard to protect legitimate occupiers from false allegations.
29. A variation on this offence might be to give the police the discretion to direct a squatter to leave a residential or non-residential property if a complaint had been received from a property owner. Failure to obey the direction could result in criminal charges. This approach would be consistent with that taken in the Criminal Justice and Public Order Act 1994 to remove unauthorised occupants from land.

Questions:

- *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?*
- *How does the definition of 'displaced residential occupier' and 'protected intending occupier' work in practice?*
- *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?*

Option 3 – repeal or amend section 6 of the Criminal Law Act 1977

30. Section 6 of the Criminal Law Act 1977 makes it an offence for a person, without lawful authority, to use or threaten violence to enter a property where someone inside is opposed to their entry. The offence was introduced to prevent legitimate tenants from being forcibly evicted by unscrupulous landlords, but the offence also offers squatters a degree of protection from forcible entry by property owners. The existence of the offence has even led some squatters to display so-called 'squatters' rights notices' on the door of the property notifying the property owner that it would be an offence for him to break back in. However the offence does not apply to displaced residential occupiers or protected intending occupiers of residential property who break back into their own homes. The police can enter the property to arrest squatters for other indictable offences (such as burglary or an offence contrary to section 7 of the Criminal Law Act 1977 or section 76 of the Criminal Justice and Public Order Act 1994). Option 4 below discusses whether more could be done to raise police and public awareness about the true effect of a 'squatters' rights' notice. Although this might help to reassure displaced residential occupiers and protected intending occupiers of residential premises that they can re-enter their properties without committing an offence, on its own it would not help non-residential property owners who have been denied access to their property. This option therefore looks at possible changes to the law.
31. The Government is concerned that the section 6 offence gives squatters in some premises too great a level of protection. The Government has considered the possibility of repealing the offence, but would be concerned if this disadvantaged legitimate tenants or other occupiers currently protected by the offence. We know that the offence has been used, for example, to prosecute violent partners trying to break back into their homes after the relationship has broken down.
32. Another option would be to amend (rather than repeal) the offence, so that it would not apply to other specified types of property owner (such as commercial property owners). This would considerably weaken the effect of 'squatters' rights notices'.

Questions:

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

Option 4 – leave the criminal law unchanged but work with the enforcement authorities to improve enforcement of existing offences

33. Squatters who break in and occupy other people's property without permission may be guilty of a range of criminal offences. Breaking open a door or a window to enter the property or causing further damage once inside is an offence under section 1 of the Criminal Damage Act 1971. Trespassers who steal items from inside the property are guilty of burglary (under section 9 of the Theft Act 1968) and squatters who abstract electricity without authority are committing an offence under section 13 of the Theft Act 1968. A squatter who fails to leave a residential property when required to do so by a displaced occupier or a protected intending occupier is committing an offence under section 7 of the Criminal Law Act 1977. A squatter who fails to comply with an interim possession order is also committing an offence under section 76 of the Criminal Justice and Public Order Act 1994.
34. We recognise that the police may have a very difficult job when called to the scene of a property dispute. They might be called to an address by a property owner only to find no visible signs of break in. Even if a door or window has been broken, the people inside might claim the damage occurred before they arrived at the property. But it might be possible to do more where there is evidence that an offence has been committed or when there is reliable witness evidence that the people inside a property are responsible for offences.
35. Anecdotal evidence suggests that 'squatters' rights notices' (discussed in more detail in option 3) displayed on the entrance to the property may lead to doubt about what types of property owner can re-enter their property without committing an offence and the extent of police powers in this area. This option would therefore involve working closely with the police to see whether any of the barriers to effective enforcement could be removed. This might include looking at what guidance is available for police officers on trespass-related issues, including on the true effect of 'squatters' rights' notices.

Question:

- *What barriers (if any) are there to enforcement of the existing offences and how could they be overcome? Please give details.*

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

36. As mentioned in the introduction above, one of the Government's main reasons for consulting is to gain a clearer picture about the scale of the problem caused by squatters. If the consultation process shows that squatting is not as significant an issue as initially believed or that existing mechanisms (civil and criminal) are capable of dealing with it, the Government might decide that continuing with existing sanctions and enforcement activity is the most appropriate and cost-effective course of action. The Government recently published new guidance on evicting squatters (see Annex A). We would appreciate your views on whether the new guidance has already done enough to inform legitimate owners of their rights or whether further action is needed.

Question:

- *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?*

Chapter 4 - Wider impacts, including equality effects of proposals

37. Although the proposals set out above (with the exception of the 'do nothing' option) might make it less costly for property owners to evict squatters, the Government must also consider the potential impact on other bodies. For example, there might be an impact on police and the Crown Prosecution Service who would be responsible for enforcing new offences; on the courts which would be expected to administer any new laws; and on local authorities which might be required to find alternative forms of accommodation for squatters who had been evicted. Consultees are invited to assess additional costs (if any) they might expect to incur as a result of these proposals. The Government will consider these responses carefully before reaching a decision on which option to pursue. In the current economic climate, it is vital that the Government does not commit to unaffordable measures.
38. The Government is also aware of claims that criminalising squatting could target vulnerable individuals, some of whom may have mental health problems or suffer from alcohol or drug addiction. Concerns have been raised by homeless charities that criminalising squatting could increase the instances of homelessness and rough sleeping. We would be keen to hear more about these potential impacts from charities and other organisations which have regular contact with the homeless as well as from anyone who might be affected by the proposals
39. The Government has considered the potential effects of the proposed reforms in line with the public sector equality duty under the Equality Act 2010 relating to the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Its initial view is that the proposals in this paper should benefit owners or occupiers of property regardless of protected characteristics, but comments from respondents are invited in relation to the likely effects and impacts of these proposals. The data the Government has at present does not enable it to assess whether those who squat or those who suffer from the actions of squatters typically fall within any of the protected characteristics in the Equality Act 2010.
40. We would particularly welcome responses from those who identify themselves as having a protected characteristic or from interest groups representing those with protected characteristics. The responses received will be taken into account as the Government decides the best way forward following the end of the consultation period. They will inform the full analysis of equality effects that will be published alongside our consultation response.

Question:

- *If any of the proposals in this document were to be adopted, what impact would this have on your organisation or those whose welfare you promote?*
- *Do respondents who identify themselves as having a protected characteristic (listed in paragraph 39 above) 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?*

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

1. 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?
2. Please provide any evidence you have gathered on the number of squats and the nature of squatting in your area or nationwide?
3. 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?
4. Do you think the current law adequately deals with squatting? Please explain your reasons.
5. 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?
6. Do you think there is a need for a new criminal offence of squatting?
7. If so, do you agree with the basic definition of squatting set out in paragraph 21 (i.e. the unauthorised entry and occupation of a building)?
8. 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)?
9. 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)?
10. Do you think there should be any exemptions to any new offence of squatting? If so, who should be exempt and why?
11. Do you agree that the existing law provides adequate protection against false allegations?
12. If not, what other steps could be taken to protect legitimate occupiers from malicious allegations?
13. What do you think would be the most appropriate maximum penalty for a new squatting offence?

14. 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?
15. How does the definition of 'displaced residential occupier' and 'protected intending occupier' work in practice?
16. 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?
17. 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?
18. 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.
19. What barriers (if any) are there to enforcement of the existing offences and how could they be overcome?
20. 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?
21. 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?
22. 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?

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by **5 October** to:

**Squatting Consultation
Ministry of Justice
Criminal Law & Legal Policy Team
7th Floor (7.42)
102 Petty France
London SW1H 9AJ**

Tel: 020-3334-5007

Fax: 020-3334-5051

Email: squatting.consultation@justice.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.justice.gov.uk/index.htm>.

Alternative format versions of this publication can also be requested from squatting.consultation@justice.gsi.gov.uk

Publication of response

A paper summarising the responses to this consultation will be published in October. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

ANNEX A – DCLG/MoJ Guidance on evicting squatters

Advice on dealing with squatters in your home

For too long it has been the squatters, not the law-abiding homeowners, who seem to have had the upper hand. It is because the Government is aware of the misery squatters can cause that we are considering the options for strengthening the law in this area. In the meantime our aim is simple: to make sure homeowners are aware of existing criminal and civil procedures that are designed to protect them from squatters.

This advice, which has been produced jointly with the Ministry of Justice, makes it clear that it is an offence for a squatter to fail to leave a residential property when required to do so by or on behalf of either a displaced residential occupier or certain other occupiers whose interest in the premises is protected under the legislation.

It also makes clear that squatters are not, more generally, above the law. Where squatters commit criminal offences or cause a nuisance to homeowners or other residents, people should not be deterred from contacting the police or local authority.

How can I prevent squatters occupying my property?

Make sure your home is properly secured when it's left unoccupied. The Directgov website includes a number of tips on protecting your home from burglars. Many of these tips may also be useful in protecting your home from squatters.

Let your neighbours know if your home will be vacant for a long period so they can alert the police if they see anything suspicious.

What can I do if my home has been taken over by squatters?

If you return to find squatters in your home and they refuse to leave, you can call the police and report a criminal offence.

If you intend to move into a property, but are currently not living there (for example because you are carrying out repairs), you may also be protected by criminal law.

The police may decide to make an arrest on suspicion of an offence under Section 7 of the Criminal Law Act 1977, which says that it is an offence, subject to certain defences set out in the Act, for a person who is on residential premises as a trespasser to fail to leave having been required to do so by or on behalf of a displaced residential occupier or a protected intending occupier.

Always remember that you will have to be able to prove that you are either a displaced residential occupier or protected intending occupier of the property.

Do not be put off by the 'legal warning' squatters often post on the front door. This claims that it is an offence for a person to use or threaten violence to enter their property if the people inside are opposed to their entry. While this may be true in certain circumstances (e.g. a landlord threatening to barge his way in to evict a legitimate tenant or an owner of non-residential premises breaking back into their property) this offence does not apply to a displaced residential occupier or a protected

intending occupier trying to get back into their own homes. It also does not stop police from entering the property if they want to arrest somebody inside on suspicion of criminal damage, theft, etc.

What should I do if a squatter has damaged or stolen my property?

Squatters are not above the law and if they damage your property either whilst entering or once inside the property, they may be guilty of criminal damage. You can call the police to report this.

Similarly, if they steal items from the property, or use the utilities they may have committed a criminal offence, and you should report this to the police. You might like to speak to your utility company about possible action.

What should I do if squatters move into a neighbour's property and are anti-social or intimidatory?

If squatters are excessively noisy or there is evidence of fly-tipping you could report it to your local authority who may be able to take appropriate enforcement action under the Environmental Protection Act 1990. If residents suspect that criminal offences are being committed on a neighbouring property they should not hesitate to report it to the police.

Do 'squatters' rights' really exist?

The popular notion of 'squatters rights' arises from section 6 of the Criminal Law Act 1977, which makes it an offence to use violence or threats of violence to gain access to premises when there is someone on the premises who is opposed to such entry.

This was introduced to prevent unscrupulous landlords from using violence or intimidation to evict legitimate tenants. But it has also been used by squatters to oppose violent entry on the part of the property owner.

The Criminal Justice and Public Order Act 1994 made it clear that this offence does not apply to a person who is a "displaced residential occupier" or a "protected intending occupier" (or is acting on their behalf). In other words, someone who breaks down the door of their own home would not be committing any offence (providing he could prove he was the rightful occupier).

This exemption only applies to residential occupiers and protected intending occupiers. It does not extend to owners of non-residential properties, or residential properties which are not their own home.

Can squatters take ownership of the property if they stay for a certain amount of time?

Yes, but as squatters would have to remain in occupation of the property without the permission of the owner for ten years or more before they could acquire ownership of the property, it is rare for them to become the owner. The actual period of adverse possession required would depend upon whether the land is registered or unregistered.

The general rule is that 12 years adverse possession of unregistered land will bar the title of the former owner and 10 years adverse possession of registered land will entitle the squatter to apply for registration. The registered proprietor will be given the opportunity to object and in most circumstances, an objection will be successful.

How can I evict a tenant who won't leave?

There are different sorts of tenancy and leases and landlords should carefully check both the terms of them and any statutory provisions that may apply before considering what action to take to gain possession. It is advisable for landlords to seek legal advice when seeking to evict tenants, as there are often difficult procedural requirements to be followed.

A tenant with an assured shorthold tenancy who fails to leave when asked to do so by a landlord is not a squatter and is not committing a criminal offence. Provided that any fixed term has ended, and that the correct period of notice has been given to determine the tenancy, a landlord can seek to remove him from the property by applying for a possession order in the civil courts.

Before applying for a possession order, the landlord must also comply with the specific two-month notice requirement set out in section 21 of the Housing Act 1988. This period (which may be longer than two months depending on the terms of the tenancy) must have expired before the landlord can issue their claim for possession.

If the courts grant a possession order, they will also specify a date for the tenant to leave - usually 14 days after the court hearing. However, if there are exceptional circumstances (e.g. if the tenant is ill or has very young children), the judge may delay this for up to six weeks from the date the order was made.

If the tenant does not leave by the specified date, the landlord can apply to the court for the bailiffs to evict them.

Is there a faster way of removing squatters?

Yes. The **interim possession order** makes it easier and quicker for people to regain possession of residential or commercial property from squatters. If the correct procedure is followed, an interim possession order can usually be obtained from the courts within a few days.

Squatters must leave the property within 24 hours of service of the interim possession order. If they do not they are committing a criminal offence and may be arrested. The offence is punishable by up to six months imprisonment.

It is also an offence for them to return to the property without the permission of rightful occupier for a period of up to 12 months from the date of service of the interim possession order.

An interim possession order does **not** give you final possession of the property. You must, therefore, also make an application for possession when you apply for an interim possession order. A final order for possession will normally be made at a hearing shortly after the interim possession order has been made.

Advice on applying for an interim possession order can be viewed on the [HMCS website](#)

Where can I go to for practical advice?

For practical advice on how to remove squatters from your property, you may wish to contact the Citizens' Advice Bureau, a solicitor or local authority.

ANNEX B – Existing legal framework

A. Criminal Offences

1. There are currently a range of criminal offences that could apply to squatters. These are summarised below:

Section 7 Criminal law Act 1977 (adverse occupation of residential premises)

2. Under section 7 of the 1977 Act any person who is on any premises as a trespasser after having entered as such is guilty of an offence if he fails to leave those premises on being required to do so by or on behalf of either a displaced residential occupier or protected intending occupier of the premises. It is a defence for the accused to prove that he believed that the person requiring him to leave the premises was not a displaced residential occupier or protected intending occupier of the premises or a person acting on behalf of such a person. It is also defence if the accused can prove that the premises are premises used mainly for non-residential purposes and that the accused was not on part of the premises used wholly or mainly for residential purposes.
3. The maximum penalty for such an offence is 6 months imprisonment or a fine not exceeding £5,000 or both..
4. A displaced residential occupier is a person who was occupying any premises as a residence immediately before being excluded from occupation by anyone who entered those premises, or any access to those premises, as a trespasser provided that he continues to be excluded from occupation of the premises by the original trespasser or any subsequent trespasser. A person who was occupying the premises in question as a trespasser immediately before being excluded is not a displaced residential occupier (see section 12 of the 1977 Act).
5. The definition of “protected intending occupier” is contained in section 12A of the 1977 Act. The definition is as follows:

“(1) For the purposes of this Part of this Act an individual is a protected intending occupier of any premises at any time if at that time he falls within subsection (2), (4) or (6) below.

(2) An individual is a protected intending occupier of any premises if—

- (a) he has in those premises a freehold interest or a leasehold interest with not less than two years still to run;
- (b) he requires the premises for his own occupation as a residence;
- (c) he is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser; and
- (d) he or a person acting on his behalf holds a written statement—

- (i) which specifies his interest in the premises;
 - (ii) which states that he requires the premises for occupation as a residence for himself; and
 - (iii) with respect to which the requirements in subsection (3) below are fulfilled.
- (3) The requirements referred to in subsection (2)(d)(iii) above are—
- (a) that the statement is signed by the person whose interest is specified in it in the presence of a justice of the peace or commissioner for oaths; and
 - (b) that the justice of the peace or commissioner for oaths has subscribed his name as a witness to the signature.
- (4) An individual is also a protected intending occupier of any premises if—
- (a) he has a tenancy of those premises (other than a tenancy falling within subsection (2)(a) above or (6)(a) below) or a licence to occupy those premises granted by a person with a freehold interest or a leasehold interest with not less than two years still to run in the premises;
 - (b) he requires the premises for his own occupation as a residence;
 - (c) he is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser; and
 - (d) he or a person acting on his behalf holds a written statement—
 - (i) which states that he has been granted a tenancy of those premises or a licence to occupy those premises;
 - (ii) which specifies the interest in the premises of the person who granted that tenancy or licence to occupy (“the landlord”);
 - (iii) which states that he requires the premises for occupation as a residence for himself; and
 - (iv) with respect to which the requirements in subsection (5) below are fulfilled.
- (5) The requirements referred to in subsection (4)(d)(iv) above are—
- (a) that the statement is signed by the landlord and by the tenant or licensee in the presence of a justice of the peace or commissioner for oaths;
 - (b) that the justice of the peace or commissioner for oaths has subscribed his name as a witness to the signatures.
- (6) An individual is also a protected intending occupier of any premises if—
- (a) he has a tenancy of those premises (other than a tenancy falling within subsection (2)(a) or (4)(a) above) or a licence to occupy those premises granted by an authority to which this subsection applies;

- (b) he requires the premises for his own occupation as a residence;
 - (c) he is excluded from occupation of the premises by a person who entered the premises, or any access to them, as a trespasser; and
 - (d) there has been issued to him by or on behalf of the authority referred to in paragraph (a) above a certificate stating that—
 - (i) he has been granted a tenancy of those premises or a licence to occupy those premises as a residence by the authority; and
 - (ii) the authority which granted that tenancy or licence to occupy is one to which this subsection applies, being of a description specified in the certificate.
- (7) Subsection (6) above applies to the following authorities—
- (a) any body mentioned in section 14 of the Rent Act 1977 (landlord's interest belonging to local authority etc);
 - (b) the [Regulator of Social Housing];
 - (ba) a non-profit registered provider of social housing;
 - (bb) a profit-making registered provider of social housing, but only in relation to premises which are social housing within the meaning of Part 2 of the Housing and Regeneration Act 2008; and
 - (d) a registered social landlord within the meaning of the Housing Act 1985 (see section 5(4) and (5) of that Act).
- (7A) Subsection (6) also applies to the Secretary of State if the tenancy or licence is granted by him under Part III of the Housing Associations Act 1985.
- (8) A person is guilty of an offence if he makes a statement for the purposes of subsection (2)(d) or (4)(d) above which he knows to be false in a material particular or if he recklessly makes such a statement which is false in a material particular..."

Section 76 Criminal Justice and Public Order Act 1994 – criminal sanction for breach of IPO (The civil protection offered by and Interim Possession Order is described in paragraph 18 below)

6. Squatters must leave the premises within 24 hours of service of an IPO. Under section 76 of the 1994 Act a person who is present on the premises as a trespasser at any time during the currency of an order commits an offence. No offence is committed if the squatter leaves the premises within 24 hours of the time of service of the order. It is also an offence for a person who was in occupation of the premises at the time of service of the order to return to the premises after the expiry of the order but within a year of the day of service.
7. The maximum penalty for this offence is six months' imprisonment or a fine not exceeding £5,000 or both.

Powers to remove trespassers on land (not including offices or residential premises)

8. Under **section 61(1)** of Criminal Justice and Public Order Act 1994 (the 1994 Act), if the senior police officer present at the scene reasonably believes that two or more persons are trespassing on land and are present there with the common purpose of residing there for any period, that reasonable steps have been taken by or on behalf of the occupier to ask them to leave and -
 - (a) that any of those persons has caused damage to the land or to property on the land or used threatening, abusive or insulting words or behaviour towards the occupier, a member of his family or an employee or agent of his, or
 - (b) that those persons have between them six or more vehicles on the land,he may direct those persons, or any of them, to leave the land and to remove any vehicles or other property they have with them on the land.
9. It is a criminal offence for a person to whom such a direction applies (and who knows that it applies to him) to fail to leave the land as soon as reasonably practicable; or, having left, to again enter the land as a trespasser within the three months of the day on which the direction was given.
10. Section 62A of the 1994 Act enables a senior police officer to direct a person to leave the land, and to direct the person to remove any vehicle or other property he has with him on the land. This power applies where the occupier of the land or a person acting on their behalf has asked the police to remove the trespassers from land and there are two or more trespassers present with the purpose of residing on the land, they have one or more vehicles and if the person has one or more caravans in his possession or control on the land, that there is a suitable pitch available on a relevant site in the local authority's area.
11. Failure to comply with a direction under section 62A is a criminal offence (under sections 62B and 62C of the 1994 Act).

Powers to remove persons attending or preparing for a rave

12. Section 63 of the 1994 Act (as amended by section 58 of the Anti-social Behaviour Act 2003) contains similar powers to remove persons who are attending or preparing for a rave. Section 63 applies to a gathering of 20 or more people (whether trespassers or not) "at which amplified music is played during the night (with or without intermissions) and is such as, by reason of its loudness and duration and the time at which it is played, is likely to cause serious distress to the inhabitants of the locality". Section 58(3) of the Anti-social Behaviour Act extended section 63 of the 1994 Act to cover raves in buildings, if those attending the rave are trespassing.

13. It is a criminal offence for a person to whom a direction to leave applies (and who knows that it applies to him) to fail to leave the land as soon as reasonably practicable; or, having left, to again enter the land within 7 days of the day on which the direction was given. It is also an offence for a person who knows that a direction to leave which applies to him has been given, and who makes preparations for or attends a gathering to which section 63 applies within 24 hours of the direction being given.

Power of local authority to direct unauthorised campers to leave land

14. Under section 77(1) of the 1994 Act, if it appears to a local authority that persons are for the time being residing in a vehicle or vehicles within that authority's area –

- (a) on any land forming part of a highway;
- (b) on any other unoccupied land; or
- (c) on any occupied land without the consent of the occupier,

the authority may give a direction that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they may have with them on the land.

15. It is a criminal offence for a person to whom such a direction applies (and who knows that it applies to him) to fail, as soon as reasonably practicable, to leave the land or remove from the land any vehicle or other property which is the subject of the direction or having removed any vehicle or property, to again enter the land with a vehicle within 3 months of the day on which the direction was given.
16. Under section 78 of the 1994 Act a court upon the complaint of a local authority can order the removal of persons and their vehicles who are unlawfully on the land (in contravention of a direction given under section 77 of the 1994 Act). The court order can authorise the local authority to take such steps as are reasonably necessary to ensure that the order is complied with. A person who wilfully obstructs any person in exercise of any power conferred by an order under section 78 commits an offence.

Offence of aggravated trespass

17. Under section 68 of the 1994 Act a person commits the offence of aggravated trespass if he trespasses on land and, in relation to any lawful activity which persons are engaging in or are about to engage in on that or adjoining land, does anything which is intended to have the effect of intimidating those persons so as to deter them from engaging in the activity, obstructing that activity, or disrupting that activity.

18. Under section 69 of the 1994 Act a senior police officer has power to direct a person who is committing, has committed, or who he reasonably believes intends to commit aggravated trespass, to leave the land. It is an offence for a person who knows that such a direction has been given which applies to him to fail to leave the land as soon as practicable, or having left to enter the land as a trespasser within 3 months of the direction being given.

Section 6 Criminal Law Act 1977

19. Section 6 of the Criminal Law Act 1977 makes it an offence to use violence or threats of violence to gain access to premises when there is someone on the premises who is opposed to such entry. The maximum penalty for this offence is six months imprisonment or a fine not exceeding £5,000 or both.
20. The Criminal Justice and Public Order Act 1994 amended the 1977 Act to offer greater protection to residential property owners. It made it clear that the offence of using violence to secure entry into premises does not apply to a person who is a “displaced residential occupier” or a “protected intending occupier” of the premises or who is acting on behalf of such an occupier.
21. So a displaced residential occupier who broke down a door to re-enter his property when there was someone on the premises who was opposed to such entry would not commit the offence of using violence to secure entry into premises provided he could prove that he was such an occupier. However, this exemption does not apply to occupiers of non-residential properties who are seeking to enter their non-residential premises.

Other criminal offences that could apply to squatters

22. Other criminal offences such as criminal damage, burglary and abstracting electricity could also be used to prosecute squatters who cause damage, steal property whilst trespassing or abstract electricity.

B. Civil Procedures

Interim possession orders

23. A civil procedure introduced in 1995 is intended to make it easier and quicker for people to regain possession of their property from squatters by seeking an ‘Interim Possession Order’ (IPO).

24. The IPO is a civil order backed up by criminal sanctions (see paragraph 4 above), provided in section 76 of the Criminal Justice and Public Order Act 1994, to deal with squatters who trespass during the currency of an interim possession order. Where certain conditions are met, the correct application procedure is followed and the requisite notices are served, an IPO may be made within a matter of days. Squatters must leave the premises within 24 hours of service of the IPO. If they do not they are committing a criminal offence. It is a criminal offence (punishable by up to 6 months imprisonment) not only for the squatters to disobey an IPO, but also if they return to the premises without the permission of the landlord or the tenant for a period of up to 12 months from the date of service of the IPO.
25. The IPO procedure cannot be used if the claimant is seeking another remedy, for example damages.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Consultation Co-ordinator contact details

Responses to the consultation must go to the named contact under the How to Respond section.

However, if you have any complaints or comments about the consultation process you should contact the Ministry of Justice consultation co-ordinator at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Consultation Co-ordinator
Ministry of Justice
Better Regulation Unit
Analytical Services
7th Floor, Pillar 7:02
102 Petty France
London
SW1H 9AJ**

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squatting.consultation@justice.gsi.gov.uk