



# Squatting

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This note outlines the legal remedies that are available to landlords and homeowners to evict squatters from their properties in England and Wales.

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## A. The extent of squatting

Definitive information on the number of squatters in England and Wales is not available.

**Rehman Chishti:** To ask the Secretary of State for Communities and Local Government what his most recent estimate is of the number of properties occupied by squatters.

**Andrew Stunell:** Information on the number of properties occupied by squatters is not held centrally.<sup>1</sup>

**Mr Amess:** To ask the Secretary of State for Communities and Local Government if he will bring forward legislative proposals to require local authorities to report to his Department annually on the number of properties in their locality that are occupied by squatters; what recent discussions (a) Ministers and (b) officials in his Department have had with local authorities on squatters; and if he will make a statement.

**Andrew Stunell:** We have no plans to introduce a requirement for local authorities to report the number of properties occupied by squatters. No discussions have taken place with local authorities. However, we will be taking steps to help get empty homes back into productive and lawful use, reducing the scope for squatting. We are also providing more guidance to home owners on their legal rights against illegal squatting on their property.<sup>2</sup>

A consultation paper published by the Home Office in 1991 contained the following estimates on the extent of squatting:

The most recent detailed information was in the 1986 London Housing Survey. About 7,500 properties were then occupied by 12,500 squatters; 26% of the premises were privately owned, the remainder by local authorities and housing associations. Squatters were young; 52% were under 25, 40% between 26 and 40 and only 8% over 40. Mass squatting was rare and cases involving young children were negligible: 65% of squats were occupied by two adults and the rest by single persons. The position outside London has not been examined in any detail but in the early 1980s it was estimated that there were approximately 30,000 squatters in the remainder of England. More recent media estimates are 50,000.

Some more recent information is available about squatting in local authority dwellings. On 1 April 1990 approximately 5,200 dwellings in England were reported as being unlawfully occupied; some 90% of them in London. Three boroughs, Southwark, Lambeth and Hackney, accounted for 65% of the national total.<sup>3</sup>

At the time, the use of figures from a survey which was over seven years old and the citing of 'recent media estimates' was criticised by the Chartered Institute of Housing as an unsound

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<sup>1</sup> HC Deb 26 October 2010 c

<sup>2</sup> HC Deb 8 November 2010 c37W

<sup>3</sup> *Squatting: A Home Office Consultation Paper*, Home Office, October 1991 p3 paras 9-10

basis on which to discuss a complex subject.<sup>4</sup> The National Federation of Housing Associations<sup>5</sup> pointed out:

The 'media estimates' of the extent of squatting are quoted in paragraph 9 at 50,000, but there is no attempt to justify this. Indeed, a correlation between the 1986 London Housing Survey, showing 74% of squatted properties were in the social rented sector and the figures in paragraph 10, showing 90% of local authority squatted properties in London, would suggest a very much lower figure than 50,000. Indeed, unless housing associations accounted for a disproportionate number of the squatted properties in 1986, there has been a decline in local authority squatted property between 1986 and 1990.<sup>6</sup>

Around the same time the Advisory Service for Squatters (ASS) estimated that approximately 10,800 properties were squatted in London. This figure was reached by taking the published figures of two boroughs where they believe the figures to be reasonably accurate (one with a high incidence of squatting and one with a low incidence) and extrapolating these, according to experience of numbers of squatters, to other boroughs where they believed published figures to be clearly inaccurate. Allowances were made for non-council squats according to local conditions but not for under-reporting.<sup>7</sup> The ASS also analysed ownership of a sample of over 2,000 squats from April to September 1991 with the following results:<sup>8</sup>

	No.	%
Local Authorities	1640	74.1
Housing Association	365	16.5
Building Societies, banks	81	3.7
Breweries and commercial organisations	49	2.2
Department of Transport	29	1.3
Other public bodies	24	1.1
Commercial residential landlords	15	0.7
Church bodies	4	0.18
Disputed Ownership	4	0.18
Private individuals (both deceased)	2	0.09
Total	2213	100.05

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<sup>4</sup> *Response to the Home Office Consultation Paper*, Institute of Housing, March 1992 p 2 para 12

<sup>5</sup> Now the National Housing Federation (NHF)

<sup>6</sup> *Squatting - A Home Office Consultation Paper*, NFHA, March 1992 p1 para 3.

<sup>7</sup> *Squatting and Homelessness in the 90's; A response to the Home Office Consultation Paper on Squatting*, Squatters Action for Secure Homes (SQUASH), 1992 p3

Research carried out by Surrey University in 1990 estimated that around 50,000 people were squatting of which one third were in families.<sup>9</sup> The Home Office consultation paper's assertion that 'cases involving young children were negligible'<sup>10</sup> was challenged by the ASS on the basis that 32 per cent of calls received from squatters between April to September 1991 were from people with children.<sup>11</sup>

The 1999 local authority Housing Investment Programme returns (England) noted that there were 1,176 unlicensed occupiers in local authority properties of which 196 were squatters.<sup>12</sup>

A slightly more recent indication of squatting levels in London can be estimated using a report published by Crisis in 2004, *Life on the Margins: The experiences of homeless people living in squats*.<sup>13</sup> The authors, Reeve and Coward, found that 1 in 4 homeless people in London had squatted some time during their current period of homelessness. CLG gave a provisional estimate of around 15,390 statutorily homeless households in London in 2006/07, therefore, a crude estimate of the number of squatters in London in 2006/07 could be set at around 4,000. However, this crude figure may well underestimate the actual number as it is based only on recorded figures for statutory homelessness.

In addition, the Reeve and Coward estimate of 1 in 4 people having squatted is based on questionnaire responses from only 82 homeless individuals in London. The sampling strategy applied is such that the representative nature of the sample cannot be statistically estimated.

The current Government estimates that there are 20,000 squatters in the UK.<sup>14</sup>

## **B. Current legal remedies for dealing with squatters**

In November 2010 the Housing Minister, Grant Shapps, launched a new guide for homeowners, setting out their rights and detailing action to take if their property is taken over by squatters. The guidance, *Advice on Dealing with Squatters in Your Home*, was subsequently updated in March 2011. The guidance has been produced jointly with the Ministry of Justice, it 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.

Squatters are normally defined in housing law terms as trespassers as they have no rights of occupation. Trespass is a civil offence. Thus in England and Wales entry into private property

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<sup>8</sup> *ibid*, p 3

<sup>9</sup> *Faces of Homelessness*, University of Surrey, July 1991

<sup>10</sup> *Squatting*, Home Office, October 1991, p3, para 9

<sup>11</sup> *Squatting and Homelessness in the 90s: A response to the Home Office Consultation Paper on Squatting*, SQUASH, 1992 p5

<sup>12</sup> Some authorities may not have completed this part of their returns.

<sup>13</sup> Reeve, K and Coward, C. (2004)

<sup>14</sup> <http://www.communities.gov.uk/publications/housing/advice/squatters>

without authority, but without any accompanying criminal conduct or intent, is not by itself a criminal offence. In Scotland, by virtue of section 3 of the *Trespass (Scotland) Act 1865* (which is still in force) it is a criminal offence punishable by a fine not exceeding level 1 of the Standard Scale (i.e. a maximum fine of £200) to lodge in premises without permission, including a house.

Both civil and criminal law procedures can be used against squatters.

## **1. Civil law procedures**

### ***a. Part 55 of the Civil Procedure Rules***

In possession procedures against trespassers landowners need prove only their title and an intention to regain possession.<sup>15</sup>

Proceedings may be issued as ordinary possession summonses claiming possession on the ground that the defendants are trespassers. However, it is far more common for landlords to use special speedy proceedings that enable landowners to regain possession in cases where there is no dispute about occupancy rights.<sup>16</sup> These proceedings used to be invoked under either County Court Order 24 (CCR Ord 24) or Order 113 proceedings in the High Court (RSC Ord 113) – since 15 October 2001 these Orders have been replaced by Part 55 of the Civil Procedure Rules which cover all possession proceedings including those against tenants, mortgagors, and squatters.<sup>17</sup>

The procedures specify that landlords are not required to identify the occupiers against whom they are seeking possession. A summons may be issued against a named person or against persons unknown stating the landlord's interest in the property, that the property has been occupied without his consent and, if the summons is against persons unknown, that the landlord does not know the names of some or all of the people on the property. The summons can be served by personal service or by fixing it to the door of the premises.

Once the summons is served five clear days must elapse before the court hearing unless it is an urgent case, when an application can be made to the judge to have an earlier hearing. If the court finds that the occupiers are trespassers, then it is obliged to make an immediate order for possession to take effect 'forthwith'.<sup>18</sup> Once an order for possession has been made landlords will still normally have to effect eviction by using court bailiffs, which may cause some delay.

If occupiers wish to claim some right of occupation that amounts to a defence, for example a continuing tenancy, the burden of proving its existence lies on them. If a triable issue is raised over occupancy rights judges have a wide discretion either to dismiss the application or allow

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<sup>15</sup> *Portland Managements Ltd v Harte* [1976] 1 All ER 225.

<sup>16</sup> These rules were introduced in 1970 to assist landowners against the resurgence of the squatting movement.

<sup>17</sup> See [Part 55](#) rules on the Ministry of Justice website.

<sup>18</sup> *McPhail v Persons Unknown* [1973] 3 All ER 393.

the affidavits which have already been filed to stand as pleadings or try the case by hearing oral evidence. Such issues arise in only a small minority of cases under these orders.

These procedures cannot be used against a tenant or former tenant or against sub-occupiers where the head tenancy has not been terminated.<sup>19</sup>

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

### ***b. Interim Possession Orders***

The *Criminal Justice and Public Order Act 1994* amended CCR 24 to create a new form of interim possession order (IPO) which can only be granted against trespassers. The new rules came into force on 24 August 1995.<sup>20</sup>

Landlords can only use this procedure if:

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

On discovery of an unlawful occupant the owner of the premises may, within 28 days, serve a notice of intention to commence proceedings on the alleged squatter(s) before applying to the county court for an IPO; occupiers must be given at least 48 hours notice. The occupier(s) may make written representations to the court; their arguments will be taken into account before an IPO is granted but if they do not file an affidavit to defend the proceedings they lose the right to attend the hearing. The hearing date for an IPO must be set not less than three days after an application for an IPO is made. If an interim possession order is refused, the case will be referred to the existing summary possession procedures. If an order is granted it must be served on the occupiers within 48 hours and at that point the occupiers have 24 hours to leave the premises. An occupier with a right of occupation may apply to the court to have the order set aside, provided he or she has obeyed the order and left the premises.

The 1994 Act<sup>21</sup> made it an offence to make a false or misleading statement in order to obtain an IPO in civil proceedings to remove squatters from premises.<sup>22</sup> This provision is intended to protect lawful occupiers from unscrupulous landlords who try to use the interim possession

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<sup>19</sup> *Wirral BC v Smith* [1982] 43 P & CR 312

<sup>20</sup> *The County Court (Amendment No 2) Rules 1995* SI 1995/1582

<sup>21</sup> Received Royal Assent on 3 November 1994

procedure to evict them. The Act also makes it a criminal offence for a person who is the subject of an interim order to fail to leave the premises concerned within 24 hours of the order being granted, or to enter the premises again as a trespasser within one year.<sup>23</sup> If squatters refuse to leave the premises the landlord may ask the police to arrest them; there is no need to apply for a warrant or wait for the county court bailiffs to remove them.

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

A useful [fact-sheet on IPOs](#) can be found online.

## 2. Criminal law procedures

Strictly speaking there used to be no need for landowners to bring court proceedings to evict trespassers. They were entitled to use ‘self-help’ and to evict trespassers without a court order.<sup>24</sup> However, this course of action is often not recommended because of the ‘possible disturbance’ that might be caused.<sup>25</sup>

Entry into private property without authority, but without any accompanying criminal conduct or intent, is not by itself a criminal offence. The *Criminal Law Act 1977*<sup>26</sup> provides that if violence is used or threatened for the purpose of securing entry to premises when there is someone present on those premises, this can amount to a criminal offence. However, 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).

A displaced residential occupier is any person, other than another trespasser, who was using the premises or part of them as a residence immediately before the trespasser entered.<sup>27</sup> **This exception is designed to permit the owner occupier or tenant who is absent from his home for a short period, and who returns to find his premises squatted, to take direct action to evict trespassers without any need to initiate court proceedings and without fear of committing an offence.** A displaced residential occupier must still take care not to commit other offences such as assault or actual bodily harm.

The 1977 Act introduced a major new criminal offence against would-be squatters. It is an offence for any trespasser who enters as a trespasser to fail to leave premises if asked to do so by a displaced residential occupier or a person who is a protected intending occupier (PIO). PIOs are those who have been designated to occupy a property by a local authority or housing association, or those who find that a property that they have just bought has been occupied while

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<sup>22</sup> Section 75

<sup>23</sup> Section 76

<sup>24</sup> *R v Blankley* [1979] Crim LR 166; *McPhail v Persons Unknown* [1973] 3 All ER 393.

<sup>25</sup> *McPhail v Persons Unknown* per Lord Denning MR at p 396.

<sup>26</sup> Section 6

<sup>27</sup> Section 12 of the *Criminal Law Act 1977*

the sale was being transacted.<sup>28</sup> There is no offence of failing to leave until a request has been made to do so. PIOs must produce statements proving their status; if this is done satisfactorily the police can be requested to remove the trespassers.

The *Criminal Law Act 1977* introduced other criminal offences in connection with squatting. It is a criminal offence for a person on the premises as a trespasser, having entered as such, to have with him any weapon of offence, i.e. anything which has been made or adapted for causing injury to another.<sup>29</sup> Section 9 made it an offence for a trespasser to enter diplomatic or consular buildings, unless he can show that he does not believe them to be diplomatic or consular premises. It is also an offence to resist or intentionally obstruct any person who is an officer of the court executing a possession order issued by the County or High Court.<sup>30</sup> Section 10 is worded so that it applies to resistance or intentional obstruction of an officer executing any order which **could** have been brought under Part 55 of the Civil Procedure Rules, even if the landowner used ordinary possession proceedings.

### **C. Future legislation: a criminal offence?**

On 21 March 2011 the Housing Minister, Grant Shapps, announced that the Government would “look to take steps in the New Year to make squatting a criminal offence.”<sup>31</sup>

### **D. Claiming good title (adverse possession)**

The law of adverse possession<sup>32</sup> provides a means by which people can claim title over land by occupying it adversely or "squatting" for a period of time. The broad principle underlying the law of adverse possession is the rule that no action may be brought for the recovery of land after the expiration of a statutorily prescribed period of time running from the date when the right of action first accrued. The *1980 Limitation Act* provides that 'no action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him'.<sup>33</sup> The *Limitation Act* reflects the policy that 'those who go to sleep upon their claims should not be assisted by the courts in recovering their property'.<sup>34</sup>

Where adverse possession is used as a means to gain ownership of land, the occupiers have to show either (i) a 'discontinuance by the paper owner followed by possession' or (ii) a 'dispossession' (or 'ouster') of the paper owner. Action for the recovery of land by a paper owner must be brought before the expiration of the limitation period.

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<sup>28</sup> Section 7

<sup>29</sup> Section 8

<sup>30</sup> Section 10

<sup>31</sup> CLG, *Grant Shapps signals an end to squatters' rights*, March 2011

<sup>32</sup> commonly referred to as 'squatters' rights'

<sup>33</sup> s.15(1)

<sup>34</sup> *RB Policies at Lloyd's v Butler* [1950] 1 KB 76 at 81

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

The essence of the new scheme is that a squatter will be able to apply to be registered as proprietor after 10 years' adverse possession. However, the registered proprietor will be notified of that application and will, in most cases, be able to object to it. If he or she does, the application will be rejected. However, the proprietor will then have to take steps to evict the squatter or otherwise regularise his or her position within two years. If the squatter is still in adverse possession after two years, he or she will be entitled to be registered as proprietor. We consider that this new scheme strikes a fairer balance between landowner and squatter than does the present law. It also reflects the fact that the basis of title to registered land is the fact of registration, not (as is the case with unregistered land) possession.<sup>35</sup>

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

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

Occupiers in this position can protect their rights by applying for registration within 3 years and the old law and procedure still applies.<sup>36</sup>

Guidance on adverse possession can be found in the Land Registry's Practice Guide 5: <http://www.landreg.gov.uk/assets/library/documents/lrpg005.pdf>

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<sup>35</sup> Lovells Property Newsletter, September 2001 para 1.13

<sup>36</sup> Land Registry Legislation Update 5, Adverse Possession, <http://www.landreg.gov.uk/publications/legislation/lu5.pdf>