

<p>Title: Options for dealing with squatters</p> <p>Lead department or agency: Ministry of Justice</p> <p>Other departments or agencies: Department for Communities and Local Government</p>	<p>IA No: MOJ102</p> <p>Date: 13/07/2011</p> <p>Stage: Consultation</p> <p>Source of intervention: Domestic</p> <p>Type of measure: Primary legislation</p> <p>Contact for enquiries: squattling.consultation@justice.gsi.gov.uk</p>
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Squatting per se is not a criminal offence, but it is currently a criminal offence for a person who enters residential premises as a trespasser to refuse to leave when required to do so by a displaced residential occupier or a protected intending occupier of the property. Squatters who break into a building may also be guilty of other offences, such as criminal damage, burglary or the unauthorised abstraction of electricity. There is a growing public perception that the misery and financial hardship squatters can cause when they deliberately occupy another person's home or business property without authority should be punishable in the criminal courts. The consultation is exploring whether the position can be improved, for example, through enforcement or further criminal offences.

What are the policy objectives and the intended effects?

The Government is keen to find out more about the scale of the problem caused by squatters and seek to address it, either through new legislation or by working with the enforcement authorities to improve the enforcement of existing offences. The various options for achieving this objective are explained in more detail below. Depending on which option is pursued, this may help to reassure property owners that the law is on their side. It may also help to reduce the level of squatting by acting as a deterrent to would-be squatters who see the current law as a soft touch.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- Option 1 – Create a new offence of squatting in buildings.
- Option 2 – Amend section 7 of the Criminal Law Act 1977 to extend the offence to other types of premises
- Option 3 – Repeal or amend the offence in section 6 of the Criminal Law Act 1977
- Option 4 – Leave the criminal law unchanged but work with the enforcement authorities to improve enforcement of existing offences.
- Option 5 - Do nothing: continue with existing sanctions and enforcement activity

The Government will make a final decision about which option to pursue following the conclusion of the consultation exercise.

Will the policy be reviewed? It will/will not be reviewed. **If applicable, set review date:** Month/Year

What is the basis for this review? Please select. **If applicable, set sunset clause date:** Month/Year

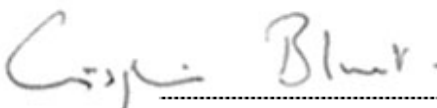
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes/No

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date:

Summary: Analysis and Evidence

Policy Option 1

Description:

Create a new offence of squatting in residential and non-residential buildings

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

Any costs arising from the creation of a new offence would fall most heavily on the criminal justice system agencies. This would include the police, the Crown Prosecution Service, Her Majesty's Court Service, Her Majesty's Prison Service (HMPS) and the National Probation Service (NPS). There may also be an impact on bailiffs' organisations if enforcement of civil orders is no longer required..

Other key non-monetised costs by 'main affected groups'

If a new offence deterred people from squatting, would-be squatters may have to approach local authorities, housing associations or charities for alternative forms of accommodation. They may turn to rough sleeping, with potential consequent impacts for local authorities, the police and charities.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

It is anticipated that most owners/occupiers of property would support provisions which make it easier to remove squatters and allow them to get back into their properties quickly, although displaced residential occupiers and protected intending occupiers of residential property are already protected by the current law.

Other key non-monetised benefits by 'main affected groups'

Maximum of 5 lines

Key assumptions/sensitivities/risks

Maximum of 8 lines

Discount rate (%)

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	IN/OUT

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England and Wales			
From what date will the policy be implemented?		TBC			
Which organisation(s) will enforce the policy?		Police, CPS			
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?		Yes/No			
Does implementation go beyond minimum EU requirements?		N/A			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded:		Non-traded:	
Does the proposal have an impact on competition?		Yes/No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	Yes	8
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	7
Small firms Small Firms Impact Test guidance	Yes	7
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	n/a
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	n/a
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	Yes	7
Human rights Human Rights Impact Test guidance	Yes	8
Justice system Justice Impact Test guidance	Yes/No	6-7
Rural proofing Rural Proofing Impact Test guidance	No	n/a
Sustainable development Sustainable Development Impact Test guidance	No	n/a

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	
2	
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

This impact assessment has been prepared to accompany the Consultation Paper which assesses options for tackling squatters. At this stage we do not have a precise idea of how many squatters there are in England and Wales or the reasons why people squat. Local authorities are not required to keep records on the number of buildings occupied by squatters, but Ministers have received a number of representations from MPs and members of the public about the problems squatters can cause. They are also aware of the high-profile squatting cases in London that have been reported in the media, but these may not be representative of the picture nationwide. What the Government does know is that the county 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. 531 ordinary possession orders were granted against trespassers under Part 55(1) of the Rules, although it is unclear from court databases what proportion of these related to premises as opposed to land. These figures provide an indicator of how many properties may be affected by squatting each year, but the Government recognises they might 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. This Impact Assessment will be modified based on the findings of the consultation.

Problem under consideration

Although there are already a range of criminal offences and civil procedures in place to deal with squatters (see Chapter 2 of the consultation paper), there has been increasing concern over the last few months about the distress and misery that squatters can cause when they deliberately occupy somebody else's property without authority. Owners or occupiers of those properties can spend considerable sums evicting squatters from their properties, repairing damage and clearing up the debris they have left behind. This has led to calls from a number of MPs and members of the public for the creation of tougher laws and procedures for dealing with squatters.

Rationale for intervention

The main issue raised in relation to the existing law is that the act of squatting is not in itself currently a criminal offence (it is a form of trespass, which is normally regarded as a civil wrong). Residential occupiers who have effectively been made homeless by the actions of squatters have some protection under the existing criminal law - section 7 of the Criminal Law Act 1977 makes it an offence for a squatter 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. But the offence does not extend to owners/occupiers of non-residential property (e.g. commercial property) or owners of residential property who were not occupying the property immediately before being excluded by the squatter and do not require the premises for occupation as a residence (e.g. some holiday home owners).

In these circumstances, unless there is evidence that squatters have committed other offences, such as criminal damage or burglary, the police may not be able to intervene. Even where there are visible signs of a break in or damage to the property, it may be difficult for the police to prove that the squatters inside the property were responsible, particularly if there are no eye witnesses and the squatters claim the damage was caused by somebody else. The onus is therefore sometimes on property owners to regain possession of their properties in the civil courts.

Policy objective

The Government is concerned about the serious financial and emotional impact squatting can have on the owner/occupier of a property. At this stage we do not have a precise idea of how many squatters there are in England and Wales, the type of people who squat or their reasons for doing so, but the consultation exercise should provide a clearer picture about the scale of the problem and allow the Government to develop affordable and workable proposals to deal with it. The paper includes options ranging from introducing a new offence of squatting; strengthening existing offences that currently apply to squatters; and working with the enforcement authorities to identify and overcome barriers to enforcement of existing offences that may be committed by squatters, such as criminal damage and

theft. The paper will also consider whether legislative and non-legislative measures should remain unchanged.

Description of options considered (including do nothing)

Option 1 - Create a new offence of squatting in residential or non-residential buildings

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. Implementing any new offence would be subject to the evidence derived from the consultation process showing that this is both a necessary and proportionate response.

Any costs arising from the creation of a new offence would fall most heavily on the criminal justice system agencies. This would include the police, the Crown Prosecution Service, Her Majesty's Court Service, Her Majesty's Prison Service (HMPS) and the National Probation Service (NPS). There may also be an impact on bailiffs' organisations if the arrest of squatters means there is no longer a need for bailiffs to enforce a court order to evict them.

If a new offence deterred people from squatting, there might also be an impact on local authorities, housing associations or charities which may need to provide alternative forms of accommodation

At this stage the precise impact on the criminal justice agencies and other organisations is difficult to estimate because there is a lack of verifiable data about the number of squatters in England and Wales. The consultation process should provide a clearer picture of the true extent of the problems caused by squatters.

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

As an alternative to option 1, this option would amend the offence in section 7 of the Criminal Law Act 1977, which is committed where a squatter refuses to leave *residential* property when required to do so by a displaced residential occupier or protected intending occupier of the property. The offence could be extended so that a squatter who refuses to leave *non-residential* property (such as commercial property) would also be guilty of an offence. Again this would need to be on the basis of evidence demonstrating that this is a necessary and proportionate change.

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 compliant had been received by a property owner. Failure to obey the direction could result in criminal charges. This approach would be consistent with the approach taken in the Criminal Justice and Public Order Act 1994 to remove unauthorised occupants from land.

As in option 1, any costs arising from criminalising an entirely new group of people would fall on the criminal justice system agencies. However this option is narrower in scope than Option 1. The offence would only be committed where squatters *refused to leave* a property when required to do so. Squatters would have the opportunity to leave the property before police intervention became necessary, so we anticipate there would be fewer prosecutions and convictions for this offence than the offence of squatting in option 1.

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

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 offence 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 offence does not, however, apply to displaced residential occupiers or protected intending occupiers seeking to break back into their own homes.

There were 512 prosecutions in 2008 and 519 in 2009. If this offence were repealed altogether or amended so that it did not apply to other types of property owner (e.g. commercial property owners using force to enter their properties), the number of prosecutions under section 6 is likely to fall. However, permitting a wider range of property owners to break back into their properties may increase the

likelihood of confrontation between property owners and squatters. The police may be called to the scene to deal with public order-related offences and this may offset any benefit derived from repealing or amending the s.6 offence.

The Government would be cautious about repealing the offence altogether, as this may affect legitimate tenants or other occupiers who are 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 being thrown out.

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

This option would not involve any substantive changes to the law, but would involve working with the Home Office and the enforcement authorities to improve the way existing offences are enforced, for example by reviewing the guidance that is available for the enforcement authorities on trespass-related issues. There are a range of offences that may be committed by squatters (e.g. criminal damage, burglary, abstraction of electricity) and we could work with the police to identify and overcome any barriers to their effective enforcement. Anecdotal evidence suggests that the police may sometimes be reluctant to get involved in what they see as a civil matter.

The cost of this non-legislative option would be low in comparison to the others, though there would be a cost to the police in terms of training and circulating guidance and to the criminal justice system more generally through better enforcement.

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

If no legislative or non-legislative measures were taken, property owners (with the exception of displaced residential occupiers or protected intending occupiers of residential property) would continue to seek repossession of their properties in the civil courts and continue to bear the cost of evicting squatters. The potential costs to the enforcement authorities and other organisations arising from options 1-4 would not be incurred, although the failure to take any decisive action may perpetuate the message that squatting is in some way acceptable.

Costs and benefits to business

Commercial property owners have corresponded with Ministers on a number of occasions to describe the damaging effect squatters can have on business. Costs to businesses are incurred through solicitors' fees when seeking to evict squatters and repairing the damage they may have caused. Small retailers may suffer from unfair competition from squatters occupying premises for free and charging lower prices for their goods. Squatting can be more of a problem for small business with, for example, a single property than for larger landlords with better preventative security procedures. However it is anticipated that most property and business owners would support provisions which make it easier to remove squatters and allow them to get back to business as usual quickly.

If options 1 or 2 were adopted, for example, business owners could then call the police to report the new offences as they can already do for existing offences such as criminal damage or burglary. This would provide an alternative to using the civil courts to regain possession of their property. Other options being considered in the paper would not involve criminalising squatting or the failure by a squatter to leave but they could still make it easier for business owners to regain possession of their properties. For example, option 3 considers whether Section 6 of the Criminal Law Act 1977 could be amended to permit commercial property owners to break back into properties which have been occupied by squatters. Currently the law states it is an offence to use or threaten violence to gain access to premises when someone on the premises is opposed to their entry. The offence does not currently apply to a person who is a 'displaced residential occupier' or 'protected intending occupier', so a homeowner is permitted to use violence to break back into their own home. This option would give commercial property owners the same degree of protection as displaced residential occupiers.

Wider impacts

The Government is aware of claims that are sometimes made that criminalising squatting (i.e. option 1) would target individuals who are already leading chaotic lives and may increase the instances of homelessness and rough sleeping. In turn, this could have a negative impact on health and well-being as people who are homeless may sometimes display signs of physical illness, mental health problems and

substance misuse. The Government believes there are other avenues open to those who are genuinely destitute and who need shelter which do not involve occupying somebody else's property without authority. The Government, local authorities and the police would, however, need to work closely together to ensure that people who were evicted or deterred from squatting by the creation of a new offence were linked into services to find alternative accommodation.

The Government also acknowledges that criminalising squatting may have an impact on those organisations which currently enforce possession orders (e.g. High Court Enforcement Officers and bailiffs' organisations). If squatters were arrested following the creation of a new offence, bailiffs may no longer be required to evict offenders from the property. It is unclear what proportion of a bailiff's workload consists of evicting squatters (IPOs make up a very small percentage of the total number of possession orders issued by the civil courts), though we anticipate the consultation process may shed further light on this.

Equality Impact Assessment

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. At this stage we do not have enough data to conclude what impact (positive or negative) the Governments' proposals would have on any group which shares a protected characteristic, but our initial view is that the proposals in the consultation paper should benefit owners or occupiers of property regardless of protected characteristics. With regard to those who squat, the consultation process should help to show which groups would be most affected by the proposals. The Government 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 any consultation response.

Human Rights

We are satisfied that all of the options in the Consultation Document can be developed in a way that complies with the ECHR.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review, or there could be a political commitment to review (PIR)];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p>

Add annexes here.