

Response to the Ministry of Justice Consultation Paper:
'Options for Dealing with Squatting'

INTRODUCTION

About SQUASH

SQUASH (Squatters Action for Secure Homes) is a campaigning organisation which, since the early 1990s, has worked to protect squatters and other vulnerably housed people. We are undertaking extensive research into the impacts of the proposed criminalisation of squatting. As part of this we are gathering the views and experiences of squatters and others who are at risk of being impacted. We campaign to raise awareness of these impacts and give voice to squatters and others experiencing insecure housing. SQUASH are in a unique position as one of the only organisations researching squatting in the UK from within the diverse world of squatting itself. It has been recognised as such from the beginning, with SQUASH research quoted extensively within the Home Office Research Paper 94/1 in 1994. Our broader aim is to provide resources towards the achievement of secure housing for all.

Preliminary Comments on the Consultation Paper

The present consultation paper is almost entirely skewed towards gathering the responses of property owners. The consultation questions make little attempt to gather the opinions and experiences of squatters and others, such as vulnerably housed tenants, who are at risk of being negatively affected by the proposals set out by the consultation document. Squatters are homeless people, part of the growing numbers of 'hidden homeless' in the UK. Squatting provides temporary relief to those who would otherwise be sleeping on the streets: research by homelessness charity Crisis has found that 39 per cent of homeless survey respondents had squatted at some point in order to house themselves temporarily. The proposals included in the consultation threaten to criminalise already vulnerable people for attempting to house themselves temporarily, and to exacerbate these peoples' hardships in the midst of a housing crisis. The Ministry of Justice is demonstrating recklessness by failing to consult this vulnerable and largely voiceless group.

At points, the consultation borders upon a presumption of criminality towards squatting, even before any legislation or firm democratic decision has been taken, whilst squatting is consistently viewed as a 'problem' and in places the consultation paper appears to confuse 'dealing with squatting' with 'dealing with squatters'. There is no attempt to consider empty properties or homelessness as a problem in need of serious attention, or to take a holistic view of the wider context of housing crisis and homelessness. Respondents are encouraged to respond in this vein by leading questions.

The Ministry of Justice has not made any attempts to consult 'hard to reach' groups, for example by undertaking oral consultations. Page 31 of the consultation document lays out the seven criteria for consultations taken from the Better Regulation Executive Code of Practice on Consultation. Criterion four of the code is concerned with the accessibility of consultation exercises. It states that: "Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach." In addition to this, the guidance states the following:

“Some interested parties may need particular attention to ensure their views are heard. The limitations of reaching some groups through written consultation exercises and the capacity of such groups to participate need to be taken seriously into consideration in the planning stages. You should think about whether your proposal might impact on any specific groups. If the answer is ‘yes’, you should try to involve them in consultation, seeking ways to engage them beyond pure written consultation.”

On Page 6 of the current consultation document it states that ‘there is no data held by central Government about the number of people who squat or their reasons for doing so’. Evidence from SQUASH’s research, outlined in our consultation response below, strongly suggests that ‘hard to reach groups’ are amongst those who squat (or would otherwise be negatively impacted by the proposals included in the consultation), and as such the proposals will have an impact on these groups.

SQUASH has serious concerns about the Ministry of Justice’s failure to address squatters and other vulnerably housed people within the consultation documents, or to undertake steps to ensure they are otherwise directly consulted. In light of this, though we cannot claim to represent all squatters, we believe that our consultation response is of utmost importance in making sure that those most directly affected by the consultation are heard.

On the following pages, we respond in order to the questions set out by the consultation paper.

RESPONSES TO QUESTIONS

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?

Squatting is not a problem. Rather, empty properties are a problem, indeed the key problem in the housing crisis currently occurring in the UK. Empty properties are a waste of scarce economic resources, and squatting provides a means of bringing these assets back into use for residential and community spaces, at low or no cost. They produce negative effects in the neighbourhoods they are situated in and are subsidised by the government through rates discounts and grants. Only 2-4 per cent of empty properties are currently squatted. People squat properties which they know, or can reasonably assume, will not be otherwise occupied for the foreseeable future. SQUASH have records stretching back to the early twentieth century of squatters making a positive contribution to the built environment of this country, and being recognised as such by building owners and the wider community. Furthermore, many areas of our cities which are now Conservation Areas or similarly protected only exist as a result of squatter action and its resistance to the wrecking ball of post-war 'slum clearance'. Evidence suggests that the vast majority of squatters leave properties in a similar or improved condition in relation to when they found them. Though not frequently presented in the mass media, at a local level the presence of squatters is frequently regarded as an asset rather than a problem.¹

In 2010, there were still 79,739 empty properties belonging to local authorities (39 per cent), housing associations (54 per cent) and other public bodies (7 per cent). The value of the local authorities portion of empty properties comes to around £7 billion in 2011², with London making up £3 billion. This is a waste of public assets. With the massive transfer of public housing stock over to housing associations, local government has transferred the liability of empty properties into private institutions which remain unaccountable to the public.

When owners of empty properties were asked how long they expected their properties to be empty, 52 per cent

said that it would still be empty in six months to two years time, calculated to be over 400,000 properties.³

Considering the fall in UK house prices since the burst of the housing bubble, this number of empty properties remaining vacant is expected to be higher, as 38 per cent of owners anticipated that they would be selling their property within the next year. These same owners were hostile to local authority interference, with 49 per cent saying that they were "not at all open to council assistance", and 39 per cent saying that they were "open to minimal council assistance", with this reluctance especially prevalent amongst those who did not want to have their properties occupied. Local authorities have limited scope in trying to convince owners to bring properties back into occupation. Squatting can be a private means to bring these properties back into use, to provide housing and social spaces for the local community.

The Empty Property Survey (2008) of owners of empty residential property, provides an insight into why private properties remain empty for prolonged periods of time, and fall into dereliction. Applying these findings to the current database of empty residential property in England and Wales (EHA 2010), we estimate that almost 2 million people could be housed. Of these properties, 312,000 are ready for occupation, 117,000 need redecoration, and 317,000 need major improvements.

We have extensive records of buildings that have required major improvement being transformed by squatters into comfortable, creative and long-term living and social spaces.

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

There have been no serious attempts by any government agency to quantify the number and demographics of squatters in England and Wales, and at present there are no definitive figures to draw upon. Indeed, to undertake the current consultation without significant attempts to research the squatter demographic is inappropriate.

The government's attempts to criminalise squatting

are misguided. Depending on the estimated size of the squatting population, only between 2-4 per cent of empty properties⁴ are squatted, and this may be an overestimation. We emphasise that squatting is an extreme action undertaken by the most vulnerable people in our society, and this is reflected in these estimates.

We note, as per our response to question 1, that the 'nature' of squatting is more likely to have a positive than a negative effect on a local community and its built environment.

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?

The fact that HM Government are using the current consultation as an opportunity to gather data on squatters and squatting is worrying as it suggests that proposals are being circulated without due attention to the people most affected by those proposals or adequate statistical information about their numbers and demographics.⁵ Again, SQUASH object to this model of consultation.

The Hidden Truth about Homelessness,⁶ a report prepared by Crisis, highlights the 'hidden homeless' who are not counted in official statistics and which may number around half a million people. It is estimated that 6.5 per cent of these individuals currently squat while 39 per cent have squatted temporarily in order to house themselves. SQUASH do not believe a portion of this hidden homeless should be criminalised for putting a roof over their heads, especially during the winter months.

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

Squatting is not a public order or a criminal issue, it is a symptom of a housing crisis. Ignoring for the moment the premise that squatting can be 'dealt with' by the law, it is safe to say that there is ample legal recourse

for those who find their property occupied without authorisation.

As regards to the scope of the property owner's legal recourse, any property owner can file a claim at a civil court for a possession order. The distinction between squatting in lived-in residential properties (covered by section 7, Criminal Law Act 1977) reflects the fundamental importance of the right to a home, in our human rights and the English legal tradition. Insofar as a squatter makes a home in another's property, the property owner can only remove them by showing their right to do so in accordance with due legal process. But when a squatter interferes with another person's right to a home, it is arguable that the criminal law should more forcefully protect the property owner's right to a home above that of the squatter (although this is not without its practical problems). Squatting in properties which are not lived in simply does not affect others' rights as severely, and the current law rightly deals with it as a civil matter to be remedied in a less heavy-handed fashion.

Many of the perceived difficulties with the current law are a result of inadequate guidance. Problems with this guidance are discussed in our response to Question 20.

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?

As SQUASH, we have never taken steps to evict squatters.

In the course of our research, however, we have come across cases of landlords who have had relatively positive experiences of squatters. Most squatters do carry out their repairs and maintenance, as it is in their interests to do so. Some landlords have found having squatters much preferable to a building being left empty (empty buildings frequently suffer from vandalism and arson), and have given them a licence to occupy. Sometimes this has taken the form of a lease or other written agreement, certified by a civil court. Others simply wait until they need the building back - and have the necessary planning permission and funds, in cases of development - and then use the existing court procedures to gain a

possession order. This is a relatively speedy process, and usually results in immediate possession being granted to the owner. Many owners are satisfied with this system.

6. Do you think there is a need for a new criminal offence of squatting?

Absolutely not.

We do not believe that the perceived ‘problem’ is widespread enough to justify such drastic and far-reaching measures. We do not believe that criminalisation of the ‘problem’ would have a positive overall effect or achieve its stated aims. Indeed, there is reason to think that criminalisation would have wide-ranging and severe negative effects that would hugely outweigh any intended positive effects.

Criminalisation would result in a significant increase in public expense by increasing the workload on the police and wider justice system, a fact which caused the ACPO in 1992 to reject the then-proposed criminalisation of squatting. In 2011, high court enforcement officer Claire Sandbrook raised similar objections in *The Guardian*.⁷

In response to the 1992 consultation the Law Centres Federation and the Law Society both responded to the effect that the law was satisfactory at that time and did not require amendment. ACPO also submitted that the courts should maintain responsibility for issuing possession orders against squatters.

The creation of an offence based on what is referred to as an ‘unauthorised occupation’ suggests that – at the point of enforcement – very clear determinations would be needed of ‘authorisation’ and ‘occupation’. Therefore the place to work through such cases is the civil courts, not the doorstep. Perhaps the main public benefit of criminal offences as opposed to civil disputes is deterrence, but it is hard to see how this applies in the case of squatting. It seems likely that the principal reason people squat is that, despite the risks and vulnerability, the alternatives (such as living on the street) are worse. It is hard to see how the threat of criminal sanctions will keep such people out of unused properties.

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

It is wrong to suggest that only those who agree with Question 6 should have an opinion on the definition of squatting.

However, it is worth noting that the definition is far too vague, and this is problematic given the importance of certainty in the criminal law. The term ‘occupation’ is dealt with below, so here we will focus on ‘authorisation’.

The question of whether someone is ‘authorised’ to enter or occupy a building is difficult. The obvious question is: authorised by whom or what? Perhaps a better definition to use would be that of trespass: ‘the act of unauthorised and unjustifiable entry upon land in the possession of another’. However, it is difficult to determine whether an individual has been authorised. The courts have long recognised that knowing inaction on the landowner’s part means a trespasser is in effect granted an implied licence. Arguments about whether the landowner knew about the occupier’s presence should not be the sort of question on which a criminal conviction should turn.

Furthermore, the consultation document seeks to distinguish between ‘landlord and tenant disputes’ and ‘squatting’. This is a remarkable oversimplification. The question of whether an individual is a tenant can be complex, depending on numerous factors relating to whether there is an agreement to grant ‘exclusive possession’ for a term at a rent. These legal issues are multiplied by the evidential complexities. There is no general requirement that a tenancy agreement be reduced to writing, or even that express words be used. A large body of law has developed to protect tenants from unscrupulous or dishonest landlords, and the protection of tenants would be undermined if they were threatened by dishonest landlords with criminal prosecution for something they may never have done but cannot disprove (ie. by showing authorisation).

Additionally, there are situations where someone may have a contractual right to be in a property, but not a right to possess it in ‘real’ terms (ie. so that they can sue for damages but not for possession). So the landlord

will be entitled to possess the property, but the occupier will still have the right to sue for damages (and may well have reasonably believed that they were entitled to possession of the property). None of this fits easily into the question of authorisation.

Finally, it is worth mentioning that most criminal offences require a *mens rea* or mental element. For example, murder requires an intent to kill or to do serious injury. This reflects a fundamental idea of criminal law: that people should be held responsible for their actions only insofar as they are morally responsible for them. What *mens rea* would apply to the offence of squatting?⁸

8. How should the term occupation be defined? Should it cover those who occupy a building for a short period?

We note that the consultation document is highly inconsistent in its use of this term.

There is already a legal definition of ‘occupation’. It depends highly on the facts of an individual case, but is defined primarily with reference to the degree of physical control over the premises. In essence, people who control the premises (especially who control access to the premises) occupy it.⁹ However, it is a difficult concept that has been developed by civil judges, for purposes wholly different from that contemplated here. Given the fundamental importance of certainty in the criminal law, it is highly unlikely that a sufficiently clear definition will be arrived at.

A wider issue of fundamental importance here is occupation as a means of protest, in the context of civil liberties. Sit-ins and other occupations have been an important part of peaceful protest for generations. During the debate around tuition fees, occupations occurred at thirty four of the UK’s universities. The idea that criminal liability should attach to protestors who merely occupy property, severely undermines the right to protest and is a completely disproportionate response. To quote Shami Chakrabarti, director of Liberty: ‘Criminal offences such as aggravated trespass now have the potential to impugn and imprison even the most peaceful demonstrators who leave people and property completely unharmed.’¹⁰ An offence of ‘squatting’ would shift the balance yet further in favour of those who

would silence protest at the cost of others’ freedom.

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)?

There should be no new criminal offence of ‘squatting’. It will not be possible to protect ‘protesters’ or ‘tenants’ from the harmful effects of criminalisation by exempting certain types of property/buildings.

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

There should not be a new ‘offence of squatting’ and therefore no exemptions.

11. Do you agree that the existing law provides adequate protection against false allegations?

It is well known that unscrupulous owners sometimes make false statements and allegations about people they no longer want living in their properties. Alleging that these occupiers are trespassers, and erroneously describing them as ‘squatters’, is one such tactic used by owners in the hope of obtaining a speedier eviction.

Cases exist of the measures currently designed to deal with squatters being used maliciously against tenants, subtenants, and other vulnerably-housed people.

If occupiers do not receive proper warning of a case being made against them, their ability to access legal advice about their situation is diminished. If possession is granted by the court, the procedure renders the occupiers homeless, and their ability to challenge the false allegations and appeal the court’s decision is obviously hindered.

Owners know that falsely claiming the existence of a PIO means no need for a court case, and so the PIO process is heavily abused.

According to the Section 12(a) of the Criminal Law Act of 1977, as amended by the Criminal Justice and Public Order Act of 1994:

“An individual 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”

Despite evidence of these criminal abuses being presented to the police, we know of no occasions when a landlord has been prosecuted under Section 12(a).

Although the penalty is not as strong as it arguably should be (on a par with perjury), the existence of this offence undoubtedly discourages some owners from making false claims. However, local authorities and other registered social landlords were made exempt from the provisions of Section 12(a). This explains why almost all false PIO claims originate from councils and other social housing providers, rather than from private owners. An estimated 99% of council PIO certificates turn out to be false.

So although the law does contain some provisions to ‘counter-balance’ the possibility of an owner making false allegations, it does not apply equally to all types of owner, and in practice must be described as wholly inadequate.

Unscrupulous landlords are a serious housing issue, a fact confirmed in the recent Shelter policy paper *Asserting authority - calling time on rogue landlords*. Residential landlords have more power than tenants or occupiers, contrary to statements made in the Consultation. We have on record a significant number of cases where landlords have been able to defraud tenants, eschew their legal responsibilities, and generally use the law in their favour. This has had, in turn, a disproportionate effect on poorer tenants who have few resources to challenge their actions.

The existing law also fails to protect tenants against abuse of Section 21¹¹ and provides the opportunity for landlords to deprive tenants of deposits, services or accommodation.¹² Furthermore, SQUASH calculates that landlords kept around £3.4 million in returnable deposits in 2010, in most cases without an independent arbiter to decide whether it was warranted or not. Additionally, landlords in 2010 charged additional fees amounting to around £83 million.¹³

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

The best way to protect legitimate occupiers from these types of malicious allegations – including allegations that they are ‘squatters’ when they are not – is to retain and even extend the current system, so that cases of possession are generally heard and decided in the civil courts.

The majority of owners claiming for possession do not bother to use the IPO procedure, as they find the normal court process perfectly adequate for their needs. It is clear that the procedures around IPOs, including the ex parte hearings, are vulnerable to abuse by landlords who lie on their claim forms and before the courts. We argued against the introduction of IPOs, and would argue now for their repeal.

Local authorities and social housing providers should not be exempt from prosecution for making a false claim about a PIO. Section 12(a) should be amended as follows:

“An individual is guilty of an offence if he makes a statement for the purposes of subsection (2) (d) or (4)(d) or (6)(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.”

Casual perjury is common in proceedings against ‘squatters’ and we believe that all cases of perjury should be vigorously pursued. If the police are unable or unwilling to prosecute cases of landlords lying in court, this leaves tenants and other legitimate occupiers with no real protection, and brings the entire British legal system into disrepute.

The police do require more training about the law as it relates to squatting. Most of the time it is a civil matter, with no criminal offences being committed, and so the police need not intervene. Sometimes they do need to intervene, to prevent violence being used or threatened by the owners or their agents. They need a better understanding of the rights of PIOs, DROs and other types of owner, in order to offer accurate advice to anyone who complains about their property being

‘squatted’.

Police officers should remain within the law at all times, and should not be used to enforce malicious allegations.

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

There is no need for a new offence against squatting. Any proposal to levy additional penalties is therefore irrelevant.

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?

We have extensive experience of section 7, although not necessarily as members of the groups whose views you selectively seek in the phrasing of the question.

The ‘existing offence’ referred to seems to be the failure of a squatter to leave premises when required to do so by or on behalf of either a Displaced Residential Occupier (DRO) or a Protected Intending Occupier (PIO).

We doubt that this consultation exercise will uncover any cases of genuine DROs. The idea that squatters target people’s actual homes is a myth, largely propagated by the media and by politicians. *Squatting: a Homelessness Issue*, the recent report by Crisis and CRESR, Sheffield Hallam University found that every squatter interviewed was occupying empty, abandoned buildings including flats awaiting demolition, disused warehouses or empty schools, and all preferred properties where they were least likely to attract attention.

In cases when they discover that their presence is depriving someone else of a home, squatters tend to move out immediately. There have been no cases of anyone refusing to leave in these circumstances, then being convicted of any Section 7 offence.

There is already adequate criminal law to protect both DROs and PIOs. However it would be helpful if the existing law was better understood by the public. Even government representatives have demonstrated a lack of understanding of the current legal framework, and

contributed to the misconceptions that are widespread in society. This is detailed in our response to Question 20.

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

As already noted, squatters occupy empty properties, not ones which are already being lived in. We do not believe that genuine DROs (by which we mean anyone being displaced from their actual home by the arrival of squatters) exist. This term was coined and first defined for the Criminal Law Act of 1977, despite no evidence of this alleged problem having occurred.

We cannot find evidence of a single corroborated case of it occurring since then either. Behind the leading headlines of much of today’s media coverage, the truth is heavily distorted: stories which apparently concern the occupation of someone’s ‘home’ by squatters, on close examination, reveal that they are in fact second homes, or unoccupied by their owner for great lengths of time, as in the much-publicised recent case of Julia High.¹⁴

In some cases those being described as ‘squatters’ are themselves the victims of fraud, committed by a third party, for example self-styled ‘lettings agents’ who have collected rent monies from their “tenants”.

When the police are criticised by the media for not helping the owner regain their property, it is often because they have investigated the matter, and come to the conclusion that the complainant cannot truthfully be described as a DRO.

One thing that squatters share is the experience of homelessness; they have no desire to deprive anyone else of a home. If squatters move into an empty place and then discover that a new tenant or homeowner is about to take up residence themselves, they move out as quickly as possible, as documented in the recent news story concerning Dr and Mrs. Cockerell.¹⁵ From the interviews we have conducted with squatters, it seems likely that they would do this even if the Section 7 sanctions relating to PIOs did not exist.

However, in practice, the PIO legislation is routinely abused by social landlords, who name a fictitious

‘intending occupier’ in order to secure possession. The supposed ‘tenant’ never appears, the property remains empty for many months – sometimes years – and it seems unlikely that a real person has ever been offered a tenancy for the place in question. This appears to be standard practice in some areas.

Obviously, lying about a tenancy like this for the purposes of obtaining possession may in itself constitute an offence. As noted in our responses to Questions 11 and 12, it is currently a criminal offence for a private landlord to do so. Despite the existence of this supposed “counter-balancing offence” the police have shown a clear reluctance to take people’s complaints seriously and to prosecute offenders.

Those adversely affected by the falsification of PIOs are usually left homeless by the process, so understandably find it difficult to seek redress. In any case, the only redress currently available to them is to make a complaint to the Ombudsman, though nothing more substantive than that.

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?

We do not believe that expanding section 7 is a good idea. It is not always easy to define who might be considered the ‘rightful occupier’, and in legal terms we need to identify precisely who is ‘entitled to possession’.

A PIO, or someone acting on their behalf, is currently required to provide a statement or a certificate confirming that the occupiers are preventing them from moving in as intended. If someone’s actual home was ever squatted, it would be even more simple for the DRO to prove that this had taken place.

As we described in our answer to Question 15, there are numerous cases of the PIO procedure being fraudulently misused, against a wide range of people (not just ‘squatters’, but also licensees, subtenants, tenants in rent arrears, etc) who are forced to move out without any opportunity to present their case in all its complexity.

In cases where there is no DRO or PIO, any owner who

finds their empty property occupied by squatters is able to use the civil court system, and obtain an immediate order for possession. They are simply expected to show the court that (a) they are, or represent, the actual owners, and (b) those owners are legally entitled to possession. The court grants the claim as long as those two criteria are met.

Crucially, if a landlord goes to court claiming possession when they are not legally entitled to it (for example, the occupants are actually tenants in rent arrears, not trespassers, and the landlord has not bothered to take the steps required in law to end that tenancy), then the court is able to adjudicate the case correctly. When it comes to commercial properties, the rights of occupation can be multi-layered and complex, and it is only with great difficulty that the courts are able to decide who is entitled to possession. The term ‘rightful occupier’ is not always interchangeable with ‘owner’, and that legal distinction is important.

It does not seem practical or desirable that a decision like this should be made on the spot by police officers, who are not necessarily well-versed in the finer points of possession law. Any expansion of Section 7 would be problematic for this reason.

The consultation document proposes expanding Section 7 in order to give ‘commercial property owners a similar level of protection to displaced residential occupiers and protected intending occupiers’. A similar, proportionate, level of protection already exists in law. If a commercial property user ever were to discover trespassers in their business premises (again, there is no evidence of anybody ever squatting in a building that is already in use), there are already criminal sanctions in place which the police would have no hesitation in applying.

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?

No. We believe that Section 6 offers a basic level of protection for everyone, not just squatters. Nobody should be evicted violently, without warning, from their home, and this is what Section 6 protects against. We believe that the legal complexities of possession cases are best dealt with in a judicial setting, and that those who

face homelessness deserve an opportunity to present their side of the case.

Section 6 was designed to prevent the use or threat of violence to settle disputes, and creating exemptions will likely be seen as the government condoning the use of violence.

Owners are likely to turn to the unregulated private security sector for assistance if they are given the go ahead to organise their own evictions. Recent years have seen an increase in the number of private security firms who are ready and willing to use violence in order to evict both Traveller sites and squatted buildings. One notorious example is Constant & Co, who have received international criticism for their methods.¹⁶

Any increase in what are termed ‘self-help evictions’ by owners and their agents would lead to more actual violence being used against those accused of ‘squatting’. There are no exemptions to the existing criminal laws regarding assault, actual bodily harm, grievous bodily harm, arson, sexual assault: if alleged ‘squatters’ become the victims of these kinds of serious harm then the police will have to investigate and prosecute any complaints, increasing their workload.

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.

The existence of section 6 currently acts as a deterrent to those who might otherwise use violence to break into places occupied by others.

We know of property owners both using and threatening violence against alleged ‘squatters’. However, the police have not charged them with a section 6 offence.

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

There seems to be an implication, and a misconception, that squatters are currently committing various offences, and that the police are incapable of enforcing existing

legislation, which prohibits such behaviour as theft, criminal damage, or abstraction of electricity.

Far from damaging properties, squatters are more likely to maintain and repair them, often leaving them in better condition than they were found in. Vulnerably housed, they are highly unlikely to do anything to attract the attention of the police or other authorities.

As stated in the consultation document itself (Chapter 2 and Annex B), there are already criminal sanctions in place for a range of offences around squatting. The consultation mentions only those ‘which could apply to squatters’. However, as previously noted, many of the existing offences are not those committed by squatters but by owners and their agents. It is an offence, for example, to invent a fictitious ‘tenant’ for the purposes of securing possession for a PIO, but this practice continues unchecked.

The only barrier to any of these offences being used effectively is ignorance (or a misunderstanding of the legal situation as it stands) on the part of the owner or the police. Ensuring that the police are better-informed of the laws around squatting could be a simple matter of including more on this subject in their training, and in their operational guidelines.

Furthermore we assert that existing offences involving property ownership on the part of owners themselves are not adequately enforced.

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?

There is a great deal of confusion and misunderstanding of the laws concerning squatting. The Government should be able to provide accurate and helpful information for those involved, and society at large.

Unfortunately, the guidance is not always accurate and helpful. Subtitled ‘Advice on dealing with squatters in your home’, it is written as if to help a mythical DRO whose ‘home’ has been squatted, an event which we know does not normally happen. In most cases, the circumstances – and the best advice for the owner – will differ from this.

IPOs are described as the ‘way of removing squatters’, even though this is not always applicable, or appropriate. Most owners seeking to evict squatters prefer to use the normal possession proceedings in the county courts, a simple and cost-effective method, but this is not even detailed as an option.

Owners do not always choose to evict squatters. Many see the benefits of their building being occupied and cared for, rather than being left empty, and choose to negotiate an agreement with the occupiers. This may take the form of a licence or even a lease, for a fixed period of time or until possession is required.¹⁷ The guidance should include this option too.

Finally, the guidance is very clearly written for property owners, and does not include any advice for those accused of being ‘squatters’, although the Government has a duty to ensure balanced access to justice.

We agree that the Government could play a greater role in educating the public about squatting. However, this guidance does not seem to have been widely circulated, and its contents have, on a number of occasions, been contradicted and undermined by Ministers and MPs, whose misleading statements achieve more publicity than than the original guidance.

For example, the Housing Minister, Grant Shapps, stated on *The World Tonight* that on the issue of primary homes being squatted, ‘the police don’t act because the law does not support the police acting’.

A second example is of the Conservative MP Mike Weatherley, an advocate of the further criminalisation of squatting. He told the *Daily Mail* that even in the case of finding squatters in your home, ‘If those squatters claim that they did not break into your property – though they almost certainly will have done – you have no powers to throw them out.’

Inaccurate and inflammatory reports about squatters regularly appear in the media, with no government spokesperson to challenge the myths and misleading statements being made. This protects neither owners or the homeless people who turn to squatting for shelter. Indeed, as a letter to *The Guardian* signed by 158 solicitors, barristers & other housing legal experts states:

‘We are concerned that a significant number of recent media reports have stated that squatters who refuse to leave someone’s home are not committing a criminal offence and that a change in the law – such as that proposed by the government – is needed to rectify this situation. This is legally incorrect, as the guidance published by the Department for Communities and Local Government in March this year makes clear. We are concerned that such repeated inaccurate reporting of this issue has created fear for homeowners, confusion for the police and ill informed debate among both the public and politicians on reforming the law.’¹⁸

Better guidance should also be issued to the police.

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?

SQUASH promotes the welfare of homeless people who depend upon squatting as a means to find temporary shelter, and the ‘hidden homeless’ into which category virtually all squatters fall. We work towards the achievement of secure housing for all.

Local authority housing waiting lists have doubled since 1997, to around 5 million. Rents have increased by 7.3 per cent and will soon hit £1,000 per month on average,¹⁹ while at the same time overcrowding has exploded since 2002/3 with 1 in 20 (3 million) people living in overcrowded conditions.²⁰ More than 42,000 households are officially homeless, 50,000 living in “temporary accommodation” in England alone,²¹ while, as previously stated, the “hidden homeless” figures, according to Crisis, are closer to half-a -million (Reeve and Barry, 2011). With increasing house prices and decreased availability of social housing across the UK, low-income groups are those who will turn to squatting to fulfil their housing needs.

Options 1 to 3 amount to the criminalisation of the homeless in the midst of a housing crisis. Unscrupulous landlords would be able to accuse their tenants of ‘squatting’, avoid a proper court process, and force the eviction of the most vulnerably housed.

By conservative estimates, there are 20,000 squatters in the UK. Options 1 to 3 would see a substantial rise in the number of rough sleepers, cause a greater demand for the decreasing number of hostel beds, and increase the burden upon local authorities and charitable bodies working with the homeless. If all squats were to be evicted, between 10,400 – 26,000 under-25's would join the already long list of young people seeking accommodation, which the Citizens Advice Bureau has highlighted is a growing problem.

The proposals would also come at great public expense - a survey of squatters found that 42 per cent stated they would claim housing benefit if they could no longer squat.²² With recent changes to housing benefit, and rising prices in the private rental sector, this is increasingly an unstable course for those on low incomes. Currently squatters save taxpayers in England and Wales between £21 – 52.7 million a year in housing benefit payments.²³ If a new law to criminalise squatting forced those who currently squat to rent privately and claim benefits, it would cost the taxpayer between £35.9 – 89.8 million a year.²⁴ Additionally, if all squats were evicted, it would cost an additional £29.3 – 73.3 million in police and magistrate costs to enforce.²⁵

Transferring cases from the civil courts to the criminal courts will transfer the costs of evicting squatters from landlords to the public purse, and the costs of using the police and criminal justice system will obviously be much higher. A further cost would be the potential entitlement of squatters to Legal Aid.

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?

“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” (paragraph 39, Options for Dealing with Squatters, MoJ)

The government has a legal duty to assess their decisions with reference to impact on people with the protected

characteristics included in the Equalities Act 2010, and are at present in danger of not fulfilling this obligation. It is worrying that the government are considering criminalising a diverse and under-represented group about which so little is known.

SQUASH have identified the categories of children and young people; Gypsies and Travellers; asylum seekers; and migrant communities as falling within the protected characteristics and impacted by the proposals included in the Ministry of Justice's consultation document.

Children and young people

Young people (under 25s) are experiencing homelessness and difficulty finding housing, particularly within the private rental sector, in increasing numbers. The Citizens Advice Bureau (CAB) reports that privately rented accommodation was the biggest housing issue young people sought advice on in 2010/11 (26,000), up 10 per cent from 2009/10. CAB dealt with 10,000 problems of threatened homelessness, up 16 per cent from the previous year; 6,000 problems with actual homelessness, up 25 per cent on the previous year. One in four problems with actual homelessness came from the under 25's. In the second quarter (Q2) of 2010/11, there was a big increase in rent arrears to private landlords (rising 19 per cent to 7,020), with actual or threatened homelessness rising 22 per cent (to 24,720), and problems with access to accommodation rising 20 per cent (to 9,952).²⁶ Social, charitable and voluntary organisations are becoming increasingly overstretched with cases of young people turning to them for support. For example, Crisis' survey of housing professionals in local authorities and the voluntary sector found: 87 per cent of those surveyed were having difficulty finding properties for people on the Shared Accommodation Rate (under 25's), following housing benefit cuts.²⁷

This situation means that increasing numbers of young people are turning to squatting as a temporary solution to their dire housing needs. Young people make up a large proportion of squatters: research by Crisis has found that 39 per cent of homeless survey respondents, 30 per cent of whom were 30 years or under had squatted.²⁸ Research from 1994 found that 32.2 per cent of squatters had children under 16; women under 30 years of age made up 17.7 per cent of squatters; and men under 30 years of age made up 21.8 per cent of squatters.²⁹

Gypsies and Travellers

Although on page six of the consultation there is reference to the proposals being targeted to those squatting premises as opposed to land, Gypsies and Travellers are highly likely to be impacted by these proposals. 25 per cent of the Gypsy and Traveller population who live in caravans are on either unauthorised encampments or unauthorised developments (according to the Communities and Local Government Caravan Count). In urban areas, Gypsies and Travellers who can find no official stopping place, whether permanent or transit, often have to resort to the land around disused or derelict buildings e.g. former factories.

Asylum Seekers

A significant proportion of asylum seekers are excluded from entitlement to welfare benefits, assistance with housing from local authorities, and are prohibited from taking on paid employment. Asylum seekers awaiting a decision on their application from the Home Office are housed by the UK Border Agency/NASS if they meet certain conditions. The weekly allowance received by asylum seekers is not enough to save for future accommodation costs. The 1999 Immigration and Asylum Act excluded all asylum seekers from the security of tenure provisions of current housing legislation, meaning that people can be legally evicted from their accommodation with a minimal seven days' notice being given. If an asylum application is unsuccessful they have to vacate NASS accommodation in 28 days. Even if an asylum application is successful, a person has to leave this accommodation in 21 days and whilst they are then entitled to housing benefit they first have to find private accommodation, which usually takes longer than 21 days and requires a large deposit, whilst housing benefit now rarely covers the full cost of rent. The UK Border Agency is cutting its housing budget by nearly £30 million and its number of housing contracts by 21 per cent, in 2012, which will result in less housing provision for asylum seekers. All this means that it is very easy for an asylum seeker to become homeless. Research by Oxfam³⁰ shows that many asylum seekers experience entrenched homelessness after becoming destitute: where a person cannot obtain both (a) adequate accommodation and (b) food and other essential items (Section 19 of the National, Immigration and Asylum Act 2002). Existing evidence suggests that many asylum seekers have been destitute for more than six months and a significant proportion

for more than two years (recent survey undertaken by the Asylum Support Partnership). It is estimated that 283,500 refused asylum seekers were living in the UK in 2005, and this number seems likely to have increased. It has been estimated that there could be more than 100,000 children caught up in the backlogged system, a significant proportion of whom may be living in conditions of destitution (Reacroft 2008). Faced with no other option, many become reliant upon squatting as a means to house themselves, in order to alleviate rough sleeping and/or reliance upon temporary accommodation with friends and family.

Migrant communities

Migrants are particularly vulnerable to homelessness, both 'hidden' (relying on friends and relatives for accommodation, or squatting) and rough sleeping. In London, for example, migrants from accession countries account for half of the bed spaces in night shelters. Most migrants live in the private rental sector, which is currently experiencing an extreme lack of affordable properties on the market and large rent increases. This is combined with restrictions on claiming benefits, and reliance upon lower-paid and less secure employment, making their economic situation more precarious and the risk of homelessness greater than for other demographics. Many migrants rely upon squatting as a means of finding temporary shelter and alleviating their experience of homelessness.

In addition to those who fall under the protected characteristics, the government has a duty under the Equalities Act 2010 to consider the impact on socio-economic inequalities of its decision making: "An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."³¹ 78% of homeless people who squat have approached their local council but were not entitled to housing as they did not meet the council's strict criteria.³² Squatters are homeless people, and the majority fall into the category of people on low incomes. A 2011 survey of squatters found that 86 per cent of respondents cited financial reasons for squatting.³³ Criminalising squatting will exacerbate socio-economic disadvantage. The government must also consider its proposals from this perspective, and gather the appropriate research to allow it to do so.

REFERENCES

¹One recent example from the London Borough of Hackney (SQUASH Case Study 45): http://www.hackneygazette.co.uk/news/hackney_gp_backs_squatters_fighting_eviction_from_abandoned_school_1_972335

²EHA (2010) database of empty properties by region, combined with the average house prices, by region, provided by the Land Registry's Housing Price Index, July 2011.

³Applying the EHA (2010) database of empty properties in 2010 to the EPS (2008) Figure 2.3.3: "Length of time property is likely to remain empty", using the percentage breakdown of those who said: "Between six months and two years", "More than two years" and "Don't know", as they are unlikely to have resolved the situation within 6 months.

⁴Using the Empty Homes Agency's (EHA) 2010 database of 737,491 empty properties in 2010, and the low[a] and high[b] estimates of the squatting population (20,000 [a] and 50,000[b]), the average occupancy being 65% 2-person houses and 35% single persons (Wilson, 1994). Thus between 12,121 and 30,303 vacant buildings are occupied.

⁵The Criminal Justice Act consultation released the following figures regarding squatting in England and Wales in 1994, these are the most recent statistics on squatter demographics:

- 26% of the premises were privately owned, the remainder local authority and HA owned.
- 52% of squatters were under 25 years of age, 40% between 26 and 40, and 8% over 40.
- 65% of squats were occupied by two adults, and the rest by single persons.

⁶Reeve, Kesia and Elaine Batty; *The Hidden Truth About Homelessness: Experiences of single homelessness in England*; Crisis and CRESR, May 2011; http://www.crisis.org.uk/data/files/publications/HiddenTruthAboutHomelessness_web.pdf

⁷<http://www.guardian.co.uk/commentisfree/2011/jul/04/squatting-illegal-vulnerable>

⁸Peck v UK (2003) 36 EHRR 719 at [44]. Deane v

Clayton (1817) 7 Taunt 489 at 532-3; more recently R (Beresford) v Sunderland CC [2004] 1 AC 889

⁹Furmedge v Chester-Le-Street DC [2011] EWHC 1226 (QB)

¹⁰*The Independent*, March 31 2011 <http://www.independent.co.uk/opinion/commentators/shami-chakrabarti-policing-the-student-protests-2290890.html> [last accessed: 17:19 Fri 30th September]

¹¹The Citizens Advice Bureau's (CAB) study *The Tenant's Dilemma* addresses the issue of private landlords abusing Section 21 of the Housing Act 1988 (fast-track "no fault" means of evicting tenants), which requires no reasons to evict and is commonly used as a retaliation tactic if tenants try to get landlords repairs or safety issues addressed. The CAB conducted an email survey with environmental health and tenancy relations officers across England and Wales and found that 48% of officers answered "always" or "often" to the statement that clients "were afraid of repercussions from landlords if they pursued a course of improving their accommodation in line with environmental health standards"; 58% answering "sometimes". 98% agreed that legislative change concerning Section 21 Notices needed to be made due to their abuse by landlords. Crew, Debbie; *The Tenant's Dilemma: Warning: your home is at risk if you dare complain*; Crosby, Formby and District CAB, June 2007; <http://www.marmotreview.org/AssetLibrary/local%20examples/Tenants%20Dilemma.pdf>

¹²A number of charities, local authorities and voluntary organisations have noted the prevalence of "dodgy landlords" and private rent scams. The charity Shelter claim that almost one million Britons were victims of a scam involving a private tenancy or landlord in the last 3 year, using Home's (2009) figure of 2.6 million privately rented homes, and Property Owner's Survey 2009 - Deposits and Additional Fees (78% of landlords require deposits). Assume that the average rent in England and Wales is £800 (lower end of spectrum, with the 2011 RRPI rent average of £1,244 from Rentright.co.uk), and one month rent as deposit as standard, which amounts to £1.6 billion held with landlords as deposits. Applying, of which 67% are returned in full, 24% returned in part

(assumed at 50%), and 9% not returned at all., therefore it is estimated that a total of £1,087,008,000 of tenant deposits are held back in 2010.

¹³Using the Property Owner's Survey, which states that 41% of those who charge deposits, also charge fees, of which 62% are non-returnable administration fees. Thus assuming the average fee of £100 (<http://www.hiddenfees.co.uk/house-rental-hidden-fees.html>), thus £83,148,000 may have been charged in 2010.

¹⁴SQUASH Case Study 55: <http://www.bbc.co.uk/news/uk-england-london-14564949>

¹⁵<http://www.thisislondon.co.uk/standard/article-23984564-squatters-say-sorry-and-finally-leave-pregnant-womans-home.do> (Accessed 30.09.2011)

¹⁶See for example <http://www.corporatewatch.org/?lid=3454> (SQUASH Case Study 46).

¹⁷SQUASH Case Study 72 gives an instance of this. A commercial property in London Borough of Southwark was squatted in 2010. After squatters approached the owner - a developer - he stated that he was impressed by the willingness to communicate. He offered the squatters a licence to occupy, on the condition that they vacate when property is sold. Eighteen months later, the occupiers remain and the owner is still content with the situation, appreciating the security provided by the licencees.

¹⁸<http://www.guardian.co.uk/society/2011/sep/25/squatting-law-media-politicians>

¹⁹Residential Landlord: <http://www.residentiallandlord.co.uk/news2585.html>

²⁰Office National Statistics – *General Lifestyle Survey, Great Britain*, updated November 2010

²¹Communities and Local Government, *Live Tables on Homelessness*, <http://www.communities.gov.uk/housing/housingresearch/housingstatistics/housingstatisticsby/homelessnessstatistics/livetable/>

²²Clare Smith, *A Cost Analysis of the Proposed Introduction of an Intentional Trespass Law in Regards to Squatting*, July 2011.

²³For all squatting calculations we use the low and a high figure for the number of squatters in England and Wales;

20,000 is the estimate from the Ministry of Justice in 2011, while 50,000 is estimated in the University of Surrey's research. Clare Smith (ibid.) estimates that her sample of squatters (50) save the local housing benefit £4,392 per month after all considerations have been taken into account; thus each squatter, on average, saves the Local Authority £87.84 per month. This figure is applied to the low and high estimation of squatter populations.

²⁴Clare Smith (ibid.) makes estimates for the housing benefit needs of her sample of 50 squatters, depending on their circumstance (standard, supported housing, etc). She produces a low, high and supported housing figure of future costs; thus using an average, it is estimated that each squatter will cost the local housing department £149.80 per month; the low and high population figures are applied to this figure.

²⁵Clare Smith (ibid.) estimates the cost for the police of evicting and prosecuting all respondents, taking into account their intended actions if it were criminalised in her survey, which is used to calculate a per person figure: £833.04 for police eviction, £633.36 for magistrates costs. This is applied to the low and high squatter population estimates. Since only 12% in the survey would stop squatting, one can expect similar levels of costs to continue. Incarceration costs have not been included, but would certainly push costs higher.

²⁶Citizens Advice Bureau: http://www.citizensadvice.org.uk/index/pressoffice/press_index/press_20110606.htm

²⁷Crisis, <http://www.crisis.org.uk/news.php/239/dramatic-benefit-cut-risks-rise-in-rough-sleeping%29>

²⁸Crisis, *The Hidden Truth About Homelessness*, 2011

²⁹SQUASH, *Ordered Out*, 1994.

³⁰Oxfam, *Coping With Destitution: Survival and livelihood strategies of refused asylum seekers living in the UK*, (February 2011)

³¹<http://www.legislation.gov.uk/ukpga/2010/15/part/1>

³²Crisis: *Squatting: a homelessness issue, An evidence review*. <http://www.crisis.org.uk/publications-search.php?fullitem=327> (Accessed 30.09.2011)

³³Clare Smith, ibid.

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