Policy on Squatting in the Criminal Justice and Public Order Bill [Bill 9 of 1993/94]

Research Paper 94/2

10 January 1994

The Criminal Justice and Public Order Bill was presented on 17 December 1993 and is due to have its Second Reading on 11 January 1994. Clauses 56 and 57 deal with the eviction of squatters from residential and commercial premises. This paper discusses the changes to the law affecting trespassers in residential premises. Information on other aspects of the Bill can be found in Library Research Papers 94/1 and 94/3.

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A. Background

The last major revision of the law on squatting took place in 1977 with the *Criminal Law Act*. This Act followed a Law Commission Report[1] which recommended the abolition of the Forcible Entry Acts 1381-1623 and the introduction of the new offences specified in the 1977 Act (see next section).

The 1980s saw a number of proposals to further reform the law on trespass. In 1983, following a consultation paper[2], Mr Brittan, then Home Secretary, announced that he had asked officials to draw up proposals for a new offence of trespassing on residential premises[3]. This consultation was prompted by the intrusion of Michael Fagan into Buckingham Palace.

Lord Onslow introduced a Criminal Trespass on Residential Premises Bill in the 1982/83 session which fell with the 1983 election. The Bill was subsequently reintroduced in the Lords in the 1983/84 session and reached the Commons but was lost through lack of time.

Proposals for reform resurfaced in June 1990 when, in response to a Parliamentary Question, Margaret Thatcher, then Prime Minister, said that squatting in residential premises which did not cause the immediate threat of homelessness could be dealt with only through civil action and commented that there appeared to be a "defect in the law.[4]" On 15 November 1990 John Patten, then Junior Minister at the Home Office, made a further announcement:

> 8. **Mr. Burns**: To ask the Secretary of State for the Home Department if his Department has any plans to bring forward proposals to tighten the law on squatters
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> **The Minister of State, Home Office (Mr. John Patten)**: As my right hon. Friend the Prime Minister told the House on 19 June, we are considering the criminal law on squatting as it affects unoccupied residential property. This is a difficult and complex area in which the criminal law has traditionally not played a major role in England and Wales. But we recognise that there is a case for strengthening the law, and I hope to announce the Govemment's intentions in due course.
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> [HC Deb 15.11.90 c 696]

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1 Law Commission Report `Criminal Law : Report on Conspiracy and Criminal Law Reform' [Law Com No 54 HC Paper 176 Session 1976/77]

2 Home Office `Trespass on Residential Premises' February 1983

3 HC Deb 1.12.83. cc577-8W

4 HC Deb 19.6.90 c 795

The Home Office issued a further consultation paper on squatting in October 1991[5] in which various options for extending the criminal law to cover certain instances of trespass on residential and shop premises were discussed. The Government's position was set out as follows:

5. There are no valid arguments in defence of squatting. It represents the seizure of another's property without consent. It can cause distress to lawful occupants both by the deprivation itself and afterwards when the property is left in a squalid state. No matter how compelling the squatters' own circumstances are claimed to be by their apologists, it is wrong that legitimate occupants should be deprived of the use of their property. This paper is not concerned with spurious arguments claiming to justify squatting. Rather it considers the various remedies which are, or might be, available to dispossessed owners.

6. Although the Government readily accepts the need for efficient and quick means of expelling squatters it cannot be blind to the very real difficulties of principle and procedure. These are discussed at paragraphs 34-40 but they can be reduced essentially to the suitability of the criminal law to resolve private disputes over property. Accepting in principle that criminal law should go further to deal with squatting is not enough without careful definition of where it should stop. The criminal law needs to keep in proportion to public mischiefs if it is to command confidence and respect, not appearing too particular or sectarian. And the enforcement of the law by the police, Crown Prosecution Service and courts is a valuable and limited public asset, which should not be squandered when other remedies are available, adequate and may be more suitable to the conflict of interest involved. Any changes in the law must be practical and enforceable.

The Government's final proposals for amending the law in this area were announced by Michael Howard on 4 November 1993[6]. He outlined the proposals as follows:

> "The new proposals will:
>
> - apply to all premises (including shops);
> - allow the lawful property owner or occupier to apply **immediately** to a civil court for an interim possession order without the squatters being present (ex parte);
> - speed up procedures to ensure that applications are dealt with quickly;
> - give squatters 24 hours to gather their belongings and leave the premises after the order is granted. If they fail to do so they will be committing a criminal offence and will be liable to arrest;

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5 Home Office `Squatting : A Home Office Consultation Paper' October 1991

6 Home Office Press Release 4.11.93 `Faster Eviction for Squatters'

Safeguards will be introduced to ensure that only genuine cases of squatting are covered.

- It will be a criminal offence to make a false statement to obtain a possession order;

- Defendants, once they have left the premises, will be allowed a full hearing of their case with the possibility of reinstatement and damages."

Clauses 56 and 57 of the Criminal Justice and Public Order Bill will introduce the offences of making a false statement to obtain a possession order and of failing to leave the premises concerned within 24 hours of an order being granted. The Lord Chancellor's Department is dealing separately with procedures to enable landowners to apply immediately to a civil court for an interim possession order as this requires an amendment of the Rules of Court.

B. The extent of squatting

Definitive information on the number of squatters in England and Wales is not available. The consultation paper gives the following details on the extent of squatting[7]:

9. The most recent detailed information was in the1986 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.

10. Some more recent information is available about squatting in local authority dwellings. On I 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.

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[7] Home Office `Squatting: A Home Office Consultation Paper' October 1991 p.3 paras 9-10.

The use of figures from a survey which is over seven years old and the citing of `recent media estimates' has been criticised by the Institute of Housing as an unsound basis on which to discuss a complex subject[8].

The National Federation of Housing Associations (NFHA) points out[9]:

The 'media estimates' of the extent of squatting are quoted in paragraph 9 at 50,000, but there is no atteint 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.

The Advisory Service for Squatters (ASS) estimates that approximately 10,800 properties are 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 believe published figures to be clearly inaccurate. Allowances were made for non-council squats according to local conditions but not for under-reporting[10]. The ASS also analysed ownership of a sample of over 2,000 squats from April to September 1991 with the following results[11]:

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8 Institute of Housing `Response to the Home Office Consultation Paper' March 1992 p.2 para 12.

9 NFHA `Squatting - A Home Office Consultation Paper' March 1992 p.1 para 3.

10 Squatters Action for Secure Homes (SQUASH): `Squatting and Homelessness in the 90's; A response to the Home Office Consultation Paper on Squatting' 1992 p.3.

11 Ibid, p.3.

	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

Research carried out by Surrey University in 1990 estimated that around 50,000 people were squatting of which one third were in families[12]. The consultation paper's assertion that `cases involving young children were negligible'[13] is 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[14].

The most recent estimate of the number of squatted local authority dwellings is given in the PQ reproduced below:

Mr. Pike: To ask the Secretary of State for the Home Department what estimates he has as to the number of squatters there are currently in England; and if he will make a statement.

Mr. Maclean: The nature of squatting makes it impossible to assess the number of squatters with any degree of accuracy, but estimates as to the total number of people squatting in England and Wales generally range between 30,000 and 50,000. More precise information is, however, available about the number of local authority dwellings under unauthorised occupation: on I April 1993 there were 2,963 local authority dwellings so occupied, of which 88

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12 University of Surrey `Faces of Homelessness' July 1991

13 Home Office `Squatting' October 1991, p.3, para 9.

14 SQUASH `Squatting and Homelessness in the 90s: A response to the Home Office Consultation Paper on Squatting' 1992 p.5

per cent. were in inner London: Hackney -1,152; Lambeth-327; Tower Hamlets-232; Camden-153; and Islington-135-being among the areas worst affected.

[HC Deb 17.12.93. c950W]

C. Existing legal remedies

Squatters are normally defined in housing law terms as trespassers as they have no rights of occupation and, because they pay no rent, are subject to no rent control. Both civil and criminal law procedures can be used against squatters. These separate procedures are outlined below.

1. Civil law procedures

There are special speedy proceedings available for landowners to regain possession in cases where there is no dispute about occupancy rights. These are Order 24 proceedings in the County Court and Order 113 proceedings in the High Court. Under these procedures 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. If the court finds that the occupiers are trespassers, then it is obliged to make an immediate order for possession (*McPhail v Persons Unknown* 1973 3 All E.R. 393). 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 which 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 the affidavits which have already been filed to stand as pleadings. Such issues arise in only a small minority of cases under these orders.

It is also possible to issue an ordinary possession summons against trespassers, but there is no guarantee of a swift hearing so in practice this is little used. Where ordinary possession procedures are used 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, however, there is no provision for awarding any monetary compensation by way of damages to a landlord.

Orders 24 and 113 have been available for use since 1970 when they were introduced to assist landowners against the resurgence of the squatting movement.

Landlords are entitled to use the remedy of 'self-help' in order to evict trespassers without a court order. However this course of action is rarely to be recommended since the passage of s.6 of the *Criminal Law Act 1977* (see below).

2. Criminal law procedures

Entry into private property without authority, but without any accompanying criminal conduct or intent, is not by itself a criminal offence. However, any person, whether or not the landowner, who uses or threatens violence against either people or property in order to gain entry into premises, commits an offence under the *Criminal Law Act 1977*, s.6. Landowners risk prosecution under this provision if violence is used or threatened against squatters, hence few landlords disregard advice to use the civil remedies available.

An offence under s.6 is not committed by a person otherwise offending against its provisions, if he or someone acting on his behalf is a displaced residential occupier of the premises concerned. 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 (*Criminal Law Act 1977*, s.12). 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 which they have just bought has been occupied while the sale was being transacted (*Criminal Law Act 1977*, S.7). 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* also 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 (s.8). 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 (S.1O). 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 Orders 24 and 113, even if the landowner used ordinary possession proceedings.

D. Defects in the law?

There have been a number of complaints about the current operation of the law on squatting, both in terms of the civil and criminal proceedings.

Perhaps the most frequently voiced criticism of the civil remedies is the length of time involved in actually regaining possession of a property. Although it is possible to obtain a court hearing under the Order 24 or Order 113 procedure within two weeks, delays may occur when the bailiff or sheriff is too busy to execute the order immediately. However, it is open to the aggrieved landowner to lobby the bailiffs' office for speedy execution.The Government's consultation paper highlights the following grounds for dissatisfaction with existing civil remedies:[15]

33 Concern about the civil remedies centres on the time it can take to regain possession and the expense. Squatters may well know and exploit the requirements of the civil process, for instance, by making spurious claims about the legal basis of their occupation (sometimes supported with false or misleading documents) and seeking adjournments to win time. It has also been said that the civil process involves too many stages between initial application and final enforcement of any order. Costs can be significant and resentment felt at the ensuing inconvenience and expense which is seen as compounding the harm done by the squatting. This is contrasted with the speedy resolution of disputes afforded by the 1977 Act, where arrests can be made on the spot and any disputes over title dealt with later after re-possession of the property. Invoking the criminal law brings little inconvenience and no cost to the aggrieved owner and might be more effective in deterring squatting in the first place.

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15 Home Office `Squatting' October 1991, p.11 para 33

In their responses to the consultation paper, the Law Centres Federation (LCF)[16] and Shelter (the National Campaign for Homeless People[17]) question the actual costs and delays which are involved in using the civil procedures. The LCF's response states:

> "Our experience suggests that in an appropriate case, the Order 24/Order113 procedure is a very simple and speedy procedure for recovery of possession from unauthorised occupants. In addition it provides a reasonable, but short, period in which occupiers with a genuine claim to the right to occupy the dwelling in question, may raise a defence. Where a so-called "spurious" defence is raised it is unlikely that the Judge dealing with the matter will not be able to see through this and grant the appropriate order."[18]

On the issue of costs, Shelter states:

> "It is essential that the issue of costs is examined rationally. Court fees, for summary possession actions in the civil courts, are usually £48 in the county court, and £70 in the High Court. We do not accept that civil actions need cost £500 to £800, as the consultation paper claims. Solicitors are expensive, but there is no reason why the comparatively straightforward procedure cannot be carried out without a solicitor. Squatting is primarily a phenomenon affecting the public sector. Local authorities and housing associations do nor always rely on legally qualified staff to process such cases through the civil courts."[19]

The Law Society, in its response to consultation paper[20], suggests that some criticism of the existing powers available in law stem from an ignorance of the processes and emphasises that a District judge can give leave to expedite proceedings, making "same-day" possession possible.

Local authorities have sometimes faced difficulties in implementing the civil procedures successfully. The decision by a public body to take possession procedures can be challenged on administrative law grounds, for example, that it has failed to take into account relevant factors or has misdirected itself in law. Special considerations will apply where occupiers are homeless people with a priority need under Part III of the *Housing Act 1985*. According to

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16 LCF `The LCF response to the Home Office Consultation Paper on Squatting' 31.3.92

17 Shelter `Shelter's response to the Home Office Consultation on Squatting' 30.3.92

18 `The LCF response to the Home Office Consultation Paper on Squatting' 31.3.92. p.1 para 2

19 `Shelter's response to the Home Office Consultation Paper on Squatting' 30.3.92. p.5 para 4.4.

20 Law Society `Response to the Home Office Consultation Paper on Squatting' 25.3.92

a Legal Action article[21], administrative law defences have been successful in certain London cases.

While section 7 of the *Criminal Law Act 1977* provides a remedy for people who are rendered homeless by unauthorised occupiers this section cannot be used by owners who have vacated their homes with the intention of selling or letting them. The problems facing second home owners dealing with squatters were debated in the House in 1991[22]. The consultation paper states "If squatters move in the property will be difficult to sell because they will exclude potential buyers, and may cause damage. All this can cause great inconvenience and expense.[23]" However, available evidence indicates that squatting is concentrated in the public housing sector and that relatively few private owners have experienced these type of problems.

The organisation, Squatters Action for Secure Homes (SQUASH), notes in its response to the Home Office consultation paper that on occasion local authorities have "abused" the section 7 provisions by inventing PIOs[24]. A local ombudsman report of an investigation into a complaint against the London Borough of Tower Hamlets (Case 88/A/858), found that the council had presented a group of squatters with a letter stating that the PIO was the council itself. The police subsequently evicted the squatters although there was no PIO in existence. The ombudsman noted that the council had thus probably committed an offence under section 6 of the *Criminal Law Act* and made a finding of maladministration proposing that the council compensate the squatters[25].

E. The Bill (Clauses 56-57)

The Bill will not make squatting in either residential or commercial premises an automatic criminal offence.

Clause 56 seeks to introduce a new criminal offence of making a false or misleading statement in order to obtain an interim possession order in civil proceedings to remove squatters from premises. As the Government intends to enable property owners and occupiers to apply immediately to a civil court for an interim possession order without the squatters being present (ex parte), the purpose of this clause is to deter landowners from trying to use

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21 Legal Action `Judicial Review as a defence to summary possession procedures against squatters' May 1989 pp16-17

22 HC Deb 25.7.91 cc1340-1346

23 Home Office `Squatting' October 1991 p.9, para 27

24 SQUASH `Squatting and Homelessness in the `90s : A response to the Home Office Consultation Paper on Squatting' 1992 p.10

25 Roof September/October 1990 `Legal eye' p.14

these provisions to evict lawful occupiers. The Government has stated that if lawful occupiers are evicted under these new procedures,"they will be allowed a full hearing of their case with the possibility of reinstatement and damages.[26]"

Clause 57 will make it a criminal offence for a person who is the subject of an interim possession 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.

F. Responses and other comments

In their responses to the Home Office's 1991 consultation paper both Shelter and the Institute of Housing criticise the document's failure to look at squatting in the context of the wider housing situation. The Institute's response states `The failure of the housing system to provide decent affordable housing to those in need has a significant link to the incidence of squatting.'[27] While Shelter notes `In the vast majority of cases squatting involves people moving into a wasted home because they are desperate for somewhere to live. It is one expression of a need which our housing system is failing to meet, and a resource our housing system is failing to use.'[28] These organisations believe that, in the majority of cases, squatting is merely a symptom of the lack of affordable rented housing and that the thrust of Government policy should focus on removing the need to squat by reducing the number of empty properties and by increasing the supply of social housing.

On the question of existing legal remedies against squatters the Law Centres Federation and the Law Society are of the view that they are adequate and that the problems noted in the Home Office consultation paper are not widespread.[29] Alternatively, the Small Landlords Association believes that `the existing law is an open invitation to squatters to cynically exploit' and agrees with paragraph 63a of the consultation paper that the existing civil remedies are too expensive, over-elaborate and slow.[30]

In its response to the consultation paper the Association of Chief Police Officers (ACPO) noted that `any proposals that sought to place any significant additional burden on already overstretched police resources would be rejected.'[31] The ACPO also stated that the courts

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26 Home Office Press Release 4.11.93 `Faster eviction for squatters'

27 Institute of Housing `Response to the Home Office Consultation Paper' March 1992, p.1 para 4

28 Shelter `Shelter's response to the Home Office Consultation Paper on squatting' 30.3.92. p.1 para 3

29 Law Society `Response to the Home Office Consultation Paper on squatting' March 1992, p.1 para 4 and LCF `Response to the Home Office Consultation Paper on squatting' March 1992 paras 1-3

30 Small Landlords Association `Squatting' March 1992 p.1 paras 4 & 6

31 Association of Chief Police Officers `Squatting - A Home Office Consultation Paper' March 1992 p.1, para 2

should maintain responsibility for issuing possession orders against squatters and that a criminal offence should only be committed when squatters breach these orders.[32]

Under the current proposals squatters who breach an interim possession order will face eviction, criminal prosecution, up to six months in jail and a £5,000 fine. If police routinely become involved in evicting squatters they will be taking on the role of bailiffs, a function which they already exercise under the limited circumstances set out in s.7 of the *Criminal Law Act 1977*. Both Shelter and the Law Society remark in their responses that any extension of the criminal law will involve the police in extra work.

If a squatter occupies premises as a direct result of homelessness and subsequently commits a criminal offence under clause 57, he could find himself facing a prison sentence. The costs of keeping a prisoner in the various categories of prison are set out in the following PQ:

Sir Nicholas Fairbairn: To ask the Secretary of State for the Home Department what is the cost per week, month or year of keeping a prisoner in the various categories of prison.

Mr. Peter Lloyd: Responsibility for this matter has been delegated to the director general of the prison service, who has been asked to arrange for a reply to be given.

Letter from A. J. Butler to Sir Nicholas Fairbairn, dated 16 June 1993..

The Home Secretary has asked me, in the absence of the Director General, Mr. Lewis, from the office, to reply to your recent Question about the cost of keeping a prisoner in the various categories of prison.

The average weekly cost of keeping prisoners in the financial year 1991-92-the latest year for which information has been published-was as follows:

Weekly cost

Type of establishment	*£ per prisoner per week*
Local prisons and adult remand centres	437
Dispersal prisons	807
Category B training prisons	438
Category C training prisons	363
Open adult prisons	316
Closed youth establishments	452
Open youth establishments	551
Female establishments	629
All operational establishments	442

[HC Deb 16.6.93 c578W]

[32] Ibid, p.1, para 3

Concern has been expressed over whether the safeguards included in clause 56 will actually give enough protection to lawful occupiers against unscrupulous landlords who seek to evict them. It is proposed that the hearing preceding the creation of the offence of remaining on private property will be an *ex parte* hearing. A recent article in the *New Law Journal* notes `it is a well-established and fundamental principle of natural justice, that a party to a hearing is entitled to be heard at it. Normally, *ex parte* hearings are considered acceptable only in exceptional circumstances, such as an emergency.'[33] *Ex parte* hearings could increase the potential for abuse by landlords and although occupiers are to be offered a remedy against such abuses, they may be left homeless until the matter is finally resolved. The *New Law Journal* suggests that the creation of a criminal offence following a failure to follow a civil court order `could lead to a situation where even an improperly obtained court order would cause a lawful occupier to commit a criminal offence if they remained in the premises after 24 hours.'[34]

In defence of landlords on this issue the Small Landlords Association notes `there seem to be fears that private landlords might attempt to utilise changes in the squatting law as a means of wrongfully evicting tenants. A landlord would be most ill-advised to attempt this because he would be liable for very severe penalties for illegal eviction.'[35] However, Squatters Action for Secure Homes (SQUASH) points out that of the 9,698 possession actions filed against squatters in the County Courts in 1989 only 7,240 resulted in orders for possession. SQUASH argues that the remaining 2,458 applications, which were dismissed or adjourned for judicial review, are evidence of the extent to which the present law is abused by landlords who claim their tenants or licensees are unknown trespassers.[36]

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33 New Law Journal `The Criminalisation of the squatter' 3.12.93. pp1721-1722

34 Ibid., p.1722

35 Small Landlords Association `Squatting' March 1992, p.2, para 12.

36 SQUASH `Squatting and Homelessness in the 90s : A response to the Home Office Consultation Paper on Squatting' 1992, p.10.