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Unlawful Occupation of Property

Introduction

1. This paper seeks views on the present law relating to the unlawful occupation of property - 'squatting' - and explores various options for changes to the law. These are included for the purpose of discussion and do not represent settled Government policy. There is concern about squatting in private dwellings and in commercial buildings, especially shops, and reported doubts whether existing civil and criminal remedies give adequate redress to dispossessed owners.

2. This paper is about squatting on premises and does not consider unlawful occupation of open land, which raises different questions of law and practice and is subject to separate legislation - in particular the Public Order Act 1986. Following a public review of section 39 of that Act, which deals with aggravated trespass on land, the Government announced on 22 May that no change in the law was required. But in order to secure a better understanding of how the law should operate guidance has been issued to the police on the application of the section and a leaflet has been published which gives a simple guide to the law in relation to trespass on land.

3. Trespass has proved a difficult subject for the law principally because it falls between public and private rights. There are difficult issues of principle and practice, and no unassailable consensus on many aspects. The Government is concerned that any legislative changes should flow from broad public discussion. The Government would therefore welcome views on the issues raised in this paper from as many people as possible. Responses should be sent to the Home Office, C4 Division, Room 332, 50 Queen Anne's Gate, London SW1A 9AT by 31 March 1992. Additional copies of this Paper can be obtained from the same address.

4. This review is concerned only with the law as it affects England and Wales; different legislation is in force in Scotland and Northern Ireland.

The Government's position

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.

7. Residential squats can occur in dwellings private and public, single and multiple. The owners may have moved away and need to sell to pay for a new home. Small private landlords may rely heavily on rent. Companies or local authorities may suffer less, indeed may be somewhat indulgent. The issues of principle may not vary so much but the hardship and degree of public interest which arises may be very different. And separate considerations arise where the squatting is in non-residential premises.

8. The paper is set out as follows.

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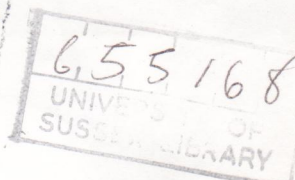
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The Extent of Squatting

Disparities
Boroughs
Official
Fig

There is little definite information. Some think there may be 50,000 squatters throughout England and Wales.

Squatting seems to be heaviest in London, and also in public rather than private housing.

Criminal law

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

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

11. Squatting has been the subject of a mixture of common and statute law.

Common law

At common law it was an offence, punishable with a fine and imprisonment, to make forcible entry upon, or to keep possession of, lands or tenements with menaces or force, without the authority of the law. It was necessary to prove that the force constituted a public breach of the peace or the conduct constituted a riot or unlawful assembly. These provisions were commonly invoked when there were few civil means of establishing ownership and recovering property.

Statute law

Common law was supplemented by a series of Forcible Entry Acts from 1381 to 1623. These were repealed, and the common law offences abolished, by the Criminal Law Act 1977.

12. Squatting and trespass are now subject to the **criminal law** in only three categories of case:

(a) by specific enactment, normally byelaws, such as on defence property or railway lands.

(b) by sections 6 and 7 of the Criminal Law Act 1977 (Appendix A).

(c) if it involves other offences such as criminal damage, threatening behaviour and assault which are dealt with as such.

13. Section 6 of the 1977 Act prohibits the use of violence to secure entry to any premises where there is someone on the premises opposed to the entry. This prohibition applies to lawful owners as to potential trespassers.

14. Section 7, broadly speaking, makes it unlawful for a trespasser to remain on any premises after being required to leave by either 'a displaced residential occupier' or a 'protected intending occupier'. The first is self-explanatory. The second is a person who has acquired a defined legal interest in the property and who requires it for his own occupation and has prepared a statement in the prescribed form, witnessed by a Justice of the Peace or Commissioner of Oaths, defining such matters as the nature of his interest. These provisions cover persons possessing a freehold or leasehold interest of at least 21 years duration and tenants of local authorities and housing associations. Where the premises are partly residential and partly business, such as a public house, it is a defence for the accused to prove that he was not in a residential part. The offences which are triable summarily attract a maximum sentence of 6 months' imprisonment and/or a fine. Uniformed police officers can arrest without warrant anyone suspected of committing them and can enter, if need be by force, to do so.

8 *The Criminal Law Act 1977. It is an offence to drive anyone from the premises he occupies as his home - or to keep someone out of his home - if in effect this makes him homeless.*

There are few prosecutions - fewer than 100 a year.

Civil Law

Otherwise owners have to get an expulsion order from the civil courts, which may take some weeks and cost - with fees for bailiffs to enforce it - £500 to £800.

10,000 people use this method every year.

15. There are comparatively few prosecutions; in 1988 55 persons were charged under section 6 of the Act and there were 26 convictions; in 1989 64 and 34. Under section 7 only six persons were charged in 1988 with three convictions, in 1989 only one person was prosecuted and convicted. It is difficult to assess the significance of these figures; it is not possible to quantify, for instance, how many cases were resolved informally by the police, but with the threat of arrest and prosecution in the background. The low figures for section 7 may suggest some ignorance of the remedies which are available.

16. A civil remedy can be obtained in the High Court under Order 113 of the Rules of the Supreme Court or in the County Court under Order 24 of the County Court Rules. The procedure is similar in both courts; issue of an originating summons (High Court) or originating application (County Court); preparation of an affidavit in support; and services of both documents on the occupants. There are several ways of effecting service. When the person in occupation is known, service can be effected in person or by leaving a copy at the premises or in such other manner as the court directs. When the occupant is not known, service can be effected by fixing a copy of the summons to the main door or posting it through the letterbox or fixing a copy to a stake fixed in the ground. The next stage is a hearing, in the High Court usually before a Master and in the County Court before the Circuit or District Judge. The court then makes and issues an order for possession specifying a date by which this must take effect. Once the date has passed the landlord can seek a warrant for possession by the Sheriff (High Court) or Bailiff (County Court).

17. Basic court fees are £80 (High Court) and £55 (County Court). Then there will be fees paid for the Sheriff or Bailiff to execute a writ of possession. Legal fees for solicitors and Counsel are much higher. Typically the total bill will amount to £500 to £800. In 1989 9,698 applications were filed in the County Courts, and 7,240 orders for possession were made; in the Chancery Division of the High Court 638 applications were issued against squatters or trespassers that year. Applications may also be made in the Queen's Bench Division, which does not keep separate statistics.

18. Rules of Court in both Courts require a minimum period between service and hearing. For residential premises the period is five days. High Court applications are fitted in at the earliest possible date before the Master, but there may be some delay in obtaining a hearing in the County Court. It is difficult to determine a reliable average period, but in most cases it is likely to take at least one week from the initial application to the issue of an order for possession, which will in turn specify only the future date by which possession must be given.

Scotland

Scots law criminalises trespass with intention to lodge or encamp.

Some 300 cases a year are reported to the police. Fewer than 100 end up in court.

Squatting seems less of a problem in Scotland.

19. In Scotland the civil remedies of ejection and interdict may be relevant, but squatting is also subject to the Trespass (Scotland) Act 1865 (Appendix B). This makes it unlawful to lodge in any premises or to occupy or encamp on any land without the consent of the owner. Temporary encroachment, for instance by ramblers, is not caught. The Act allows arrest without warrant and provides a level 1 fine (currently £50, this will rise to £200). Unlike the Criminal Law Act 1977 the Scottish Act lays down no procedures by which the owner's title to the property must be established before proceedings can commence nor does it require him to take any initiative: any constable coming across *prima facie* unlawful occupation is empowered (but not required) to act.

20. The available statistics on prosecutions under this Act over the past 10 years are difficult to interpret. An average of 280 offences a year have been reported to the police within a wide range (349-195), but few have resulted in proceedings - an average of 74 a year in the past six years. Since 1987 there may have been a small reduction in prosecutions as a result of a new power for the procurator fiscal to offer a fixed penalty. Over half the cases reported are believed to be travellers arriving in Tayside for the berry picking season. Most of these will relate to camping, not squatting.

21. Given the different conditions in Scotland, it is difficult to assess what effect similar provisions would have in England and Wales. There is little evidence of squatting being a serious problem in Scotland. Chief Constables describe squatting as infrequent and some forces have encountered none for some years.

Previous Reviews of the Law

The 1977 Act strengthened the law following a Law Commission review.

22. The law on squatting has been reviewed several times. In 1974 the Law Commission published its Working Paper No 54 on Offences of Entering and Remaining on Property. The Commission found inadequacies in the then law, in particular that establishing an offence of forcible entry required difficult distinctions between possession and custody, and that it was not clear when the use of force by a person entitled to occupation amounted to an offence. The Commission also found doubt whether entry was enough in itself to constitute the offence, or only if coupled with an intention to assert a right to the land. The Law Commission recommended that the Forcible Entry Acts should be repealed and the common law offences should be abolished. These provisions should be replaced by two new offences of entering property by force without lawful authority or against any persons in physical occupation of it (with be a specific saving for displaced residential occupiers) and being unlawfully on property and failing to leave after being ordered by a person entitled to occupation. These recommendations were substantially adopted and are reflected in the Criminal Law Act 1977.

Home Office Consultation Paper (1983)

Fagan's entry to Buckingham Palace led to a review in 1983.

23. After Michael Fagan's incursion into Buckingham Palace in 1982 the Government reviewed the law of trespass in a consultation document "Trespass in Residential Premises" published early in 1983. The document recognised that the criminal law already protected occupiers from a range of unlawful intrusions, especially where associated offences such as burglary, criminal damage and offences against the person were involved. However, simple trespass itself remained outside the law and the document canvassed views on two possible legislative options.

24. The first would have involved the creation of an offence of entering residential premises as a trespasser or having entered such premises lawfully failing to leave at the request of the occupier or his representative. The second would have applied an offence only to certain specified premises, in effect extending section 9 of the

Criminal Law Act 1977 which makes it an offence to trespass on a diplomatic mission.

The Government backed an attempt to make simple entry of occupied residential premises without consent a criminal offence. But as a Private Member's Bill it failed in the Commons.

The Present Concerns - Residential Premises

Once squatters are inside the owner may be prevented from breaking into his own home.

25. Lord Onslow, supported by Lord Renton, and with Government support, took a Bill through the House of Lords in 1983/4. (An earlier version in 1982/3 fell with the May election). The 1983/4 Bill failed in the Commons. The Bill would have created an offence of entering as a trespasser without reasonable excuse any building or part of a building in which a person has his home. A person would not have committed an offence unless he entered the building knowing or having reasonable cause to believe it to be residential premises; nor would it have been an offence if the building or part of it was open to the public at that time; or if a person simply overstayed his welcome, so long as he had not entered as a trespasser. The Bill's provisions would not have applied to vacant residential premises.

26. Many people have argued that the law - civil and criminal - is inadequate, resulting in expense and inconvenience to owners and encouraging squatting. Much concern has been expressed about deficiencies in the 1977 Act as regards residential premises:

(a) Section 6 makes it unlawful to use or threaten violence to secure entry if there is someone present on the premises opposed to entry and the person seeking entry knows it. It is no defence that the attacker owns the property or is acting for someone who does. It is a defence for the accused to prove that he was a displaced residential occupier or acting on behalf of one. It has been said that these provisions have two adverse effects. First, they render "self-help" by owners to regain possession of their property (on established common law principle) uncertain, with even displaced residential occupiers obliged to show their status to avoid conviction. Secondly, it is said that the Act defines violence too widely, specifically including damage. Thus an owner is prevented from breaking a pane of glass in his own front door to obtain entry. This makes squatters almost invulnerable and impairs rights to property.

If he enters lawfully, the squatter can remain despite the owner's wishes. The owner can use reasonable force to eject the squatter - but the police have no duty to help.

The house may be empty, because the owner has moved away, or it is a second home.

There can be nuisance to neighbours.

Squatting by unruly groups is rare.

The police can act against drugs or other offences, but not against squatters who are simply bad neighbours.

(b) Section 7 has been much criticised. It provides an effective remedy in the very worst cases of squatting, where an occupier has been rendered homeless by the occupation. Critics point out that it does not deal with other serious mischiefs. If entry is obtained lawfully, say by walking in by an open door or at the invitation of the owner or one of his household, no offence is committed by remaining in defiance of the owner's wishes. The owner can use reasonable force to evict his trespasser but this may not be practical. If the owner calls upon the police, the position is unclear. The officer can, but is not obliged, to help, but if he does he is not regarded as executing his duty with the protection which follows from that (*R v Roxburgh 1871*).

27. Another major concern is the occupation of residential premises, excluding the owner but not making him homeless. Section 7 does not apply to a property which the owner has vacated because he intends to let or sell it until he has sold it (when the buyer becomes a "protected intending occupier"). 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 (especially if a heavy bridging loan is involved). Renting the property on a limited tenancy in the meantime would not attract the protection of section 7.

28. Some squatters are not content with securing another's property simply to live in, perhaps stealing electricity and damaging the premises as they do. The occupied premises may become a centre for lawlessness and nuisance to neighbours. The survey evidence suggests that this is relatively rare - most squatting is by couples or singletons. But when it does occur, it is naturally a cause of acute distress and concern.

29. When groups of squatters engage in crime such as petty theft in the vicinity, or using illicit drugs, the police have power to act. The more difficult problem is that they may be bad neighbours, without necessarily infringing the law.

Some would give neighbours - or the local authority - the right to act when the owner can't or won't.

Present Concerns - Non-Residential Premises

Other squatting can take many forms from 'sit-ins' to angry shoppers refusing to leave.

With a few exceptions - such as embassies - the criminal law does not attempt to cover squatting in non-residential premises.

'Shop squatting' by casual traders, who may cheat the customer as well.

30. Some people have argued that if, for whatever reason, the owner or lawful occupier of a property which has been unlawfully occupied is unready to act - because of ignorance, indifference or when he cannot be contacted or even traced - it should be open to a third party such as a neighbour or the local authority to act in his stead.

31. The provisions in the 1977 Act do not cover squatting in non-residential premises. This can take a number of forms: workers occupying a factory during an industrial dispute, a student sit-in, or a shopper refusing to leave a store until he has received his money back for faulty goods. The criminal law already covers some occupations, for instance trespass on diplomatic premises or remaining on licensed premises after being required to leave. But such incursions are generally subject only to civil remedies.

32. One acute form is the phenomenon known as "shop squatting", which over recent years have become particularly prevalent in the period running up to Christmas. Squatters move into empty high street properties, to trade on their own account, using electricity without payment, incurring none of the usual overheads, and frequently selling sub-standard goods. Such squatters - who in some cases appear organised - are well aware of their legal position. One of them will always remain on the premises, enjoying the protection against forcible entry conferred by section 6 of the 1977 Act. The owners of such premises are often large companies based some distance away who may only learn of the occupation later and, by the time civil proceedings are completed, squatters will have enjoyed several weeks of trading. The owners lose because damage may be caused making re-letting more difficult. Honest traders nearby will suffer from unfair competition. And shoppers may be cheated of their redress for faulty goods.

Grounds of dissatisfaction with Civil Remedies

The civil law allows re-possession, but in several steps. Squatters can have been and gone in the meantime, leaving the owner facing legal as well as repair bills.

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.

The Principles

Trespass can be careless and harmless.

Violence or damage is an offence in its own right.

Property disputes are generally better settled in the civil courts - they feature disputes between people, not between people and the state and procedures are more suitable - probability is enough to

34. Trespass spans a range of behaviour, from an inadvertent and temporary deviation onto private land to the forcible entry and continued occupation of premises. The traditional view is that the criminal law should concern itself not so much with the impingement on property rights as such - which may be the subject of misunderstanding or dispute - but rather with its manner. If violence is used against another or criminal damage is done to secure entry, it, rather than the resulting occupation, is dealt with under the criminal law. Curbing violent or forcible encroachments is an aspect of preventing disorder and maintaining the Queen's Peace.

35. On this view there is no more general public interest in disputes over title or occupations of property than there is in disputes arising from a civil debt or alleged breach of contract - which may equally result in hardship to the parties. There are practical considerations in this approach: disputes to title are often difficult to resolve; the civil courts are best equipped to resolve such disputes by tradition, knowledge and procedure - including setting the balance of probabilities as the

prove the claim, not proof 'beyond reasonable doubt'.

The 1977 Act goes further - because homelessness of the owner is a public mischief.

Hardship is arguable - and so not a good test for the criminal law.

It is possible to argue that any interference with the owner's rights to enjoy his property should be a criminal offence, but the law does not generally go that far.

There are strong objections to giving third parties rights to act.

standard of proof rather than the test of proof beyond reasonable doubt which applies between state and accused citizen; and the police and criminal courts are not a free enforcement agency for private wrongs.

36. These principles remain the basis of the general law on squatting, but section 7 of the 1977 Act goes significantly further, since it turns not on unacceptable methods used to obtain entry but on the consequence - homelessness - for the legitimate occupier. The homelessness introduces a public interest because of the heightened risk of breach of the peace and the possible obligation on the local authority to rehouse. Nevertheless, section 7 is a significant precedent.

37. If the degree of hardship rather than the means used to obtain entry is the right criterion for determining when the criminal law should apply, there is no apparent objective principle to determine where to draw the line. Views will vary over time and between different social groups. The extreme cases present few problems. Where property has been left derelict any ensuing trespass will often cause little or no hardship to the owners. The law already caters for the other extreme. It is the middle range of cases which present difficulties.

38. It is possible to argue that any intentional trespass should be criminal, in order to leave people secure in their property rights. Deprivation of property - even temporarily - can cause extreme hardship. For instance, it may deprive the owner of his livelihood from rents or business. Theft requires an intention permanently to deprive someone of property, but the criminal law already acknowledges the mischief of temporary deprivation in the offence of taking and driving away a motor vehicle or other conveyance. Many cases of squatting appear to have criminal characteristics: unlike civil disputes between essentially honest parties, most squatters know they have no legal right to be on the premises, cynically exploit gaps in the law and are heedless or reckless of the effects on the legitimate occupiers and others.

39. Proposals to give third parties some right to act against squatters in other people's property present difficulties of principle which in the Government's view are conclusive. Such an interference in another's property rights would be most undesirable. Third parties will

rarely know for certain whether or not someone is a squatter and, unlike the owner, their interests are not directly affected by squatting as such but by having criminally inclined or troublesome neighbours who may or may not be squatters. Moreover it would not be acceptable for the law in seeking to remedy one form of encroachment upon an owner's rights to introduce another.

40. It is a different matter to enable neighbours or the local authority to act against a nuisance - that need not impinge on the owner's rights.

Action against nuisance need not impinge on the owner's rights.

The Government's approach

The Government believes that there are strong arguments of practicality and principle against making every trespass a criminal offence but it seeks views on options stopping short of that.

41. In the Government's view there remain strong reasons of principle and practice against making all trespass on property a criminal offence. There is no statutory definition of trespass, which may include straying by animals, or causing noxious substances to drift over land. Trespass by people may conveniently be thought of as unlawful or unwarranted intrusion on property, but this covers a wide range of incidents, including a temporary inadvertent straying from the public area of the building to the private (for instance a public house) or a tenant remaining after being ordered to quit. In many cases there will be neither blameworthy intention nor the serious public mischief necessary to justify resort to the criminal law. This paper explores proposals stopping short of making all trespass criminal. These are offered for discussion and do not represent settled Government thinking.

Residential premises

42. Home owners could be protected by a limited extension of the law to create a new offence where a person who is on residential premises as a trespasser, having entered as such, is required by an authorised person to leave and wilfully fails to do so. Authorised persons might be:

- (a) the owner of the premises, or his agent, where the owner had occupied the premises as his principal residence for a continuous period of at least six months in the previous 18 months;

(b) executors, or

(c) a duly authorised tenant who intended to take up residence within one month.

43. The temporal requirements are designed to limit the offence to cases where there is still a direct threat of homelessness. It would be necessary for the owner or the tenant to establish his claim - at least to the extent now provided for by the 1977 Act by a declaration before a Justice of the Peace or Commissioner for Oaths - to remove any scope for argument by the trespasser that he had no means of knowing that the person who was trying to turn him out was protected, and to trigger the offence. This proposal, based on the 1977 Act, includes a number of safeguards. First, no offence would be committed by hitherto lawful tenants. It seems right to ensure that landlord/tenant disputes are not brought within the criminal law and so a formula could be adopted based on the existing one in Order 113 of the Rules of the Supreme Court, which is designed to meet this problem. It might also be desirable to exclude those whose entry was originally lawful but who subsequently outstay their welcome, in order to prevent the criminal law from intervening between hosts and their guests for example.

A simple procedure to prove his status.

Landlord/tenant disputes should not be covered.

Is it acceptable to categorise victims like this?

Commercial landlords ought not to look to the police and criminal courts to safeguard their business interests at public expense.

44. Secondly, this proposal is based on the principle that protection should extend only to properties which have recently been the owner's home. This is a central issue. The law generally does not differentiate between categories of victims, but there are reasons to depart from the principle here. First, there is evidence that squatting in homes which have recently been vacated by the owners can cause great hardship, which needs to be mitigated both more quickly and more comprehensively than when the owner is suffering something more akin to a business or investment loss (which, when attributable to someone's fault, civil procedures can already meet). If protection were extended to cover commercial landlords they might prefer to rely on the criminal law - in effect calling on public resources - as a means of obtaining rapid and free (to them) eviction of unwelcome tenants. The proposal would therefore apply only when the owner had lived in the property recently and for at least six months. If this were thought too stringent a test, particularly where a home owner may have had to move out shortly after

purchasing the premises, three months might suffice.

Lawful tenants not yet in possession should be protected.

The police must remain properly impartial.

Tenants of private and public landlords should be treated alike.

45. If changes on the lines above were made they should probably extend to protecting incoming tenants who have signed a rent agreement, perhaps paid a deposit, and are in effect rendered homeless because of the actions of squatters. Such tenants do not enjoy protection under the 1977 Act and unless the owner had a previous residential connection, the proposals at paragraph 42 would not apply. (Nor would they help if he were unavailable or unready to act). How should changes be framed to exclude fictitious tenancies designed to bring in the public resources of the criminal law in essentially commercial cases?

46. The Government would welcome views on who should count as "authorised persons", able to order squatters out with the backing of the criminal law. It would be consistent with the rationale of the proposed change that they should be limited to persons who are directly affected by the adverse occupation. In particular it should not include a constable, whose duty is to preserve the peace and to act if offences are disclosed. The law should not permit or require him to act in any manner which would compromise his impartiality. On the other hand there is no reason why owners should not be able to appoint a solicitor, or a friend, to act for them if they are unwilling to confront the squatters personally.

47. The proposal would treat "owner" widely and would not require him to establish the extent or nature of any nuisance caused by the squatting. If respondents felt that this carries too much risk of the law being used for commercial evictions (especially if the residential qualification were drastically reduced), it might be qualified somewhat to apply only if the owner shows that he requires the property for his own use, or proposes to sell or dispose of it and that the occupation is an obstacle. Could the test be framed in a way which would bar the more speculative owner from manipulating it by deciding to sell the particular rented property?

48. Whatever legislative changes might be considered, there are two points of detail in the present law which should perhaps be re-considered. First, the protection given to the 'protected intending occupier' of section 7 of the Act does not cover tenants of private landlords.

The Government wants to encourage a thriving private rented sector, and finds this distinction particularly difficult to justify. Secondly, the provision that a person possessing a leasehold or freehold interest will be a protected intending occupier only if he acquired that interest for money or money's worth should be reviewed. Why should this protection be denied for instance, to a homeless family who have been fortunate enough to inherit a home?

Inherited property should be protected.

*Should there be a power of arrest?
Should there be a new form of exclusion order against a convicted squatter?*

49. Squatters will often, by their nature, be unamenable to the law's requirements. A power of arrest would therefore seem necessary. Arrest would effectively forestall any proceedings to determine title since eviction would follow automatically and the other party would be able to re-secure the premises. If the accused is subsequently acquitted - especially if this were on the grounds that he had not entered as a trespasser but was a *bona fide* tenant - his arrest could seem unfair. It might seem even more questionable if, as would probably happen quite frequently, in practice, proceedings were not taken or pursued for the new offence once the squatter had been removed from the property by his arrest. However, there seems no alternative if the law is to be enforced effectively. This consideration has already swayed Parliament to give in the Criminal Law Act 1977 (and specifically to preserve in the Police and Criminal Evidence Act 1984) powers of arrest for the sections 6 and 7 offences. Any power of arrest is **permissive** and it would always be open to the constable to decide not to use it in the particular circumstances.

50. Not creating a power of arrest would mean that if the 1984 Act's general conditions for arrest were not satisfied, the occupation could continue until the case came to trial and even after conviction (unless a custodial penalty were imposed). Upon conviction the court could consider whether a conditional discharge or deferment of sentence might be apt to end the occupation, but these might be defied by the determined squatter. There might be a case for giving the courts power to make an order requiring the squatter to leave and stay out of the specified property in unlawful occupation of which he had been convicted - and perhaps of other properties. If so, such powers should equally be available on conviction of the present offences in sections 6 and 7 of the 1977 Act.

To be effective breach of such an order would have to be arrestable.

Squatting in other residential premises

Can there be a simple clear test of when squatting in residential premises is serious enough to require the intervention of the criminal law?

51. The ideas canvassed so far would be a small extension of the criminal law, not extending to residential property generally. But other kinds of residential property can be attacked, including second homes, commercial lettings and tied cottages which may be left empty temporarily before other staff move in. To the extent that all unlawful occupation involves an unacceptable infringement of the rights of owners there seems little difference of **principle** between these cases and those involving residential property which is the owner's home.

52. Certainly squatting can cause considerable financial loss and inconvenience to private landlords. Attempts to protect some but not other categories of dwelling run into difficulties. It may be thought, for instance, that squatting is a greater mischief when it intrudes into the "living space" of the legitimate occupier, but a holiday home may be the owner's principal residence for a significant part of the year but not long enough to meet the tests canvassed above. In other cases a second home may be largely a commercial undertaking, but perhaps with a view to becoming the owner's principal residence on retirement. Commercial lettings will cover everything from the owner of a block of flats to the pensioner who lets out a cottage - or a room - and depends heavily on the income. The number of properties held need not relate to the economic harm to the individual. Moreover the state has an interest in preserving a pool of housing available for commercial letting, and the Government is trying to encourage an expansion of this sector of the market. It might be thought counter-productive to discriminate against commercial private landlords.

53. The Government suspects that such distinctions will be unacceptably difficult to define in law. One option, therefore, would be not to attempt to differentiate between residential properties. It could be argued that all **continued trespass on residential premises** should be made unlawful subject to an express provision to protect tenants who are in dispute with their landlord. Such an extension of the law would cover almost all the cases currently causing concern. It would be clear in its scope and fairly easy to administer. There would no doubt be arguments as to whether the property in question was

A general extension to cover failing to leave residential property when required - under some formal procedure - to go?

Securing entry

Surely squatters who oust the owner from his own property should not be able to rely on the law to keep him out.

At minimum, should he not be able to enter - by force if need be - to safeguard himself against theft or damage?

indeed "residential" but this would be a matter of fact for the court to determine. To protect the inadvertent trespasser from prosecution it would be necessary to have some formal procedure of a requirement to leave, failure to obey which would trigger the offence.

54. We mention above the suggestion that section 6 of the 1977 Act works oppressively against property owners (other than displaced residential occupiers) who want to break into their own occupied property. The Government would appreciate views on this, and on whether if the category of persons enjoying protection under section 7 is extended as discussed above, they should also enjoy some degree of protection under section 6.

55. The Government understands the sensitivities surrounding the use of force by owners to take possession. Nevertheless it is difficult to defend a situation where a landlord who breaks into his own property in order, for instance, to recover furniture and fittings which he fears may be damaged or stolen, commits a criminal offence. One possibility would be to amend the legislation so that an authorised person (as in an expanded section 7) commits no offence if he uses reasonable force on his own property in order to gain entry for the purposes of recovering personal property (which he has reasonable grounds to suspect may be stolen or damaged). It could be stated that these powers would not authorise the use of force against any person, or with the primary intention of evicting the occupant. A wide range of criminal law safeguards would be maintained: for instance, the powers would not be available against formerly lawful tenants (both because of the definition in section 7 and the law on the harassment of tenants). If the use of force against property did cause injury to persons within there would be the risk of prosecution for assault if the necessary degree of recklessness or intention could be established. An important consideration would be the extent to which it would be possible in practice to confine use of force to property and secondly, the risk of serious disorder attending such action. It would not be the intention to give unauthorised persons any formal powers in this area, but only to remove the present prohibition. It would still be open to a constable to prevent such use of force

against property, if necessary by arrest, under his common law powers if he judged that an imminent breach of the peace was likely.

56. Provisions of this sort could be seen as restoring to owners some reasonable right to self-help in protecting themselves against theft and damage. But there are obvious concerns how they might work out in practice. The Government would welcome full comment on these possibilities.

57. One possible measure would be a right for an authorised person to apply to the justices for an order authorising him to enter the property, if need be by force, for the purpose of recovering goods or preventing other financial loss, but falling short of eviction. It would be necessary to establish by affidavit both the nature of the applicant's interest in the property and the purpose of the entry, including showing reason to expect further financial loss. Such a procedure could bring a degree of legal control to such forced entry, although other questions would arise: how would the magistrates' courts view and expect to deal with the possibility of exerting a new power, what role might the police (or others) have in assisting in the execution of such an order?

Should these rights depend upon getting a court order?

Nuisance to neighbours

Remedies for nuisance by neighbours should preferably be available in common for all kinds of bad neighbour, not just squatters.

58. The Government recognises the serious nuisance which can be caused to the neighbours of premises occupied by squatters. It would not be right for the reasons explained in paragraph 39 above, to give third parties such as neighbours or the local authority the right to exercise the owner's or lawful occupier's rights if he fails to do so. The Government is inclined to think that tightening the law as canvassed above would make it likely that owners and lawful occupiers would be readier to act, although there would remain a problem if they were not available. Measures are available to counter nuisances from neighbours - such as noisy parties - whatever the status of the neighbours, and the Department of the Environment is considering separately the effectiveness of some of these remedies. The Government would be disinclined to look for enhanced measures to counter nuisances by particular types of bad neighbour, but would welcome views.

Non-residential premises

59. This paper has touched on the arguments for making squatting criminal even in non-residential premises. It has also touched on some objections.

Squatting on non-residential premises is often an aspect of an industrial dispute, or other protest.

So the police and courts could be seen as partial if they got involved.

60. First, on the criterion of the degree of hardship which the occupation causes to the owners, the argument for a significant extension is not so strong. Certainly where a factory is occupied during an industrial dispute, there will be costs in lost production, but they may well be no greater than would be caused by other forms of industrial action, such as a strike. The direct costs of the occupation of an academic institution may well be difficult to determine (except legal expenses to obtain possession). They are unlikely to be a great burden. Perhaps the most significant argument against extending the law in this field is that such an occupation is rarely an end in itself but usually a tactic used in furtherance of a wider dispute or campaign. If the police were available to evict such squatters the criminal justice system would be seen, rightly or wrongly, as agents and supporters of one party to the dispute. The eviction of such occupiers, especially strenuously opposed, would create a real risk of a serious breach of the peace out of proportion to the original mischief.

Are 'shop squatters' distinguishable - in principle and practice - because they are violating other law, and are usually dishonest as well as disputatious?

61. It can be argued that these considerations do not apply to the same degree to squatting in empty shops. The primary motive of the squatters is private gain. The occupation is often a flagrant defiance of the law, with the additional mischief of the sale of shoddy goods with no comeback and unfair competition for neighbouring retailers. Although it is not the proper role of the criminal law to assure equity in trade, shop squatting appears to involve significant public mischief. There are no centrally collected statistics on it but it is widely regarded as becoming more prevalent. For its part the Government would be concerned that any new criminal law should be clear in its application and enforceable, without requiring disproportionate police effort. Whether the public harms are serious enough to justify criminal penalties, and on what basis any distinction should be drawn, are matters on which it would like to have public and Parliamentary opinion.

Options

62. Squatting can be distressing for owners and unfair to neighbours, commercial or residential. The Government does not accept the claim that is sometimes made that squatting is a reasonable recourse of the homeless resulting from social deprivation. Squatters are generally there by their own choice, moved by no more than self gratification or an unreadiness to respect other people's rights.

63. Squatting is nevertheless a difficult subject for criminal law because it spans private and public wrongs and may offer real difficulties in the law's practical application. There are broadly four options, on which the Government would appreciate views:

(a) **Leave the criminal law substantially unchanged - relying on civil remedies**

This approach would rest on the view that the 1977 Act deals adequately with the worst cases and that the civil courts are by tradition, experience and methodology best equipped to determine property disputes. Against this must be set the view that the law has been shown inadequate to protect vulnerable parties against exploitation by squatters, with considerable consequent emotional and financial distress. Some think that civil remedies are too expensive, over-elaborate and slow, giving some eventual remedy but no adequate redress. It is very likely that some of the criticisms regarding civil proceedings stem from ignorance of the remedies which are available. Whether or not an extension of the criminal law is considered necessary, it is important that the civil procedures are kept under review, and the Government would be ready to consider any proposals for improvement.

(b) **Extend the criminal law to cover other categories of squatting**

There seems a strong case to bring within the present protection for displaced occupiers the residential owner who has recently moved away and is still trying to sell or let his former home.

Where the owner has more than one home, the position is more complicated. Should he, for instance, be able to call on the police to eject people from what may be a seldom used holiday home? Should it make any difference whether the second home is used exclusively or predominantly by himself or his friends on the one hand, or let out on the other?

There may be a stronger case to extend protection to landlords living on the premises.

The claims of commercial owners of residential property to use the criminal rather than the civil law are weaker.

There are some formidable arguments against a general extension of the law to cover squatting in commercial premises generally. But there may be a case for exceptional action in respect of vacated shops, if the cases can be distinguished clearly and satisfactorily.

(c) Extend the provisions to cover all cases of squatting in residential premises

This option is discussed at paragraphs 51-53. It would apply only to residential premises as strictly defined with express protection for former tenants. An offence would be committed on failing to leave within a set time of some formal requirement to leave by the owner or his representative.

(d) Extend criminal law provisions more generally in respect of the unlawful occupation of any property.

This approach reflects an absolute respect for property rights which some might not find acceptable, and would fundamentally alter the present balance of the civil and criminal law on this subject in England and Wales. The Government is firmly inclined towards a more selective approach, believing that all-embracing legislation is hardly necessary given the scale of the problem, nor an apt response given the likely

disorder and conflict which its effective enforcement would involve. These arguments apply with more force if it is proposed that all trespass should present a criminal offence.

65. In considering any proposals to extend the scope of the criminal law, the Government must take into account the costs for the various bodies involved in its administration. Such additional costs should be quantified as accurately as possible, whatever the uncertainties; for instance, any increased demands upon police and court resources which changes in the law might stimulate. Consultees are therefore invited to assess additional costs (if any) they might themselves expect to incur, or the savings they might make, if any of the proposals in this document (or any other changes they wish to propose) were to be adopted, and to include this assessment in their response to this paper.

Home Office
October 1991

- (1) The fact that a person has a possession or occupation of any premises shall not for the purposes of subsection (1) above constitute a defence for the use or threat of violence by him or anyone else for the purpose of securing his entry into those premises.
 - (2) In any proceedings for an offence under this section it shall be a defence for the accused to prove—
 - (a) that at the time of the alleged offence he or another person on whose behalf he was acting was a displaced residential occupier of the premises in question; or
 - (b) that part of the premises in question constitutes premises of which he or any other person on whose behalf he was acting was a displaced residential occupier and that the part of the premises to which he was seeking to secure entry constitutes an access of which he or, as the case may be, that other person is also a displaced residential occupier.
 - (3) It is immaterial for the purposes of this section—
 - (a) whether the violence in question is directed against the person or against property; and
 - (b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.
 - (4) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or both.
 - (5) A constable in uniform may arrest (a) without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of an offence under this section.
 - (6) Section 12 below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a displaced residential-occupier of any premises or of any access to any premises.
- [Criminal Law Act 1977, s 6 as amended by the Criminal Justice Act 1982, s 46]

Criminal Law Act 1977

(1977 c 45)

PART II

OFFENCES RELATING TO ENTERING AND REMAINING ON PROPERTY

6. Violence for securing entry.— Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that —

- (a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and
- (b) the person using or threatening the violence knows that this is the case.

(2) The fact that a person has any interest in or right to possession or occupation of any premises shall not for the purposes of subsection (1) above constitute lawful authority for the use or threat of violence by him or anyone else for the purpose of securing his entry into those premises.

(3) In any proceedings for an offence under this section it shall be a defence for the accused to prove —

- (a) that at the time of the alleged offence he or any other person on whose behalf he was acting was a displaced residential occupier of the premises in question; or
- (b) that part of the premises in question constitutes premises of which he or any other person on whose behalf he was acting was a displaced residential occupier and that the part of the premises to which he was seeking to secure entry constitutes an access of which he or, as the case may be, that other person is also a displaced residential occupier.

(4) It is immaterial for the purposes of this section —

- (a) whether the violence in question is directed against the person or against property; and
- (b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

(5) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding **six months** or to a fine not exceeding **level 5** on the standard scale or both.

(6) A constable in uniform may arrest (a) without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of an offence under this section.

(7) Section 12 below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a displaced residential-occupier of any premises or of any access to any premises.

[Criminal Law Act 1977, s 6 as amended by the Criminal Justice Act 1982, s 46]

7. Adverse occupation of residential premises.—(1) Subject to the following provisions of this section, any person who is on any premises as a trespasser after having entered as such is guilty of an offence if he fails to leave those premises on being required to do so by or on behalf of—

- (a) a displaced residential occupier of the premises; or
- (b) an individual who is a protected intending occupier of the premises by virtue of subsection (2) or subsection (4) below.

(2) For the purposes of this section an individual is a protected intending occupier of any premises at any time if at that time—

- (a) he has in those premises a freehold interest or a leasehold interest with not less than 21 years still to run and he acquired that interest as a purchaser for money or money's worth; and
- (b) he requires the premises for his own occupation as a residence; and
- (c) he is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser; and
- (d) he or a person acting on his behalf holds a written statement—

- (i) which specifies his interest in the premises; and
- (ii) which states that he requires the premises for occupation as a residence for himself; and
- (iii) with respect to which the requirements in subsection (3) below are fulfilled.

(3) The requirements referred to in subsection (2)(d)(iii) above are—

- (a) that the statement is signed by the person whose interest is specified in it in the presence of a justice of the peace or commissioner for oaths; and
- (b) that the justice of the peace or commissioner for oaths has subscribed his name as a witness to the signature;

and a person is guilty of an offence if he makes a statement for the purposes of subsection (2)(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.

(4) For the purposes of this section an individual is also a protected intending occupier of any premises at any time if at that time—

- (a) he has been authorised to occupy the premises as a residence by an authority to which this subsection applies; and
- (b) he is excluded from occupation of the premises by a person who entered the premises, or any access to them, as a trespasser; and
- (c) there has been issued to him by or on behalf of the authority referred to in paragraph (a) above a certificate stating that the authority is one to which this subsection applies, being of a description specified in the certificate, and that he has been authorised by the authority to occupy the premises concerned as a residence.

(5) Subsection (4) above applies to the following authorities:

- (a) any body mentioned in section 14 of the Rent Act 1977 (landlord's interest belonging to local authority etc);

- APPENDIX B
- (b) the Housing Corporation; and
 - (c) a registered housing association, within the meaning of the Housing Associations Act 1985.

(6) In any proceedings for an offence under subsection (1) above it shall be a defence for the accused to prove that he believed that the person requiring him to leave the premises was a displaced residential occupier or protected intending occupier of the premises or a person acting on behalf of a displaced residential occupier or protected intending occupier.

(7) In any proceedings for an offence under subsection (1) above it shall be a defence for the accused to prove—

- (a) that the premises in question are or form part of premises used mainly for non-residential purposes; and
- (b) that he was not on any part of the premises used wholly or mainly for residential purposes.

(8) In any proceedings for an offence under subsection (1) above where the accused was requested to leave the premises by a person claiming to be or to act on behalf of a protected intending occupier of the premises—

- (a) it shall be a defence for the accused to prove that, although asked to do so by the accused at the time the accused was requested to leave, that person failed at that time to produce to the accused such a statement as is referred to in subsection (2)(d) above or such a certificate as is referred to in subsection (4)(c) above; and
- (b) any document purporting to be a certificate under subsection (4)(c) above shall be received in evidence and, unless the contrary is proved, shall be deemed to have been issued by or on behalf of the authority stated in the certificate.

(9) Any reference in the preceding provisions of this section other than subsections (2) to (4) above, to any premises includes a reference to any access to them, whether or not any such access itself constitutes premises, within the meaning of this Part of this Act; and a person who is a protected intending occupier of any premises shall be regarded for the purposes of this section as a protected intending occupier also of any access to those premises.

(10) A person guilty of an offence under subsection (1) or (3) above shall be liable on summary conviction to imprisonment for a term not exceeding **six months** or to a fine not exceeding **level 5** on the standard scale or to both.

(11) A constable in uniform may arrest (a) without warrant anyone who is, or who he, with reasonable cause, suspects to be, guilty of an offence under subsection (1) above.

[Criminal Law Act 1977, s 7 as amended by the Criminal Justice Act 1982, s 46 and the Housing (Consequential Provisions) Act 1985, Sch 2.]

APPENDIX B

AN ACT to provide for the better Prevention of Trespass in Scotland.
[29th June 1865.]

Short title.

1. This Act may be cited for all purposes as "The Trespass (Scotland) Act, 1865."

Interpretation.

2. In this Act the following words shall have the meanings hereby assigned to them:

"Premises" shall mean and include any house, barn, stable, shed, loft, granary, outhouse, garden, stackyard, court, close, or inclosed space:

"Magistrate" shall mean and include the sheriff and sheriff substitute, or any one or more justice or justices of the peace, or any other or more magistrate or magistrates, having jurisdiction respectively in the county or burgh where any offence against the provisions of this Act is committed, or where any person charged with such offence is found or brought to trial:

"Procurator fiscal" shall mean and include the procurator fiscal of the court having such jurisdiction.

Parties lodging in premises or encamping on land, without permission, or on turnpike or public road, guilty of an offence.

3. Every person who lodges in any premises, or occupies or encamps on any land, being private property, without the consent and permission of the owner or legal occupier of such premises or land, and every person who encamps or lights a fire on or near any private road or enclosed or cultivated land, or in or near any plantation, without the consent and permission of the owner or legal occupier of such road, land, or plantation, or on or near any turnpike road, statute labour road, or other highway, shall be guilty of an offence punishable as hereinafter provided.

Apprehension and punishment of offenders.

4. Every person who commits any offence against the provisions of this Act may, if found in the act of committing the same by any officer of police or constable, be apprehended by such officer or constable, and detained in any prison, police station, lock-up, or other place of safe custody, and not later than in the course of the next lawful day after he shall have been so taken into custody shall be brought before a magistrate; and every person charged with the commission of any such offence may, if not taken into custody, or if he shall have been liberated on bail or pledge, be summoned to appear before a magistrate, and on being convicted of such offence on his own confession, or on the evidence of one or more credible witnesses, shall for a first offence be liable to a penalty not exceeding twenty shillings, or to imprisonment for any period not exceeding fourteen days, and for a second or any subsequent offence shall be liable to a penalty not exceeding forty shillings, or to an imprisonment for any period not exceeding twenty-one days.

As to prosecutions under Act.

5. Every prosecution for an offence against the provisions of this Act shall be raised and proceeded in at the instance of the procurator fiscal, and shall be heard and determined by one or more magistrate or magistrates in a summary form; and every such prosecution shall be commenced within one month after the offence has been committed.

AN ACT to provide for the better prevention of Trespass in Scotland. [29th June 1882.]

1. This Act may be cited for all purposes as "The Trespass (Scotland) Act, 1882."

Short title

2. In this Act the following words shall have the meanings hereby assigned to them:

Interpretation.

"Premises" shall mean and include any house, barn, stable, shed, loft, granary, outhouse, garden, tackyard, court, close, or inclosed space;

"Magistrate" shall mean and include the sheriff and sheriff substitutes, or any one or more justice or justices of the peace, or any other or more magistrate or magistrates, having jurisdiction respectively in the county or burgh where any offence against the provisions of this Act is committed, or where any person charged with such offence is found or brought to trial;

"Procurator fiscal" shall mean and include the procurator fiscal of the court having such jurisdiction.

3. Every person who lodges in any premises, or occupies or encamps on any land, being private property, without the consent and permission of the owner or legal occupier of such premises or land, and every person who encamps or lodges on or near any private road or enclosed or cultivated land, or in or near any plantation, without the consent and permission of the owner or legal occupier of such road, land, or plantation, or on or near any public road, statute labour road, or other highway, shall be guilty of an offence punishable as hereinafter provided.

Parties lodging in premises or encamping on land, without permission, or on public road, or public road, guilty of an offence.

4. Every person who commits any offence against the provisions of this Act may, if found in the act of committing the same by any officer of police or constable, be apprehended by such officer or constable, and detained in any prison, police station, lock-up, or other place of safe custody, and not later than in the course of the next lawful day after he shall have been so taken into custody shall be brought before a magistrate, and every person charged with the commission of any such offence may, if not taken into custody, or if he shall have been liberated on bail or pledge, be summoned to appear before a magistrate, and on being convicted of such offence on his own confession, or on the evidence of one or more credible witnesses, shall for a first offence be liable to a penalty not exceeding twenty shillings, or to imprisonment for any period not exceeding fourteen days, and for a second or any subsequent offence shall be liable to a penalty not exceeding forty shillings, or to an imprisonment for any period not exceeding twenty-one days.

Apprehension and punishment of offenders.