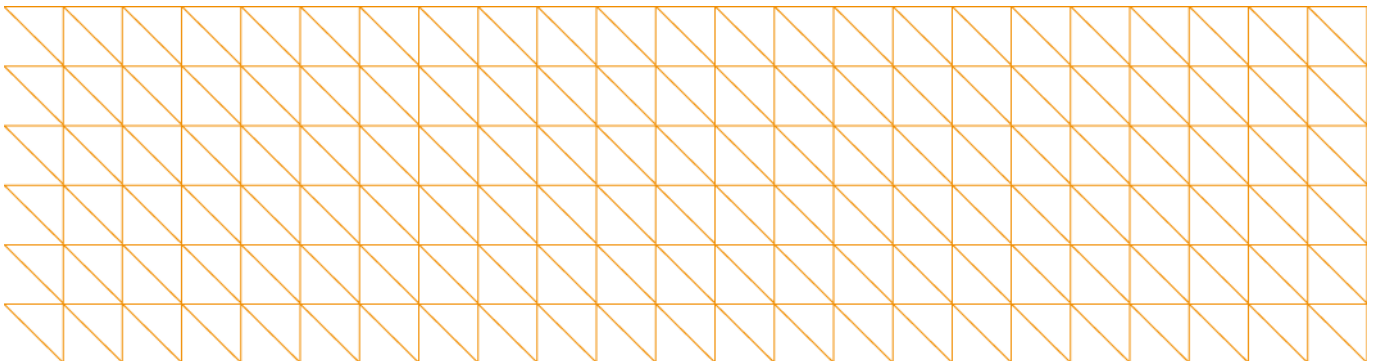




Options for dealing with squatting

Response to Consultation CP12/2011

This response is published on 26 October 2011





Ministry of
JUSTICE

Options for dealing with squatting

Response to consultation carried out by the Ministry of Justice.

**This information is also available on the Ministry of Justice website:
www.justice.gov.uk**

Foreword by Crispin Blunt, Parliamentary Under-Secretary of State for Justice

Ministerial colleagues and I are very concerned about the harm that squatters can cause. I have been contacted time and time again by MPs and constituents about the appalling impact that squatting can have on their homes, businesses and local communities. This is not media hype. It can and does really happen; and when it does it can be highly stressful for the owner or lawful occupier of the property concerned.

It is not only the cost and length of time it takes to evict squatters that angers property owners; it is also the cost of the cleaning and repair bill which follows eviction. While the property owner might literally be left picking up the pieces, the squatters have gone on their way, possibly to squat in somebody else's property.

I accept that the law already provides a degree of protection for both commercial and residential property owners as offences such as criminal damage and burglary may apply in certain circumstances. There is also an offence under section 7 of the Criminal Law Act 1977 that applies where a trespasser fails to leave residential premises on being required to do so by or on behalf of a "displaced residential occupier" or a "protected intending occupier". This offence means that people who have effectively been made homeless as a result of occupation of their properties by squatters can already call the police to report an offence.

But there are many residential property owners, including landlords, local authorities and second home owners, who cannot be classified as 'displaced residential occupiers' or 'protected intending occupiers'. There are also many commercial property owners, whose businesses may seriously be affected by squatters, who report that they generally have to rely on civil procedures to get squatters to leave.

Given the level of public concern about this issue, the Government has decided as a first step to introduce a new offence of squatting in residential buildings. The offence would be committed where a person was in the building as a trespasser having entered as such, knew or ought to have known he or she was a trespasser, and was living or intending to live in the building.

Stopping short of criminalising squatting in non-residential buildings represents a balanced compromise. Squatters who occupy genuinely abandoned or dilapidated non-residential buildings will not be committing the new offence, although their actions will rightly continue to be treated as a civil wrong and they can still be prosecuted for offences such as criminal damage or burglary. Neither will students who occupy academic buildings or workers who stage sit-ins to protest against an employer be caught by the offence. But the offence will provide greater protection in circumstances where the harm

caused is the greatest – squatting in someone’s home. This behaviour is unacceptable and must be stopped.

I recognise that homelessness charities may be concerned about the impact such an offence may have on vulnerable, homeless people who squat in rundown residential properties. One of the reasons they remain in this state is that owners cannot get in to renovate them because squatters are present. And consultation responses indicated that squats can be unhygienic and dangerous places to live and are no place for genuinely vulnerable people. We will ensure that reforms in this area are handled sensitively in conjunction with wider government initiatives to tackle the root causes of homelessness, to provide affordable homes and to bring more empty homes back into use.

Crispin Blunt

Parliamentary Under-Secretary of State for Justice

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Introduction and contact details

This document is the post-consultation report for the consultation paper, Options for Dealing with Squatting, which was published on 13 July 2011.

It covers:

- the background to the consultation paper
- a summary of the responses to the consultation by key interest group
- a summary of responses to the specific questions raised in the consultation paper
- proposals for further action following this consultation.

Further copies of this response document and the consultation paper can be obtained by contacting the address below:

Squatting Consultation
Ministry of Justice
7th Floor (7.41)
102 Petty France
London
SW1H 9AJ

Telephone: 020 3334 5007 or 020 3334 5014

Email: squatting.consultation@justice.gsi.gov.uk

This report is also available on the Ministry's website: www.justice.gov.uk.

Alternative format versions of this publication can be requested from the Criminal Law & Legal Policy Team at the above address.

Background

The consultation paper Options for Dealing with Squatting was published on 13 July 2011. It sought information about the scale and nature of squatting in England and Wales to help the government assess whether the law in this area needs to be strengthened. The paper also sought views on the workability of the legislative and non-legislative options set out below:

1. Creating a new offence of squatting in buildings;
2. Amending section 7 of the Criminal Law Act 1977 so that a squatter who refuses to leave non-residential property when requested to do so by the property owner (or as an alternative the police) would be guilty of an offence (in certain circumstances it is already an offence for a squatter to refuse to leave residential property);
3. Weakening the notion of so-called “squatters’ rights” by amending section 6 of the Criminal Law Act 1977. Under the current law it is an offence to break into a property if people inside are opposed to your entry. The offence does not apply to displaced residential occupiers or protected intending occupiers so this option explores whether other types of property owner should benefit from a similar exemption.
4. Leave the criminal law unchanged but work with the enforcement authorities to improve enforcement of existing offences commonly committed by squatters such as criminal damage or burglary; and
5. Doing nothing, but continuing with existing criminal and civil law mechanisms.

The consultation period closed on 5 October 2011. This report summarises the written responses received and the comments made by homelessness charities, academics, property owners and enforcement officers at face to face meetings with Ministry of Justice officials. It also describes how the consultation process influenced the final shape of the policy and sets out the Government’s proposals. This report should be read in conjunction with the Impact Assessment and the Equality Assessment that are also being published on the Justice website today.

A list of respondents is at **Annex A**.

Summary of responses

We received a total of 2,217 responses to the consultation from individuals and from organisations. Broadly speaking, the types of respondents were as follows:

Victims of squatting (individuals and organisations) ¹	10
Members of the public concerned about the harm squatting can cause	25
Members of the public concerned about the impact of criminalising squatting ²	2,126
Legal professionals and bodies	22
Law enforcers	2
Housing and homelessness charities	13
Academics	2
Government, local government and staff associations	7
Judiciary	2
Bailiffs and court enforcement	2
Landlords associations	4
Students/teaching unions	2

In summarising the consultation responses in the following sections, we have taken a qualitative rather than quantitative approach because 1,990 responses (i.e. almost 90 per cent of the total) were received in support of a campaign organised by Squatters' Action for Secure Homes (SQUASH). While we recognise that the statistical weight of responses was therefore against taking any action to deal with squatting, it is important that the views of other individuals and organisations are reflected in the summary of responses – even if in percentage terms, they are minority views.

¹ This group included victims of squatting in residential (seven respondents) and commercial property (three respondents)

² Of these, 1,990 responses were received in support of a campaign organised by Squatters Action for Secure Homes (SQUASH). Those who responded included squatters, people who had squatted in the past or people who knew or supported squatters.

Summary of responses by key interest group

Homelessness charities and advisory services for squatters

Regional and national homelessness charities, including **Crisis, Thames Reach, Shelter, Homeless Link, Housing Justice, St Mungo's and the Squatters' Advisory Service** had serious concerns about any proposals to criminalise squatting. They argued that squatting was a symptom of the housing crisis; if the root causes of homelessness were addressed through better provision of services and support, people would not squat. They added that for many homeless and vulnerable people, squatting was the only way of avoiding rough sleeping. They stated that some of the properties squatted in were in such a poor state that there was not much difference between squatting and sleeping on the streets. They explained that squatting generally occurred in empty or derelict buildings, but this could include run down residential properties or non-residential properties. They stated that the main driver for homeless people was finding a roof over their heads and that criminalisation was unlikely to serve as a deterrent. They indicated that as many as 1 in 3 homeless people had squatted at some point.

A campaign organised by **Squatters' Action for Secure Homes (SQUASH)** which generated 1,990 individual responses to the consultation, echoed the views of the homelessness charities, but also described dilapidated buildings being brought back to life by squatters and the positive impact this could have on a neighbourhood. They argued that the portrayal of squatters in the tabloids was distorted, giving rise to a myth that the unauthorised occupation of people's homes was commonplace. They called for the Government to do more to bring empty homes back into use and to tackle the shortage of affordable housing.

Residential property owners

A number of **local authorities** and private providers of social housing wrote in support of tougher measures to tackle squatting. They were concerned about the time and money spent on evicting squatters from social housing and repairing damage to make the properties habitable for legitimate tenants. They acknowledged that the criminal law provided some degree of protection where a legitimate council tenant was waiting to occupy a property (it is an offence under section 7 of the Criminal Law Act 1977 to refuse to leave a residential property when required to do so by a displaced residential occupier or a protected intending occupier), but they stated that some of the social houses that were occupied by squatters were those awaiting renovation or refurbishment where an intending occupier had not yet been identified.

The **Local Government Group**, the central body responsible for overseeing local authority regulatory and related services in the UK warned, however, that it was crucial that any new powers were matched with work with local authorities and voluntary and community sector providers to make better use

of the existing housing stock. They argued that bringing empty homes back into use was integral to this and offered to work with the Government and the Homes and Communities Agency to decrease the numbers of empty homes in existence.

The **National Landlord Association (NLA)**, **Residential Landlords Association (RLA)** and the **British Property Federation** agreed that the current law is inadequate. The NLA did not necessarily believe that banning all types of squatting was the right answer, but would support new police powers to direct squatters to leave a building. However, the RLA and the BPF were supportive of a new offence and suggested that it should cover all buildings. The RLA reported that a particular concern for its members was properties being occupied between lets. The BPF said a new offence would explode the myth that squatters had the right to occupy other people's property and could help ensure a quicker resolution by clarifying the police's role in being able to arrest squatters.

Transport for London (TfL) provided evidence of squatters occupying residential properties bordering road-widening schemes. They were supportive of proposals for a new offence and provided evidence of organised groups of squatters actively looking for empty TfL properties.

We also received a number of responses from **individual residential property owners** who had been victims of squatting and were supportive of proposals for a new offence. Victims of squatting in residential property included a couple who could not move into their new home and a man who found squatters in his mother's home after she had died.

Non-residential property owners

On the commercial side, **Ballymore Group**, a property development company, were concerned about 'squatters' parties' being held in large, empty commercial units. Small business owners described the loss of income arising from squatters occupying commercial units.

Network Rail provided evidence of squatters occupying buildings near railways, including premises under railway arches. Network Rail were not supportive of an outright ban on squatting and queried whether the police would have the resources to deal with high numbers of squatters. They suggested that civil remedies should be made more efficient so that squatters could be evicted more quickly.

While the **British Property Federation** acknowledged that the incidences of squatting that had been reported to them primarily related to residential property, they recognised that commercial property was also susceptible to squatting and urged the Government to consider extending any new offence to all buildings to ensure clarity in the law. This sentiment was echoed by a number of **law firms** who had represented commercial clients. One firm indicated their clients were frustrated with the limited powers of the police to deal with these cases, "particularly in relation to commercial premises where criminal damage is alleged".

Law enforcers

The **Metropolitan Police**, responding on behalf of the **Association of Chief Police Officers**, considered that the law was broadly in the right place and that the existing array of offences allowed them to tackle the worst cases of squatting (e.g. where squatters cause the rightful homeowner to be displaced). If changes were made to legislation, however, they could see that there might be a case for widening existing offences to ensure that residential properties which are not currently under occupation are protected by any new offence, for example homes under renovation or second properties. They warned that new offences could have an impact on policing in terms of community relations, local policing objectives and cost. They pointed out that many of the known squats in the London boroughs were occupied by foreign nationals and significant work would need to be undertaken with the communities affected, local councils and related third sector organisations, to ensure that enforcement was carried out in a proportionate and appropriate manner.

High Court Enforcement Officers also questioned whether the police would have the resources to carry out difficult evictions. They pointed out that some squatters would go to extreme lengths to avoid being evicted and the police may not have the expertise to deal with them.

The **CPS** was supportive of a proposal for a new offence. They considered that the current law provided inadequate protection to home owners who were not intent on immediate occupation of their property but who had not abandoned the property. They indicated that if any new offence were limited to residential property, the offence was unlikely to catch those who occupied non-residential buildings (e.g. academic buildings) for the purpose of protest. However, they were concerned about the impact on their resources and hoped that funds would be made available for extra prosecutions.

Legal professionals

The **Criminal Bar Association** and the **Law Society** strongly opposed the creation of a new criminal offence. They both argued that the current law was effective and that unnecessary new regulation should be avoided. The Law Society argued that squatting was a rare problem and introducing new offences when there was already a range of existing offences would be disproportionate and counterproductive. They queried whether the police would have the resources to enforce new offences when they appeared to be unwilling to enforce existing laws.

The **Property Litigation Association** took the opposite view, however. The Association reported that one of its members had recently dealt with the eviction of squatters from commercial premises in West London. This had cost the client a total of nearly £6,000 including fees, costs and VAT. In the event, the eviction was unopposed; it would have cost the client significantly more had the squatters opposed the eviction. Other members reported costs incurred of between £3,000 and £8,000 in respect of residential and commercial properties, but those figures ignored the cost of repairing any

damage to the properties. The Association felt that both residential and commercial property owners needed greater protection from squatters.

Judiciary

The **Magistrates' Association** said it was generally reluctant to see new laws being created without proper analysis of why existing powers might not be working satisfactorily, but members could see the case for a more comprehensive set of provisions to address the whole range of issues arising out of this phenomenon. They preferred the option of making any offence contingent upon a refusal to leave on request by the rightful owner, as this would ensure that any new law did not result, for example, in hikers, scouts or guides or schoolchildren on an orienteering trip taking shelter in a derelict outbuilding in the mountains or fells being prosecuted for squatting.

Students and lecturers

The **University and College Union** and the **National Union of Students** were both strongly opposed to the creation of any new offence which might criminalise the unauthorised occupation of buildings in relation to student protests. Both organisations pointed to the effect that a criminal record might have on a young person's future career prospects.

Chief Fire Officers Association

The **Fire and Rescue Services'** general view was that there was a need for a new criminal offence as squatters provided issues for operational crews who were sometimes unaware of their presence in the building. Crews could be committed to rescue squatters who might not be there and, in most cases, the condition of the property provided additional risk to fire fighters. If a new offence deterred squatters from occupying hazardous buildings this would be welcomed by fire crews.

Responses to specific questions

Question 1: Is squatting a particular problem in your area and where does it occur the most, e.g. in residential or non-residential property? Were these properties empty/abandoned/derelict before they were occupied, or were they in use?

Responses to this question indicated that squatting was relatively common in most of the UK's biggest cities, but particularly those in the south of England. Cities such as London, Bristol and Brighton were mentioned on a number of occasions. Squatting occurred frequently in residential properties, but also appeared to be relatively common in non-residential buildings such as former pubs and other empty commercial premises. Many of the buildings subject to squatting appeared to be dilapidated or unused, but this was not always the case.

Opinion was divided on whether squatting was a 'problem'. Respondents who had squatted or knew people living in squats argued that the question showed bias towards property owners. Many claimed that squatters occupying empty or abandoned buildings did not cause anybody harm and sometimes improved the properties. The real problem, in their view, was a lack of affordable homes and the Government's unwillingness to address the root causes of homelessness.

The SQUASH campaign said:

"In 2010, there were still 79,739 empty properties belonging to local authorities (39 per cent), housing associations (54 per cent) and other public bodies (7 per cent). The value of the local authorities' portion of empty properties comes to around £7 billion in 2011, with London making up £3 billion. This is a waste of public assets."

The SQUASH campaign generated 1,990 individual responses, primarily from people who were squatting, had squatted in the past or knew others who were squatting. The following comments are representative of many of the responses received:

"Squatting, in my view, is not a problem - if anything were to be a problem it would be the fact that buildings are left to go into disrepair/being unused. From what I have experienced properties were mainly derelict and unliveable before the squatters cleaned up the place and turned it into something new. Therefore I see them as enhancing an area rather than being a "problem"."

"I have known many different types of people who have squatted or continue to do so, families and single people young and old, and all of them were seen by their neighbours as assets to the communities they moved in to. Furthermore, many of them were seen as assets by the landlords of the properties in which they stayed, helping to keep the

property in good repair until the landlord was ready to deal with the property.”

“The squatting I have been aware of has been in empty buildings that have been neglected for years. The people who entered them put them to good use and sometimes helped keep them in good repair. Other squats I have heard about have been where homeless people have quietly found residences in empty buildings.”

“There are thousands of unoccupied buildings in the UK and we have thousands of homeless people, I do not believe there is any need to debate this...”

These views were not shared by most property owners who had encountered squatters in their premises, however. Members of the Property Litigation Association reported costs incurred by their clients of between £3,000 and £8,000 to evict squatters from residential and commercial properties and those figures generally did not include the cost of repairing any damage to the properties. One respondent who claimed his property had been taken over by squatters said he had to spend over £20,000 on the case in total.

Many residential property owners, including local authorities and landlords were very concerned about the expense of evicting squatters. Annington Holdings Plc, one of the largest private owners of residential property in the UK, described an incident where 39 out of 45 residential flats temporarily leased to a borough council in South London were occupied by squatters. The council had to pay a significant sum of money to evict the squatters and restore the flats to good order before they could be returned to the provider. The council also had to compensate the provider for loss of rent for the period that the squatters remained in occupation after the expiry of the lease. The combined total cost incurred by the provider as a result of the squatters in this incident was approximately £900,000, the majority of which was recoverable from the council.

Camden Borough Council reported:

“Upsetting instances where squatters have broken into Council owned and managed residential properties, damaging or discarding possessions and causing a nuisance to neighbours. Five recent squats in Council owned residential properties caused anti-social behaviour such as noise and other anti-social behaviour and some squatters were known to the police for drug taking activities. Two of these properties had been vacated only temporarily to allow some essential works to take place and the tenants’ possessions they’d been permitted to leave behind were rifled through and scattered about along with the squatters’ drug taking paraphernalia.”

Private landlords also expressed serious concerns about the cost and inconvenience of evicting squatters as the following quotes demonstrate:

“Some members have complained that the court process is expensive and time consuming often taking up to four months to gain repossession. As it is difficult to prove that the squatter broke in, the onus is on the landlord to prove that fact and, until then, the squatter is given the right to stay in the property until the court ruling is made which can result in further damage to the property and, therefore, higher final costs to the landlord.” (British Property Federation)

“The risk of squatting and the associated damage and possible anti social behaviour is one which members consider to be of grave concern.” (Cornwall Residential Landlords Association)

“I had to go through a lengthy (this took me three weeks), and extremely costly, eviction process. There were two Court hearings and I had to employ a Barrister as well as a firm of solicitors to represent me. The overall cost was very high.” (Squatting victim)

Commercial property owners expressed concern about the impact that squatters could have on the profitability of their businesses:

“On every occasion we have had to go via the legal route. This requires our solicitors to apply to the courts for an application to evict the squatters. This usually takes between 4–8 weeks (During which time raves/squat parties take place) our properties are always subject to criminal damage which in turn costs us/insurers in excess of £1m to date.” (Ballymore Group)

“Because in most instances Network Rail does not know the name of person in occupation, proceedings are usually brought against persons unknown. Accordingly it is not usually possible to obtain a costs order against the defendants and Network Rail therefore has no chance of recovering its legal costs and court fees. We accept that this is a difficulty which is inherent with proceedings of this sort.” (Network Rail)

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

Consultation responses from homelessness charities indicated that many people who squat do so to avoid sleeping on the streets. Research conducted by Crisis indicated that up to 40% of homeless people surveyed had squatted at some point. It said:

“The conditions in squats are often horrendous with homeless squatters living in buildings which are structurally unsound without basic amenities and with broken windows, damp and vermin. The fact that homeless people will squat in such desperate conditions shows the lack of alternatives available to them and the desperate situation that they face.”

Thames Reach, a London-based voluntary organisation working with homeless and vulnerable people, said:

“The stereotypes of squatting which polarise around family homes being taken over by aggressive squatters or groups of people in housing need contentedly living in a communal nirvana are extremely unhelpful and some way from the real experiences of those squatting in derelict buildings that Thames Reach staff witness on a daily basis... Our experience of people engaged in squatting is that they are often extremely vulnerable and have chronic drug and alcohol problems and access to these squats is prolonging their avoidance of services and addressing these issues.”

But the consultation responses also indicated that not everybody who squatted was homeless and vulnerable. A number of responses suggested that squatting was a lifestyle choice.

“I spent about ten of my formative years living and socialising in squatted buildings. These buildings that would otherwise be boarded up empty lifeless shells, blots on the landscape, become colourful social centres, places of immense cultural exchange and edgy creativity. Some of my fondest memories were in squatted pubs watching some young British band on stage or collaborating on an art installation. I know I personally gained a great deal from the freedom that squatting afforded me. I know many of my contemporaries share this view.” (A respondent who had squatted in the past)

“In my experience squatters are quite rational and intelligent young people, and they make a calculated decision that, for a certain transient stage of their lives, the mobile lifestyle of squatting is for them because it is not a crime....” (A landlord who had evicted squatters)

There was no consensus on the number of people who may be squatting at any one time, although one academic suggested:

“We do not know the scale of the single homeless population in order to generate an estimate of the number of people squatting, and in any case the sample sizes in my research are small, but if the single homeless population is 200,000 (this is half the number Crisis estimate) and 6 per cent of these are squatting at any one time then this would mean 12,000 homeless people squatting on any one night.”

Some of the homelessness charities thought this figure was probably an underestimate. They pointed out that it would be difficult to give an accurate figure as many homeless people who squat may not stay in one place for very long and might move between squats, shelters and the street in a relatively short space of time.

The Metropolitan Police which conducted a survey of squats in the London Boroughs identified a total of 224 squats, although they conceded that there might be many more that had not come to their attention:

“224 squats were identified across London as a result of the MPS survey. This included both residential and non-residential property, and single or multi-occupancy premises. No specific data was captured regarding the status of these properties prior to being occupied, but the majority of the reports suggested that they were empty or abandoned. However, the actual number of squats in London is suspected to be significantly higher than the reported figure.”

Question 3: Do you have any information on the demographic profile of people who squat – e.g. do they share any of the protected characteristics set out in the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation)? Do they live alone or with others?

Question 22: Do respondents who identify themselves as having a protected characteristic (listed in paragraph 39) or who represent those with protected characteristics think any of the proposals would have a particular impact on people who fall within one of the protected characteristics? If so why?

Responses to the consultation suggested that many of those who squat share characteristics which are or could be protected. In particular, homelessness charities pointed to evidence of mental health problems (disability is a protected characteristic) and related drug addiction amongst those who squat.

Crisis said:

“There are a significant number of vulnerable homeless people squatting – people who have mental or physical ill health, disabilities, dependency issues and a history of being in care. Whilst homeless people have higher incidences of vulnerabilities and multiple needs than the non homeless population, homeless squatters were found to be yet more vulnerable still – with higher incidences of vulnerabilities than the wider homeless population.”

Thames Reach said:

“The people we meet who occupy squats are drawn from the street homeless population. Of people seen sleeping rough in London in 2010-11, 52% had alcohol problems, 32% had drug problems and 39% were experiencing mental health problems. Their engagement in squatting in an unsafe environment increases the existing risks to their wellbeing.”

Other respondents were concerned about the potential impact of criminalising squatting on young people with low incomes, migrants who struggle to find work after arriving in the UK, families with young children and Gypsies and Travellers who encamp on land ancillary to buildings.

In relation to migrants living in squats, the Metropolitan Police said:

“19 London Boroughs reported the significant presence of Eastern European squatters, a mix of A2/A8 nationalities but predominantly Polish and Lithuanian nationals. Eastern Europeans were found across London but concentrated in East London areas such as Hackney and Newham.”

The New Traveller Association said:

“Gypsies and Travellers are highly likely to be impacted by these proposals. 25% of the Gypsy and Traveller population who live in caravans are on either unauthorised encampments or unauthorised developments (according to the Communities and Local Government Caravan Count). In urban areas, Gypsies and Travellers who can find no official stopping place, whether permanent or transit, often have to resort to the land around disused or derelict buildings e.g. former factories. Therefore, any change in the current law will have a significant impact on Gypsies and Travellers.”

A small number of respondents were concerned about the effect of criminalising squatting on people who were lesbian, gay, bisexual or transgender, as they believed they might be disproportionately represented amongst the homeless. Stonewall Housing, providing supported housing, advice and advocacy for the lesbian, gay, bisexual and transgender communities in London said:

“A third of all our clients experience harassment, homophobia and transphobia associated with their housing. A third also experience domestic abuse. Over half of our clients tell us that their housing situation was made worse due to homophobia abuse or transphobia. A quarter of our clients are under 25. This sector of clients are frequently un-supported by extended family and are not familiar with landlords responsibilities or tenants’ rights. Only 10% of our callers are in full time employment. In short, our callers do not have a large income to guarantee finding accommodation, due to a combination of poverty, health issues and social exclusion.”

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

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

Most property owners who had encountered squatters in their properties believed the law should be strengthened to allow them to regain possession of their properties more quickly. Some believed a new offence should be created, while others thought that the police should be given new powers to direct squatters to leave a building, backed up by criminal sanctions if necessary.

One private homeowner who found squatters had moved into a house he had recently purchased but not yet moved into said:

“The current system is completely unworkable. I only achieved eviction of the squatters because I had sufficient funds to pay for expensive legal fees. I would submit that those individuals without the necessary financial resources find it virtually impossible to evict squatters.”

This view was echoed by a number of landlords who had discovered squatters in their properties in the void period between lets. The National Landlords’ Association, Residential Landlords’ Association and the British Property Federation agreed that the current law was inadequate. The National Landlords Association did not necessarily believe that banning all types of squatting was the right answer, but indicated it would support new police powers to direct squatters to leave a building. However, the Residential Landlords Association and the British Property Federation were supportive of a new offence covering all buildings. They said a new offence would “*explode the myth that squatters have the right to occupy other people’s property and could help ensure a quicker resolution by clarifying the police’s role in being able to arrest squatters*”.

A number of local authorities who responded to the consultation agreed that the law should be strengthened. Wandsworth Borough Council, for example, said the following:

“Making the act of entering any property to squat a criminal offence is likely to act as a much greater deterrent than the one available at the moment which only relates to residential properties and when someone refuses to leave where they have entered. It would also give clearer direction to the police when dealing with an offender in that there is less confusion as to the action that the police can take. As such anything which makes the process of removing squatters more efficient and timely must be welcomed.”

The Local Government Group, the central body responsible for overseeing local authority regulatory and related services in the UK agreed that the law should be strengthened, but added that any new powers would need to be matched by central Government, local authorities, and voluntary and community sector providers working together to make better use of the existing housing stock.

Law enforcement agencies recognised the concerns of property owners. Although the Metropolitan Police, responding to the consultation on behalf of the Association of Chief Police Officers, believed that the existing array of offences were capable of dealing with the worst cases of squatting – for example where squatters occupied somebody’s home – they acknowledged that there might be a case for amending or expanding existing offences to protect a wider range of property owners:

“It is the view of the MPS that the current law provides an appropriate framework of offences for dealing with incidents of squatting. However, there are practical problems experienced by police when dealing with squatting in both residential and non-residential premises that may be resolved by amendments to current legislation. There may be grounds for widening the scope of this section to ensure that residential properties which are not currently under occupation are included, for example homes under renovation or second properties.”

The Crown Prosecution Service also considered that the creation of a new offence would be desirable:

“The current law provides inadequate protection to home owners who are not intent on immediate occupation of their property but who have not abandoned the same and which could not be described as long-term empty. We would therefore welcome the proposals set out in option 1 [i.e. a new offence of squatting in buildings]”.

The views of the law enforcers were broadly shared by the Magistrates' Association, who said:

“The Magistrates' Association is in general reluctant to see new laws being created without proper analysis of why existing powers may not be working satisfactorily, but members can see the case for a more comprehensive set of provisions to address the whole range of issues arising out of this phenomenon. Unless any new offence is carefully circumscribed, it may throw up perverse consequences.”

While property owners were generally supportive of any proposals to strengthen the law, the homelessness charities which responded to the consultation argued that the current law should not be changed. They believed a new offence would penalise people already struggling with complex vulnerabilities and could increase the level of rough sleeping.

Homeless Link, for example, said:

“Criminalising homeless people who periodically reside in squats will increase the number of people rough sleeping at a time when we are already seeing an increase in the numbers on the street. This in turn will place increased demand on homelessness service providers who are already struggling to meet demand for services in a period of reduced funding. Criminalisation will result in an increased work load for the Police.”

Many respondents who replied in support of the SQUASH campaign also agreed that the existing law should not be changed. Several blamed the media for scaring the public unnecessarily over rare cases of residential squatters.

“There's no need for a new law. Much of the recent anxiety around squatting has been stirred by press reporters in need of stories and crusades at the expense of accuracy. The legislation currently in place is sufficient, and anything more threatens the impoverished and those with

unscrupulous landlords. Plus it will increase the cost burden on charities, the police and the courts. The whole scheme is highly troubling.”

“The current law is more than adequate to deal with squatting and there is no need for a new criminal offence of squatting. History has shown that, given the choice, developers and landowners will allow their properties will stay empty in pursuit of higher rents, while the poor and vulnerable are homeless and in desperate need of shelter. That's why squatter's rights were introduced in the post war era.”

The legal profession were divided on whether new offences were required. The Criminal Bar Association and the Law Society opposed a new criminal offence. They argued that in the absence of reliable data, it could not be demonstrated that a new offence was either necessary or proportionate. They saw no evidence to suggest that the current law was inadequate.

“The consultation paper acknowledges that there are no reliable data on the nature and extent of squatting. In the absence of any such evidence, we have no reason to believe that the existing law does not deal adequately with squatting. The civil remedies available appear to us to be adequate and there is a sufficiency of criminal offences already available as remedies. From the information provided, we feel what may be required is for existing remedies to be more vigorously enforced rather than any changes to the criminal law.” (Criminal Bar Association)

“The current law deals adequately with squatting. Home owners are protected by section 7 of the Criminal Law Act 1977. A homeowner will be a ‘displaced residential occupier’, or, if they are not yet residing in the property, a ‘protected intended occupier’. It is a criminal offence for a squatter to remain once they have been informed of the displaced occupier or a protected occupier. The police can arrest any trespasser who does not leave.” (Law Society)

But the Property Litigation Association and some individual law firms acknowledged the frustration felt by their clients:

“In advising clients, we are aware of their frustration at the fact that police have very limited powers to deal with squatters (and/or appear reluctant to exercise those powers they do have), particularly in relation to commercial premises where criminal damage is alleged. It is a common issue that once the police realise that solicitors are engaged on behalf of the land owner, it is assumed the civil route will be pursued and the police do not need to become overly involved.” (Property Litigation Association)

“At a time when displaced owners/ occupiers are particularly upset, frustrated and feeling vulnerable, the onus is on them to instruct lawyers, prove that the squatters have no legal right to occupy the property, attend the court and then accept that their chattels and other belongings within the property may be stolen and damaged.” (Hogan Lovells law firm)

The Housing Law Practitioners Association was keen to ensure that any new provisions did not adversely impact legitimate tenants:

“We welcome the statement [in paragraph 22 of the consultation paper] that “We do not think that any offence should extend to tenants who occupy a property with the permission of the owner, but later refuse to leave (e.g. following a dispute about rent payments). We think that such people are not squatters and that landlord – tenant disputes should continue to be resolved using established eviction procedures”. We have experience of landlords who use the term “squatters” for tenants or former tenants who continue to occupy (one of the recent press reports contained just such an example). There is a real risk of this increasing if there is an advantage to be gained from it”

Question 5: If you have taken steps to evict squatters from your properties, what difficulties have you encountered (if any) in removing squatters from your property using existing procedures? Have you had any positive experiences of using existing procedures?

The majority of property owners who responded to the consultation described negative experiences of using criminal or civil procedures to evict squatters.

With regard to the criminal law, a number of property owners expressed frustration about what they perceived to be reluctance or inability on the part of the police to enforce offences such as criminal damage or burglary.

Annington Holdings Plc said:

“In Annington’s experience enforcement is the crux of the problem; our past experiences have shown that delays arise in removing squatters from properties due to limitations on police resources. At Annington’s site in Balham in 2008, whilst there was clear evidence of forced entry and subsequent criminal damage by the squatters, the only recourse available to Annington at the time was civil action, despite reporting the criminal activity to the police.”

One international law firm suggested that:

“The police are generally disinterested and/or ignorant of the law. In a recent squatting incident, the displaced owner of the premises sought an interim possession order (IPO). Once an IPO has been served on the squatters, it is a criminal offence to remain in the premises more than 24 hours after service. The displaced owner sought the police’s assurance that they would assist if the squatters remained in the premises beyond the 24 hour period. However, this was not provided.”

The Nationwide Building Society expressed the view that there was an even greater reluctance from the police to get involved where commercial premises were taken over by squatters.

“Police are unable and unwilling to act particularly in respect of commercial property as it is deemed to be a civil matter. It takes

considerable amount of time for Bailiffs to carry out possession orders. This enables squatters (who often also commit theft) to cause extensive damage and loss to the illegally occupied property. Police often accept squatters' claims that the property was not secure when they entered and consequently accept that the squatters did not therefore commit any offence of breaking and entering into the property."

This view was shared by Ballymore Group who said:

"Once a Section 6 Notice is displayed, the Police are often reluctant to take any action, citing the matter is now a case of 'Civil Law' – to be honest the Police I have dealt with over the years are equally disgruntled with this aspect of the law and often question the rationale behind the Section 6."

With regard to civil procedures for evicting squatters, the overriding view of property owners was that these processes were simply too expensive, too complicated and too slow. One law firm representing residential and non-residential clients said:

"Our clients have commented that there are too many steps to take before possession can be obtained and the process is too expensive."
(Pinsent Mason)

Transport for London, which owns a number of residential properties bordering a road-widening scheme in North London, noted delays in county court bailiffs providing eviction dates after a Possession Order has been granted. These delays resulted in cases being transferred to the High Court and evictions organised through High Court enforcement officers. This meant that the cost of each eviction spiralled to several hundred pounds.

Network Rail, which owns the freehold of a number of commercial premises, for example, in railway arches, also believed that civil procedures could be improved. It suggested:

"It is our view that the requirement for an IPO application to be made within 28 days is arbitrary. Delay is a factor which can in any event be taken into account when the Court considers granting interim injunctive relief. We suggest extending or removing the time period within which an application for an IPO must be made. The Defendants would still have the protection of the Court's discretion as to whether or not an interim injunction should be granted."

Question 7: If so, do you agree with the basic definition of squatting set out in paragraph 21 (i.e. the unauthorised entry and occupation of a building)?

Nearly all of the property owners who thought a new offence should be introduced broadly agreed that squatting consisted of the unauthorised occupation of a building, though some argued that any new offence should cover structures such as sheds and railway arches and land immediately outside the building.

Many of the respondents opposed to criminalisation did not answer this question in detail because they did not believe it would be appropriate to comment on elements of an offence that they could not support. However, others expressed concern that the definition would have a negative impact on legitimate tenants. They argued that in the absence of a written tenancy agreement, there might be doubt about whether the occupation was authorised. They also argued that there might be instances where a person believes he or she has permission to reside in a building, but in reality no such authority has been given.

Others were concerned about the impact that the proposed definition might have on a person's right to protest – for example students staging a protest in academic buildings or workers staging a sit-down protest in a commercial building without the authority of the property owner.

The following quotes are representative of many of those responding to the consultation in support of the SQUASH Campaign:

“These definitions are so broad they could conceivably cover those who are victims of fraud at the hands of a false letting agency, or those occupying buildings for peaceful political purposes. Using this definition to create a new criminal offence of squatting would infringe upon both the rights of squatters, equating their actions which can be beneficial as always criminal, and protestors, who stand up for a long tradition of civil disobedience in Britain, this definition is unacceptable.”

“I do not agree with the creation of the new law and feel the government has mis-applied the term 'squatting' in this instance, as it covers not only squatters but tenants, and protesters (eg. students occupying a building for a protest.) I see this as the government trying to kill two birds with one stone; not only eradicating the squatting community but destroying the power and freedom to protest in this country. I think this is outrageous and a horrible prospect for our future and our political rights.”

These sentiments were echoed by the National Union of Students and the University and College Union which said:

“We would strongly resist criminalising large numbers of students and young people who have occupied buildings – for example, as we have seen in instances over the past year, in defence of education and in opposition to the tripling of tuition fees. The prospect that they could be tarred with a criminal record for doing so is unacceptable.” (National Union of Students)

“It should be clear in any new definition of squatting, that those exercising civil rights to peaceful process are not within its orbit. When collectively hundreds or thousands of people join together to peacefully protest by means of occupation, (which is generally time-limited), it is a very different proposition to an individual or several individuals taking over a family home.” (University and College Union)

On concerns about legitimate protest activities, the Crown Prosecution Service argued this risk could be mitigated if any new offence was limited to residential property:

“There is no need to occupy a privately owned residential premises to protest about the property or its owner. If a distinction was to be made between residential properties and commercial properties or academic establishments the right to a legitimate and lawful protest need not be adversely affected by the introduction of a new criminal offence.”

Question 8: How should the term ‘occupation’ be defined? Should it cover those who occupy a building for a short period (e.g. a couple of hours)?

A number of property owners who answered this question thought that ‘occupation’ should be defined as people with an intention to reside in a property, but that the police should be able to arrest a squatter very soon after he has entered the property if his intention to reside there was evident.

One legal firm, responding on behalf of clients who had experienced difficulties with squatters, agreed that any new offence should not have to be triggered by a squatter remaining in the building for any particular period. However, it also warned about possible unintended consequences if the elements of the offence required the police to prove that the squatter intended to reside in the property:

“Any attempt to put a time frame on the concept of occupation could lead to problems. It should be a strict test, but give flexibility to judges when it comes to penalties. Similarly, the intention of the person entering the premises should not be relevant. Otherwise, it may lead to ‘squatting defences’ for suspected burglary suspects.”

Many of the respondents opposed to criminalisation did not answer this question in detail because they did not believe it would be appropriate to comment on elements of an offence that they could not support. However, some argued that the proposed definition of ‘occupation’ would be a risk to civil liberties, as it could lead to the criminalisation of protest activities that were only ever intended to be temporary in nature. Opposed to the creation of a new criminal offence, the Criminal Bar Association said:

“The definition of occupation is inadequate; it would need to be focussed on the social mischief against which the law was aimed. Too broad a definition would criminalise conduct that ought not to be criminal in a democratic society, too narrow would lead to excessive legalism...”

Question 9: What 'buildings' should be covered by the offence? Should it cover all buildings or only some (e.g. should it cover public and private buildings, outbuildings, abandoned or dilapidated buildings, or buildings that have been empty for a long time)?

The vast majority of property owners thought that any new offence should cover all buildings as this would send the clearest message that squatting in somebody else's property is wrong wherever it occurs.

One law firm representing residential and commercial property owners said:

"In our view, all buildings should be covered as they are all targets for squatters. If certain buildings are excluded from the scope of the offence, they will potentially be targeted even more as a substitute for those buildings covered by the offence."

The Land Registry recognised that a new offence of squatting covering all buildings may have an impact on the law of adverse possession. They thought that one effect of a new offence of squatting in empty buildings would be to prevent squatters acquiring ownership through their long-term possession. They queried whether the offence should extend only to *"buildings, or parts of buildings, where it ought to be apparent that they are still occupied by the owner, and not to those buildings, or parts of buildings that appear to have been abandoned."*

The Metropolitan Police similarly suggested that if a new offence were created, it should perhaps be linked to buildings that are in use and driven by reports from victims:

"In these circumstances enforcement is more likely to take place where buildings are in use, and not where abandoned or dilapidated, or where buildings have been empty for a long time. Such an approach may also help with preventing false or vexatious allegations."

Many of the respondents opposed to criminalisation did not answer this question in detail because they did not believe it would be appropriate to comment on elements of an offence that they could not support. A small number of respondents representing Gypsies and Travellers did respond, however. They wanted to emphasise that any new offence should not cover the land ancillary to buildings, which could conceivably catch gypsies and Travellers encamped on land outside disused factories or warehouses. The Cardiff Gypsy and Traveller Project, for example, said the following:

"If an offence is introduced it should not include the curtilage of a building since this will unjustly target Gypsies and Travellers in urban areas."

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

A number of property owners thought that creating an offence, but then listing a series of exemptions, might be counter-productive. Transport for London argued, for example, that exemptions would be exploited by organised gangs of squatters to avoid prosecution for any new offence.

Many respondents, including a number of property owners and legal professionals, thought that it might be desirable to exempt certain activities that were not commonly thought of as squatting, such as university sit-ins. Others suggested that people who occupy a property mistakenly believing they have a right to do so should be exempted. For example, the Housing Law Practitioners Association said the following:

“We also agree that those who believe they are in the property lawfully should be exempt. This would cover those who have entered into an agreement to be let a property with someone who turns out not to have any right to do so.”

The Magistrates' Association was concerned about people who might be in desperate need of shelter, such as hikers or girl guides on a mountainside who get stranded in bad weather and are forced to occupy a building until conditions improve. They suggested that the Government should consider criminalising a squatter's failure to leave a building on request, rather than criminalising the act of trespass itself:

“Unlawful trespass cannot be a permitted act. However, the proposed ‘safeguard’ of making any offence contingent upon a refusal to leave on request by the rightful owner should ensure that any new law does not result in hikers, scouts or guides or schoolchildren on an orienteering trip taking shelter in a derelict outbuilding in the mountains or fells being prosecuted for squatting. Nor should this prevent any separate action for criminal damage etc.”

Some of the homelessness charities argued that vulnerable, homeless people who occupied empty or dilapidated buildings and cause no damage to the property should have an absolute defence. Crisis said:

“...we do not believe there should be a new offence at all. However, if one is introduced it should absolutely not affect vulnerable homeless people who are squatting due to a lack of alternative options.”

Question 11: Do you agree that the existing law provides adequate protection against false allegations? Question 12: If not, what other steps could be taken to protect legitimate occupiers from malicious allegations?

Most property owners believed that it would be very rare for a lawful occupier not to be able to provide any evidence that he or she had permission to live in a property. If a landlord maliciously claimed that somebody was squatting in a property, but the tenant could provide evidence of a tenancy agreement or

rent payments being made, the landlord could be held criminally liable under existing laws. Some landlords suggested there should be statutory duty for anyone letting a property to draw up a formal tenancy agreement. One respondent said:

“There needs to be a legal duty for landlords to provide their tenants or anyone that is allowed to reside in premises that they have control of to provide a written formal tenancy agreement. It should be an offence for a landlord not to provide a written formal tenancy agreement to a tenant.”

The Cornwall Residential Landlords Association agreed that legitimate occupiers should have a written contract or lease setting out their rights and the rights of the landlord. Production of the agreement would ensure that lawful occupiers were safe from malicious allegations.

Law enforcers agreed that the existing law provided adequate safeguards. The Crown Prosecution Service said:

“We suggest that the offences of Perverting the Course of Justice and offences contrary to section 76 of the Criminal Justice and Public Order Act 1994 provide adequate means to deal with false allegations.”

However, Tower Hamlets Law Centre disagreed by saying *“there is no offence of a Local Authority making misleading or false statements for the purposes of evicting squatters. There is only an equivalent offence for a private PIO. The law centre has never heard of anyone being prosecuted under this provision. Nor has the law centre ever come across a person prosecuted for making a false allegation in order to obtain an Interim Possession Order.”*

A number of charities raised concerns about unscrupulous landlords, however. Crisis said:

“For vulnerable tenants who are less able to advocate for themselves or do not have a good understanding of their rights, including for example when English is not their first language, this is particularly worrying.”

Other respondents who were concerned about the welfare of legitimate tenants believed there was a need for a counter-balancing offence, although some doubted whether the benefits of such an offence would outweigh the disadvantages of a new offence of squatting.

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

Many respondents did not consider they were in a position to suggest what a new penalty should be. However, respondents who had encountered squatters in their properties suggested that squatters should be dealt with as severely as burglars. There was a consensus that the worst offenders, particularly those who had caused damage to the property, should face prison. A number saw little point in imposing a fine on people without financial resources, though some suggested that benefits could be withdrawn if

squatters were in receipt of them and that foreign nationals with no right to be in the UK could be deported.

The Crown Prosecution Service said that the penalty for any new offence should be consistent with penalties imposed for existing offences that deal with certain types of squatting:

“As section 7 of the Criminal Law Act 1977 was designed to address the issue of squatting we suggest that penalties in line with those available for offences contrary to section 7 would seem appropriate.”

The Magistrates' Association suggested:

“A penalty that would help the owner pay for any damage or costs caused by the wrongdoer [would be appropriate]. Therefore a large financial penalty should be possible in the worst scenarios. Compensation as a penalty in its own right should clearly be available.”

Question 14: In your experience (e.g. as a displaced residential occupier or protected intending occupier or as a law enforcer), how effective is the existing offence in section 7 of the Criminal Law Act 1977?

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

The majority of respondents supporting criminalisation thought the section 7 offences were ineffective. An MP said:

“In my constituents’ experience section 7 is of little use as squatters refuse to leave voluntarily and instead wait for a possession order. I am not aware of any cases in my constituency where squatters have left the property following a simple request by the owner.”

A number of landlords argued that the section 7 offence might work if it were more widely publicised, but the protection of the offence should be extended to property owners who were neither displaced nor intending to live in the property. One landlord said:

“I think that Section 7 could be made to work well as it presently stands but I think it should be extended to cover non residential property and to owners of residential properties which are not their own homes, i.e. Landlords.”

Local authorities and landlords who had identified prospective tenants for their properties indicated that the definition of a protected intending occupier worked sometimes, but there were many occasions where it did not.

For example, Camden Council argued:

“The legislation cannot be used... where we are in the process of repairing a property but it becomes squatted before we have identified a prospective tenant (this can happen if a property is squatted quickly after becoming vacant).”

Transport for London agreed with this:

“The “protected intending occupier” procedure is not effective because often tenants will not sign tenancy agreements until they have had the benefit of inspecting the premises. The procedure would be far more protective if an owner/landlord could sign a certificate stating the presence of squatters is preventing the landlord from re-letting the premises.”

Many respondents who were opposed to any strengthening in the law argued that the existing offence was perfectly adequate. Many squatters argued they would only ever occupy a building that was empty or abandoned so in practice the section 7 offence would be used infrequently. The SQUASH campaign said:

“The idea that squatters target people’s actual homes is a myth, largely propagated by the media and by politicians.”

The Law Society agreed that squatting in occupied properties occurred infrequently and noted that the section 7 offence was rarely used.

“Section 7 of the Criminal Law Act 1977 makes it a criminal offence to fail to leave a property after ‘being required to do so’ by or on behalf of either a displaced residential occupier or a protected intending occupier. This is not often used, as squatting happens infrequently, but where it is our members report that it is extremely effective. They have not encountered any problems in using this provision to ensure that squatters leave the property.”

Other respondents writing in support of squatters expressed frustration that a squatter might be forced to leave by a protected intending occupier, but the building would be left empty again after the squatter had vacated the premises. One respondent said:

“I know of several examples where squatters have been evicted [by protected intending occupiers] but the property has remained empty and unused after the eviction, including neglected council properties which is the worst thing to see, especially when there are so many people on the waiting lists, that there should be available property left in disrepair by councils.”

Tower Hamlets Law Centre agreed with this:

“We consider that Section 7 Criminal Law Act could be amended to make it clear that it only applies to PIOs who are immediately prevented from moving into their home by the presence of squatters. This would avoid Local Authorities and other landlords using the PIO provisions to evict squatters, only to leave the properties empty again.”

Question 16: If we were to expand section 7 so that it covered squatters who refused to leave other types of building when required to do so by the rightful occupier, what type of buildings and what types of occupier should be specified?

There was general consensus among property owners that if the section 7 offence were expanded, it should be expanded to cover all buildings, outbuildings and moveable homes and offices such as caravans and portacabins. However, a number felt that expanding this offence would not have the same impact as criminalising squatting because it still would not be a criminal offence to enter the building in the first place. An MP, responding on behalf of his constituents, said *“section 7 is ineffective so it is of little value to extend its reach to other types of buildings.”*

Respondents who were opposed to strengthening the law argued there was no justification for extending the offence to other types of buildings. In their view, the law protected displaced residential occupiers and protected intending occupiers because Parliament had deemed those categories to be in greatest need of protection. The same could not be said for other types of property owner. One law firm which opposed amending the law in this area said:

“It would be inappropriate to extend this offence to cover non-residential property. It should be noted that the offence does not cover all residential property in any event: it only applies to residential property where a lawful occupier is being prevented from occupying, either because they have been displaced by the squatters, perhaps while away on holiday, or because squatters have occupied before the lawful occupier has had the chance to move in. In other words, this offence is designed to deal with precisely the circumstances with which the Consultation is concerned: where people suffer the distress, upset and expense of being put out of their homes and suffering damage to their home and belongings.”

Many others echoed these sentiments and questioned whether it would be proportionate to criminalise people who refused to leave empty, dilapidated buildings which clearly were not being used. One respondent said:

“If Section 7 is expanded to cover non-residential properties that are not in use and not about to be used, it will give owners of long term empty properties the ability to rapidly evict people from buildings that they themselves are not using. This doesn’t seem to serve the public interest. The owners gain slightly, by getting their property back quickly rather than slowly, but the benefit is minimal since they are not doing anything with the property. The squatters lose hugely, in that they are made homeless.”

Question 17: If section 6 were amended to exempt additional categories of people from the offence, which categories should be exempted? Are there any categories of people that should not be exempted?

Many property owners could see the merit in amending the law so that they would not be committing an offence if they broke back into a property that had been occupied by squatters. This was also a view shared by the Crown Prosecution Service:

“We recommend that owners of the property entitled to take possession should be exempted in order to cover those such as second homes, owners who work away for extended periods, owners of commercial properties and properties subject to Probate.”

However, some indicated that even if the law were changed, they would be cautious about breaking back into a property that might be occupied by several squatters.

The vast majority of those opposed to criminalisation felt strongly that adding exemptions could encourage vigilantism and jeopardise the safety of both the property owner and the squatter. One respondent said:

“I believe that were certain exemptions made, they would open up serious risks for individuals involved in squatting situations. On the one hand, it would bring serious risks to the the safety of individuals squatting properties, and on the other place property owners (and their agents) into positions where they are at risk of committing serious criminal charges such as assault.”

The SQUASH campaign argued that section 6 offers a basic level of protection for everyone, not just squatters. They suggested that nobody should be evicted violently, without warning, from their home. They further thought that the legal complexities of possession cases are best dealt with in a judicial setting, and that those who face homelessness deserve an opportunity to present their side of the case.

Question 18: Do you know of circumstances where the section 6 offence has been used –was it used to protect a tenant from forcible entry by a landlord or was it used for other reasons, e.g. to stop a violent partner from breaking back into his home? Please describe the circumstances.

Responses to this question were limited, but there was a consensus that the law served a useful purpose in preventing people from breaking in to other people’s property against their will. As indicated above, while there was some support for amending the offence to exempt additional categories, very few advocated repealing the offence altogether.

Law enforcers provided an overview of how the offence had been used in the past. The Crown Prosecution Service said:

“Section 6 of the Criminal Law Act 1977 has been used where there has been a relationship breakdown and where a former partner seeks to gain entry to a property after being refused entry by the owner (and former partner). We recommend that section 6 be maintained so as to ensure that the protection currently available for victims of domestic violence is not reduced.”

The Metropolitan Police provided evidence along similar lines:

“Section 6 has proven to be an important tool when seeking to protect vulnerable individuals, especially in circumstances relating to domestic violence. 230 section 6 offences have been recorded by the MPS over the past five years, with 31 in the last 12 months. The majority of these offences related to ex-partners forcing their way back into a home. One offence committed in the last 12 months describes a suspect impersonating a bailiff and attempting to force entry with a sledge hammer.”

Individual respondents described other circumstances where the section 6 offence had been used. One said they knew of a case where a landlord had tried to evict a legitimate tenant using a sledgehammer to break down the door and had been prosecuted under section 6. Another respondent described how the offence had protected a friend, whose violent and drug-addicted husband, had tried to use force to break into her property.

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

Many property owners suggested that the law was ambiguous and was difficult for the public and the police to understand. Some property owners suggested that even where an offence such as criminal damage or the unlawful abstraction had been committed, the police were doubtful about whether they could go into the property to make an arrest. Others recognised that the police might have a difficult job in proving which individuals had committed the offences in question if there were several squatters in the property. Many thought that the creation of a new offence would help to overcome such ambiguities.

The Metropolitan Police acknowledged that additional guidance for investigating officers might be beneficial:

“The MPS also recognise that the lack of training and practical knowledge regarding the law regarding squatting, particularly section 7, may be a barrier to effective enforcement. Improved training, including greater awareness of the damaging impact of squatting, is part of ongoing work.”

The Crown Prosecution Service described the difficulties in gathering enough evidence to prosecute for existing offences:

“It can be difficult to prove that those occupying the premises in question were the same people responsible for causing damage to gain entry. There is no way for owners to assess whether or not damage has been caused until entry is gained which may not be until the squatters have left and as such there may be insufficient information for the police to have a reasonable suspicion that an offence has been committed (criminal damage or theft for example) and therefore there is no way for the police arresting the individuals therein.”

Question 20: Are you aware of the Government’s new guidance on evicting squatters under existing laws? If so, is it helpful? Do you think the guidance could be improved in any way?

Among landlords, victims and those in support of a new offence, most were aware of the new guidance, although some said it provided an unrealistic impression of how easy it is to regain possession through civil procedures. It was suggested that guidance should be updated to describe the advantages and disadvantages of both the interim possession order and the ordinary possession order and the cost of obtaining each.

Many respondents who were opposed to the creation of new offences argued that the guidance showed that existing laws and procedures were more than adequate to deal with squatting. Many argued that MPs should be made aware of the guidance so that they stop telling the newspapers that there are no laws in place to protect homeowners.

Question 21: If any of the proposals in this document were to be adopted, what impact would this have on you, your organisation or those whose welfare you promote?

Many property owners believed that a new offence of squatting would provide welcome reassurance that the law would be on their side if their buildings were occupied by squatters. An MP suggested that making squatting a criminal offence would have a considerable impact on the welfare of many of his constituents. He said:

“When my constituents have discovered that squatting is not a criminal offence they are at first amazed and then deeply frustrated. Those affected simply do not believe the law is on their side.”

Many landlords suggested that a new offence would speed up the re-letting process. One landlord said:

“A stronger law against squatting would encourage me and others to make available more properties for renting.”

Some suggested that that there would be savings in enforcement costs.

Local authorities also believed that strengthening the law would have benefits:

“It would benefit the Council by saving time and money, benefit those waiting to be housed and, in some cases, neighbours would benefit if there had been noise and anti-social behaviour caused by the behaviour of squatters.

Private landlords that have been affected by squatting are often discouraged from bringing empty properties back into use because of the cost and distress of dealing with squatters. An effective deterrent to squatting may also become an incentive to private landlords to bring their properties back into use.

We may need to consider ensuring that any changes did not impact detrimentally on residents who were lawfully occupying properties (for example, sub tenants of leaseholders or those flat sitting). We would have concerns for those that require support, such as vulnerable residents or those for whom English is not their first language, who might enter into either a casual agreement with a “friend” or a bogus letting agent who may be subsequently treated as a squatter and, potentially, criminalised as a result.” (Camden Council)

There was a groundswell of opinion amongst those opposed to criminalisation that a new offence would create more homelessness and make the lives of vulnerable people who squat even worse. One respondent said:

“If squatting was to be made a criminal offence it would likely lead to large numbers of young people trapped in poverty and people with mental health issues entering the criminal justice system which is already over-stretched.”

It was suggested that an increase in homelessness would heap pressure on NGOs who assist vulnerable people. Shelter stated, for example, that legislative options would:

‘Increase demand for advice about squatting from both owners and squatters, placing additional burdens on both voluntarily and statutorily funded housing advice services.’

It added that it could also *“potentially increase rough sleeping and street homelessness, with knock-on impacts for homeless services providers and advice agencies.”*

The Metropolitan Police said:

“Criminalisation of squatting and subsequent enforcement would have an impact on policing, in terms of community relations, local policing objectives and cost. There would be a clear public expectation regarding enforcement. This is likely to be focused in areas which have a high concentration of buildings subject to unlawful entry and occupation, but also where there are squats which attract particular attention. At the same time contentious debate surrounding this subject may attract protest from groups who support squatting and voice concern about housing issues in London. This could attract further attention with changes to housing benefits and pressure on social housing. Significant work would need to be undertaken with the communities affected, local councils and related third sector organisations, to ensure that enforcement would be carried out in a proportionate and appropriate manner.”

Many respondents suggested that a new offence would discourage the positive community activities which it is said can be provided by squatters. One was concerned at young people receiving criminal records and being punished for their enterprise and initiative.

Proposals for further action

Having considered the consultation responses, the Government remains concerned about the impact squatting can have on residential and non-residential property owners. It believes that law-abiding property owners and occupiers should be able to enjoy their entitlements to their property without undue interference from those who have absolutely no right to be there.

The responses to the consultation document included a number of responses from owners of residential property whose houses have been occupied, thus rendering them impossible to live in. Victims included private homeowners who could not move into properties that had been occupied, local authorities who have been unable to refurbish social houses to make them available for priority categories, and landlords who had been unable to let their property as a result of squatting.

Consultation responses also showed that businesses can be weakened as a result of squatting in commercial premises: the squatting disrupts normal business activity and causes damage that often costs thousands of pounds to put right.

Whilst there are civil remedies available to property owners and occupiers under Part 55 of the Civil Procedure Rules, the Government is persuaded that, given the level of harm that squatting can cause, it is right that the criminal law should intervene to offer a greater degree of protection. It is not convinced by arguments put forward during the consultation process that the law is in the right place and should not be changed. Nor is it persuaded by arguments advanced primarily by supporters of the SQUASH campaign that squatting can have a beneficial effect on local communities. As a first step, the Government intends to criminalise squatting in residential properties. This will deal with what it considers to be the greatest mischief and the greatest distress to victims, that of being unable to use one's own home.

The new offence will be committed where a person is in a residential building as a trespasser having entered it as a trespasser, knows or ought to know that he or she is a trespasser and is living in the building or intends to live there for any period. In developing this proposal, the Government was mindful of the views of respondents. The following sections describe how specific matters raised by respondents have been considered in the development of the provisions.

Why not just criminalise squatters who fail to leave when required to do by the owner or lawful occupier?

Squatters who fail to leave residential premises when required to do by a displaced residential occupier or a protected intending occupier are already committing a criminal offence under section 7 of the Criminal Law Act 1977. The Government considered whether to simply extend this offence to other

types of owner or occupier of residential property, but agreed with responses to the consultation which argued that an offence criminalising the act of squatting in itself (rather than a failure to leave on request) would provide a more powerful deterrent to would-be squatters.

Will the new offence adversely affect legitimate tenants?

A number of respondents were concerned about the possibility that legitimate tenants might be caught by any new offence. The Government understands why respondents were concerned and has therefore ensured that the offence is carefully targeted at persons who *enter* a residential building as a trespasser and live in it (or intend to live in it) without permission. It will not catch legitimate tenants, lodgers or anyone else who occupies a residential building with the blessing of the property owner but subsequently has a disagreement with the landlord over rent payments, for example. A rent defaulter or a tenant who overstays his or her welcome is not a squatter for the purposes of this offence and the Government is very clear that these sorts of disputes should continue to be resolved using established eviction processes.

Nor will the offence catch people who entered the property in good faith but did not in fact have the permission of the property owner to live in the property. This situation could arise, for example, where a bogus letting agent encouraged an unsuspecting tenant to occupy a property. A person would only be guilty of the new offence if he knew or ought to have known he was a trespasser.

The Government considered whether legitimate tenants should be given protection from landlords who maliciously accused them of being squatters. It concluded that such an offence is not necessary, however, because a landlord can already be prosecuted for perverting the course of justice – an offence with a tough maximum penalty – in these circumstances. This point was confirmed by the CPS in their response to the consultation.

A new offence, without exemptions, could mean that hikers stranded in the mountains might be criminalised for occupying an empty home

The Government accepts that hikers who occupy a residential building in these circumstances might be committing an offence as a result of its proposals. In practice, however, it seems unlikely that the property owner would make a complaint. Even if a complaint were made, as with any criminal offence there would be an operational discretion as to whether a person should be charged with an offence. The Government considered creating a 'reasonable excuse' defence to allow for this type of situation, but was concerned that such a defence would be open to abuse and might render the new offence toothless.

Will any new offence restrict the right to peaceful protest?

The Government also noted the views of respondents who were concerned about the impact of any new offence on the right to peaceful protest. Some

respondents argued that criminalising the unauthorised occupation of any building could effectively outlaw certain types of protest, such as sit-ins held by disgruntled work forces or students occupying academic buildings. By limiting the offence to the unauthorised occupation of residential buildings, the Government will eliminate the risk that protest activities in non-residential premises such as university buildings are captured by the offence. The Government considers that squatting in residential buildings is unacceptable, regardless of whether it occurs for the purpose of protest.

Will any new offence adversely affect Gypsies and Travellers?

The Government noted concerns of groups representing Gypsies and Travellers that any new offence could criminalise Gypsy and Traveller encampments on land ancillary to the buildings protected by any new offence. Respondents indicated that it was quite common for Gypsies and Travellers to encamp on land outside disused factories and warehouses, particularly in urban areas. The Government has decided to limit the offence to residential buildings, however, and it will not extend to the land ancillary to those buildings at this stage. The only circumstances in which Gypsies and Travellers could be criminalised are if they occupied a residential building without authority, but in that situation the Government believes it would be entirely appropriate for their conduct to constitute a criminal offence.

Should the offence apply to commercial buildings and other non-residential buildings?

The Government recognises that many non-residential property owners would welcome the same degree of protection that is being offered to residential property owners. At this stage the Government will not seek to criminalise squatting in non-residential buildings, such as disused factories, warehouses or pubs as there does not appear to be the same level of concern about squatting that occurs in those premises. The Government remains concerned about squatters who occupy commercial buildings that are in use and will continue to explore whether the enforcement of existing criminal offences (such as criminal damage and burglary) and civil procedures that enable owners to regain possession of their properties can be improved. The Government will also continue to keep the law under review to measure the effects of the changes and to determine if any further action is needed.

How will the Government mitigate the impact of any new offence on vulnerable, homeless people who squat?

The Government recognises that many respondents to the consultation were concerned about the effect of criminalising squatting on vulnerable homeless people who squat. Those responses noted suggestions that more should be done to address the root causes of homelessness, to provide a greater number of affordable homes and to bring empty homes back into use. The Government accepts these are legitimate concerns, but does not view them as reasons for doing absolutely nothing to protect owners or lawful occupiers of residential property whose buildings are occupied by squatters.

The Government therefore proposes a balanced approach: criminalising squatting in residential property on the one hand whilst helping to ensure that people found squatting are put in touch with relevant support agencies and continuing to tackle the root causes of homelessness, providing more affordable homes and bringing empty homes back into use on the other.

The Government recognises that it will need to work closely with the police, local authorities and homelessness charities to put those found squatting in touch with relevant support agencies. This specific point was raised by the law enforcement agencies and local government associations in response to the consultation and the government will consider this further prior to implementation of the new offence.

Through the Homelessness Ministerial Working Group, the Department for Communities and Local Government, Ministry of Justice and Home Office will work together to ensure that any local enforcement against squatting is carried out in partnership with local homelessness services to mitigate against an associated increase in rough sleeping.

The Government is prioritising spending on homelessness prevention, investing £400m over the next four years, with the Homelessness Grant being maintained at 2010-11 levels. For the first time, it has also brought together eight government departments through the Ministerial Working Group on Homelessness to tackle the complex causes of Homelessness. The Group published its first report "Vision to End Rough Sleeping" in July 2011, which sets out joint commitments to tackle homelessness, and ensure nobody has to spend more than one night out on our streets – No Second Night Out. This includes actions to prevent homelessness for those people without a stable home who may be at risk of rough sleeping.

Will the Government act to address the shortage of affordable housing?

The Government intends to publish a strategy on housing later this year which will include plans for addressing the shortage of affordable housing. The strategy will set out the Government's overall approach to housing policy, including how it is supporting an increase in the supply and quality of new private and social housing and helping those seeking a home of their own, whether to rent or buy.

The Government wants to increase the number of empty homes that are brought back into use as a sustainable way of increasing the overall supply of housing, and to reduce the perception of neglect that can blight neighbourhoods. Reducing the number of empty homes will also help to reduce incidence of squatting. That is why we have announced £100m capital funding within the Affordable Homes programme to tackle problematic empty homes – that is properties that are likely to remain empty without extra direct financial assistance from government. This programme will deliver at least 3,300 affordable homes by March 2015, as well as engaging local communities in dealing with empty homes in their area.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact the Ministry of Justice Consultation Co-ordinator on 0203 334 4498 or email at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Consultation Co-ordinator
Ministry of Justice
Better Regulation Unit
Analytical Services
7th Floor, Pillar 7:02
102, Petty France
London
SW1H 9AJ**

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Annex A – List of respondents

Advisory Service for Squatters
Alan Edwards & Co Solicitors
Arden Chambers
Ballymore Group
British Property Federation
Camden Community Law Centre
Camden Council
Chief Fire Officers Association
Community Law Partnership
Cornwall Residential Landlords Association
Crown Prosecution Service
Criminal Bar Association
Crisis
Ealing Council
Haldane Society
Hogan Lovells
Homeless Link
Housing Law Practitioners Association
Housing Law Services
Shepherd and Wedderburn LLP
Kensington & Chelsea Tenant Management Organisation
Lambeth Law Centre
Landlord Law
Land Registry
Law Society
Legal Action for Women
Lewisham Council
Action for Land Taxation and Economic Reform Local Government Group
London Criminal Courts Solicitors Association
Magistrates' Association
Metropolitan Police
National Union of Students
Nationwide Building Society
Network Rail
New Traveller Association
Olan Trust
Osbornes Solicitors

Philcox Gray & Co
Pinsent Masons
Property Litigation Law Reform Committee
Residential Landlords Association
Rossendales
Shelter
Shergroup
Simon Community
Squatters Network of Brighton
Squatters Action for Secure Homes
St Mungo's
South West London Law Centre
Stonewall Housing
Thames Reach
The Land is Ours
Tower Hamlets Law Centre
Transport for London
University and College Union
Wandsworth Council
Wessex Regionalists

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squatting.consultation@justice.gsi.gov.uk.