

Circular No. 2012/04

TITLE

Offence of Squatting in a Residential Building

From:

Criminal Law and Legal Policy Team

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Broad Subject

Criminal Law

Sub Category

Offence of Squatting in a Residential Building

This circular is addressed to

Lord Chief Justice, President of the Queen's Bench Division, Senior Presiding Judge, Justices of the Supreme Court, Lords Justices of Appeal, High Court Judges, Crown Court Judges, District Judges (Magistrates' Courts), Bench Chairmen, Clerks to the Justices, Chief Crown Prosecutors,

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OFFENCE OF SQUATTING IN A RESIDENTIAL BUILDING

Introduction

1. Section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 creates a new offence of squatting in a residential building, which will apply throughout England and Wales. The offence is set out in full in Annex A.
2. The offence was introduced following public concern about the harm that trespassers can cause. The offence will protect owners and lawful occupiers of any type of residential building. This includes homeowners and tenants who might have been excluded from their homes by trespassers. It will also protect landlords, second homeowners and local authorities who discover trespassers living in a residential building that they own or control even if no one was living there at the time the trespassers occupied the building.
3. The purpose of this circular is to explain the elements of the offence, the relationship between this offence and other offences related to trespass and to encourage joined-up working between the police, local authorities and homelessness service providers when enforcing the offence.
4. This circular is for guidance only and should not be regarded as providing legal advice. Guidance for prosecutors on the new offence will be made available on the CPS website. The CPS are responsible for advising police for the purposes of criminal proceedings. For other operational advice, police should seek advice from their own legal advisors.
5. The offence will come into force on 1 September 2012.

Elements of the offence – points to prove

6. Subsection (1) of section 144 sets out the elements of the offence. The offence is committed when:
 - a person is in a residential building as a trespasser having entered it as such;
 - the person knows or ought to know that they are a trespasser; and
 - the person is living in the building or intends to live there for any period.
7. A person can only commit the offence if they have entered and remain in the residential building as a trespasser. This means the offence will not apply to a person who entered the building with permission of the property owner, such as a legitimate tenant. This is so even if a legitimate tenant subsequently falls behind with rent payments or decides to withhold rent. Such a person is not a trespasser for the purposes of this offence. A property owner would be expected to pursue established eviction processes in the county court (or High Court where appropriate) if they wanted to regain possession of their property in such circumstances.

8. The person must know or ought to know that he or she is a trespasser. The offence will not capture someone who enters the property in good faith reasonably believing they had permission to do so. This might arise, for example, where a bogus letting agent encouraged an unsuspecting tenant to occupy somebody else's property. In such circumstances, however, it might be reasonable to expect the 'tenant' to provide evidence of a tenancy agreement or rent payments to show they had a reasonable belief that they were not a trespasser.
9. The offence also requires that the trespasser 'is living' or 'intends to live' in the building for any period. This ensures that the offence does not apply to people who are in the residential building momentarily or have no intention of living there. A person who enters the front hall or porch of someone's home to deliver junk mail, for example, might not have the permission of the property owner to do so, but he or she is not a trespasser for the purposes of this offence.
10. Subsection (2) makes clear that the offence cannot be committed by a person holding over after the end of a lease or license (even if the person leaves and re-enters the building). 'Holding over' is a term used to describe the situation where a tenancy or licence comes to an end, but the tenant or licensee remains in occupation. In certain circumstances, such a person may be alleged by the landlord to be a trespasser. This express provision is designed to ensure that the offence does not apply in these cases. The offence only captures those whose original entry and occupation of the building was unauthorised.
11. Subsection (3) defines the meaning of residential building. This includes any structure or part of a structure which has been designed or adapted for use as a place to live. This includes temporary or moveable structures to ensure the offence covers homes such as park homes, caravans or residential pre-fabs. The building must have been designed or adapted before the time of entry, for use as a place to live. This will ensure that where, for example, a barn has been converted into a country house or offices into flats, such buildings will be protected by the offence. But a trespasser who modifies a non-residential building by placing his bedding and personal effects in it would not be committing this offence because the building had not been adapted before the point he or she entered it.
12. There might be instances where a building has been occupied by a trespasser for a period of time, but on relinquishing the property the keys are handed over to another trespasser. Subsection (4) makes clear that for the purposes of the offence, the fact that a person derives title from a trespasser, or has the permission of a trespasser to enter the property, does not prevent them from being treated as a trespasser as against the owner or lawful occupier for the purposes of the offence.

13. Subsection (7) provides that the offence applies regardless of whether the trespasser entered the property before or after commencement of section 144. This provision is designed to stop trespassers rushing to occupy residential buildings before the offence comes into force. It will also mean that trespassers who have been living in the premises for many months or years prior to commencement will be guilty of this offence if after commencement of the offence they are in the building as trespassers, they know or ought to know that they are trespassers, and they are living in the building or intend to live there.
14. Subsection (8) amends section 17 of the Police and Criminal Evidence Act 1984 (PACE) to give uniformed police officers the power to enter and search premises for the purpose of arresting a person for the offence of squatting in a residential building. The power of arrest is provided by section 24 of PACE and is subject to necessity (see section 24(4) and (5)) and PACE Code of Practice G (Arrest). This is consistent with the other summary only offences relating to trespass for which section 17 of PACE provides power to enter and search premises for the purpose of arresting a person, such as section 7 of the Criminal Law Act 1977 (see paragraph 19 below).

Penalties

15. The penalties for this offence are set out in subsections (5) and (6). The offence is triable summarily only and carries a maximum penalty of six months' imprisonment, a fine or both.

Relationship to other offences

16. In addition to the new offence of squatting in a residential building, there are a range of other offences which might arise in connection with squatting, depending on the circumstances of the case.
17. If doors or windows of the property have been broken to gain access or items inside have been used, damaged or removed, the offences of criminal damage, theft or burglary might be relevant. There is also an offence of 'abstracting electricity' under section 13 of the Theft Act 1968, which is committed when somebody dishonestly and without due authority causes to be wasted or diverted electricity. These offences are all indictable (triable summarily or on indictment)¹ and police powers under PACE apply in the same way as for any such offence.

¹ Although s. 22 of the Magistrates' Courts Act 1980 (MCA 1980) determines the mode of trial and provides that criminal damage not exceeding £5000 should be tried summarily, that does not change the classification of the offence. Section 17 and Sch.1 para.29 of the MCA 1980 clearly states that the offence of criminal damage is triable either way. See *R v Fennel* [2000] 1 WLR 2011

18. Trespassers who fail to leave a property with 24 hours of service of an interim possession order or return to the premises within a year of such an order being served are also guilty of a summary offence under section 76 of the Criminal Justice and Public Order Act 1994.
19. In addition, Section 7 of the Criminal Law Act 1977 ('section 7 offence') makes it an offence for a person who is on residential premises as a trespasser having entered as such to refuse to leave a residential property when required to do so by a 'displaced residential occupier' or a 'protected intending occupier' of the property. The offence is set out in full in Annex B. This means that lawful occupiers who have effectively been made homeless by trespassers can require the trespassers to leave and if they refuse to leave the offence can be reported to the police. 'Displaced residential occupier' and 'protected intending occupier' are defined in sections 12 and 12A of the 1977 Act (see Annexes C and D respectively). The maximum penalty for this summary offence is 6 months imprisonment, a fine or both.
20. It is anticipated the section 7 offence will be used less frequently once the new offence of squatting in a residential building is brought into force. Under the new offence there will no longer be a requirement for a displaced occupier to ask the squatters to leave before the police can act. However, the offence has been retained partly because the definition of residential premises for the section 7 offence goes wider than the definition of a residential building in section 144 of the 2012 Act. It covers, for example, any building, any part of a building under separate occupation, or any land ancillary to a building. Examples of land ancillary to a residential building could include gardens. The new offence is limited to the building itself and does not cover land ancillary to a residential building. Where squatting is suspected on land ancillary to residential buildings, the police and CPS may wish to consider a charge under the section 7 offence if a displaced occupier or protected intending occupier of the residential premises has failed to persuade the squatters to leave.

How does the offence affect 'squatters' rights'?

21. The notion of 'squatters' rights' stems from section 6 of the Criminal Law Act 1977. Under that section it is an offence for a person, **without lawful authority**, to use or threaten violence to secure entry to premises against the will of those inside. The offence is committed where the person who uses or threatens such violence knows that there is someone inside the premises who is opposed to the entry which can include someone who may themselves be a trespasser. However, the offence cannot be committed by a "displaced residential occupier" or "protected intending occupier" as defined in sections 12 and 12A of the 1977 Act.

22. The new offence will make it more difficult for trespassers to assert they have rights in respect of residential buildings because their occupation of the building will be a criminal act. The police will have a specific power, under section 17 of PACE, to enter the property to arrest a person who is suspected of squatting in a residential building. The police should not therefore be deterred if they see a 'squatters' rights' notice on the door of a residential building asserting that it would be an offence for anyone (including the police) to break into the property. The police have lawful authority under section 17 of PACE to enter the property to make an arrest.
23. It is anticipated that the use of 'squatters rights' notices on residential buildings will diminish once the offence comes into force but they might continue to be used by squatters in non-residential buildings. However, the offence in section 6 of the 1977 Act would not affect the lawful exercise by police of their powers under PACE to enter residential or non-residential premises to make an arrest for any of the offences mentioned in paragraph 17- 20 above.

Support for Homeless and Vulnerable People

24. There might be instances where people are squatting because they believe the only alternative would be rough sleeping. Particularly in areas where squatting is prevalent, police forces may wish to liaise with local housing authorities and relevant partner organisations to develop protocols for dealing with persons arrested who claim they are homeless.
25. There might be instances where the police are asked to clear a residential building that is known to house rough sleepers. In these circumstances, the police might wish to liaise with local authorities and homelessness service providers *prior* to enforcement action to ensure they are ready to assist if required and give appropriate advice on housing options. This process is likely to work most effectively if protocols on joint working have been developed in advance.
26. In other circumstances, the fact that somebody is squatting to avoid rough sleeping might only become known once enforcement action has been taken. In these circumstances, liaison with local authorities and homelessness providers would ensure the appropriate advice and assistance is offered to the accused after the point of arrest. In both scenarios, if local authorities are made aware of squatters as soon as they become known, this is likely to minimise the risk of the accused returning to the address in which he or she had been squatting or, indeed, to squat in another building on release from custody.

27. Local authorities have specific legal duties towards homeless people. If any person who is homeless or threatened with homelessness approaches the local authority for help, it has a duty to provide them with advice and assistance and, for some people who fall within certain priority categories there may also be a duty on the local authority to provide them with accommodation. Early notification is crucial to providing the most appropriate advice, assistance and if necessary accommodation. If joint working protocols have been developed, as suggested in paragraph 24 above, these could include up to date contact details (including out of hours contact numbers) for local authorities and relevant partner organisations to facilitate early notification.

Useful links

Legal Aid, Sentencing and Punishment of Offenders Act 2012
www.legislation.gov.uk/ukpga/2012/10/enacted

Explanatory notes on the Legal Aid, Sentencing and Punishment of Offenders Act 2012 www.legislation.gov.uk/ukpga/2012/10/notes/contents

Commencement order: www.legislation.gov.uk/uksi/2012/1956/contents/made

Section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

144 Offence of squatting in a residential building

(1) A person commits an offence if—

- (a) the person is in a residential building as a trespasser having entered it as a trespasser,
- (b) the person knows or ought to know that he or she is a trespasser, and
- (c) the person is living in the building or intends to live there for any period.

(2) The offence is not committed by a person holding over after the end of a lease or licence (even if the person leaves and re-enters the building).

(3) For the purposes of this section—

- (a) “building” includes any structure or part of a structure (including a temporary or moveable structure), and
- (b) a building is “residential” if it is designed or adapted, before the time of entry, for use as a place to live.

(4) For the purposes of this section the fact that a person derives title from a trespasser, or has the permission of a trespasser, does not prevent the person from being a trespasser.

(5) A person convicted of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 on the standard scale (or both).

(6) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (5) to 51 weeks is to be read as a reference to 6 months.

(7) For the purposes of subsection (1)(a) it is irrelevant whether the person entered the building as a trespasser before or after the commencement of this section.

(8) In section 17 of the Police and Criminal Evidence Act 1984 (entry for purpose of arrest etc)—

- (a) in subsection (1)(c), after sub-paragraph (v) insert—
“(vi) section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (squatting in a residential building);”;
- (b) in subsection (3), for “or (iv)” substitute “, (iv) or (vi)”.

(9) In Schedule 10 to the Criminal Justice and Public Order Act 1994 (consequential amendments), omit paragraph 53(b).

Section 7 of the Criminal law Act 1977

7 Adverse occupation of residential premises

(1) Subject to the following provisions of this section and to section 12A(9) below, any person who is on any premises as a trespasser after having entered as such is guilty of an offence if he fails to leave those premises on being required to do so by or on behalf of—

(a) a displaced residential occupier of the premises; or

(b) an individual who is a protected intending occupier of the premises.

(2) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he believed that the person requiring him to leave the premises was not a displaced residential occupier or protected intending occupier of the premises or a person acting on behalf of a displaced residential occupier or protected intending occupier.

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

(a) that the premises in question are or form part of premises used mainly for non-residential purposes; and

(b) that he was not on any part of the premises used wholly or mainly for residential purposes.

(4) Any reference in the preceding provisions of this section to any premises includes a reference to any access to them, whether or not any such access itself constitutes premises, within the meaning of this Part of this Act.

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

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

Section 12 of the Criminal Law Act 1977

12 Supplementary provisions.

(1) In this Part of this Act—

(a) “premises” means any building, any part of a building under separate occupation, any land ancillary to a building, the site comprising any building or buildings together with any land ancillary thereto, and (for the purposes only of sections 10 and 11 above) any other place; and

(b) “access” means, in relation to any premises, any part of any site or building within which those premises are situated which constitutes an ordinary means of access to those premises (whether or not that is its sole or primary use).

(2) References in this section to a building shall apply also to any structure other than a movable one, and to any movable structure, vehicle or vessel designed or adapted for use for residential purposes; and for the purposes of subsection (1) above—

(a) part of a building is under separate occupation if anyone is in occupation or entitled to occupation of that part as distinct from the whole; and

(b) land is ancillary to a building if it is adjacent to it and used (or intended for use) in connection with the occupation of that building or any part of it.

(3) Subject to subsection (4) below, any person who was occupying any premises as a residence immediately before being excluded from occupation by anyone who entered those premises, or any access to those premises, as a trespasser is a displaced residential occupier of the premises for the purposes of this Part of this Act so long as he continues to be excluded from occupation of the premises by the original trespasser or by any subsequent trespasser.

(4) A person who was himself occupying the premises in question as a trespasser immediately before being excluded from occupation shall not by virtue of subsection (3) above be a displaced residential occupier of the premises for the purposes of this Part of this Act.

(5) A person who by virtue of subsection (3) above is a displaced residential occupier of any premises shall be regarded for the purposes of this Part of this Act as a displaced residential occupier also of any access to those premises.

(6) Anyone who enters or is on or in occupation of any premises by virtue of—

(a) any title derived from a trespasser; or

(b) any licence or consent given by a trespasser or by a person deriving title from a trespasser,

shall himself be treated as a trespasser for the purposes of this Part of this Act (without prejudice to whether or not he would be a trespasser apart from this

provision); and references in this Part of this Act to a person's entering or being on or occupying any premises as a trespasser shall be construed accordingly.

(7) Anyone who is on any premises as a trespasser shall not cease to be a trespasser for the purposes of this Part of this Act by virtue of being allowed time to leave the premises, nor shall anyone cease to be a displaced residential occupier of any premises by virtue of any such allowance of time to a trespasser.

(8) No rule of law ousting the jurisdiction of magistrates' courts to try offences where a dispute of title to property is involved shall preclude magistrates' courts from trying offences under this Part of this Act.

Section 12A of the Criminal Law Act 1977

12A Protected intending occupiers: supplementary provisions.

(1) For the purposes of this Part of this Act an individual is a protected intending occupier of any premises at any time if at that time he falls within subsection (2), (4) or (6) below.

(2) An individual is a protected intending occupier of any premises if—

(a) he has in those premises a freehold interest or a leasehold interest with not less than two years still to run;

(b) he requires the premises for his own occupation as a residence;

(c) he is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser; and

(d) he or a person acting on his behalf holds a written statement—

(i) which specifies his interest in the premises;

(ii) which states that he requires the premises for occupation as a residence for himself; and

(iii) with respect to which the requirements in subsection (3) below are fulfilled.

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

(a) that the statement is signed by the person whose interest is specified in it in the presence of a justice of the peace or commissioner for oaths; and

(b) that the justice of the peace or commissioner for oaths has subscribed his name as a witness to the signature.

(4) An individual is also a protected intending occupier of any premises if—

(a) he has a tenancy of those premises (other than a tenancy falling within subsection (2)(a) above or (6)(a) below) or a licence to occupy those premises granted by a person with a freehold interest or a leasehold interest with not less than two years still to run in the premises;

(b) he requires the premises for his own occupation as a residence;

(c) he is excluded from occupation of the premises by a person who entered them, or any access to them, as a trespasser; and

(d) he or a person acting on his behalf holds a written statement—

(i) which states that he has been granted a tenancy of those premises or a licence to occupy those premises;

- (ii) which specifies the interest in the premises of the person who granted that tenancy or licence to occupy (“the landlord”);
- (iii) which states that he requires the premises for occupation as a residence for himself; and
- (iv) with respect to which the requirements in subsection (5) below are fulfilled.

(5) The requirements referred to in subsection (4)(d)(iv) above are—

- (a) that the statement is signed by the landlord and by the tenant or licensee in the presence of a justice of the peace or commissioner for oaths;
- (b) that the justice of the peace or commissioner for oaths has subscribed his name as a witness to the signatures.

(6) An individual is also a protected intending occupier of any premises if—

- (a) he has a tenancy of those premises (other than a tenancy falling within subsection (2)(a) or (4)(a) above) or a licence to occupy those premises granted by an authority to which this subsection applies;
- (b) he requires the premises for his own occupation as a residence;
- (c) he is excluded from occupation of the premises by a person who entered the premises, or any access to them, as a trespasser; and
- (d) there has been issued to him by or on behalf of the authority referred to in paragraph (a) above a certificate stating that—
 - (i) he has been granted a tenancy of those premises or a licence to occupy those premises as a residence by the authority; and
 - (ii) the authority which granted that tenancy or licence to occupy is one to which this subsection applies, being of a description specified in the certificate.

(7) Subsection (6) above applies to the following authorities—

- (a) any body mentioned in section 14 of the Rent Act 1977 (landlord’s interest belonging to local authority etc.);
- (b) the Regulator of Social Housing;
- (ba) a non- a non-profit registered provider of social housing;
- (bb) a profit-making registered provider of social housing, but only in relation to premises which are social housing within the meaning of [Part 2](#) of the Housing and Regeneration Act 2008;]

and

d) a registered social landlord within the meaning of the Housing Act 1985 (see section 5(4) and (5) of that Act).

(7A) Subsection (6) also applies to the Secretary of State if the tenancy or licence is granted by him under Part III of the Housing Associations Act 1985.

(8) A person is guilty of an offence if he makes a statement for the purposes of subsection (2)(d) or (4)(d) above which he knows to be false in a material particular or if he recklessly makes such a statement which is false in a material particular.

(9) In any proceedings for an offence under section 7 of this Act where the accused was requested to leave the premises by a person claiming to be or to act on behalf of a protected intending occupier of the premises—

(a) it shall be a defence for the accused to prove that, although asked to do so by the accused at the time the accused was requested to leave, that person failed at that time to produce to the accused such a statement as is referred to in subsection (2)(d) or (4)(d) above or such a certificate as is referred to in subsection (6)(d) above; and

(b) any document purporting to be a certificate under subsection (6)(d) above shall be received in evidence and, unless the contrary is proved, shall be deemed to have been issued by or on behalf of the authority stated in the certificate.

(10) A person guilty of an offence under subsection (8) above shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.

(11) A person who is a protected intending occupier of any premises shall be regarded for the purposes of this Part of this Act as a protected intending occupier also of any access to those premises