Squatting

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This note outlines the legal remedies that are available to landlords and homeowners to evict squatters from their properties.

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A. The extent of squatting

Definitive information on the number of squatters in England and Wales is not available. This was confirmed most recently by the Under Secretary of State at Communities and Local Government (CLG), Iain Wright, in response to a parliamentary question:

> No reliable information on the number of squatters, or people staying with family or friends because they have no accommodation, is collected centrally.[1]

A consultation paper published by the Home Office in 1991 contained the following estimates on the extent of squatting:

> The most recent detailed information was in the1986 London Housing Survey. About 7,500 properties were then occupied by 12,500 squatters; 26% of the premises were privately owned, the remainder by local authorities and housing associations. Squatters were young; 52% were under 25, 40% between 26 and 40 and only 8% over 40. Mass squatting was rare and cases involving young children were negligible: 65% of squats were occupied by two adults and the rest by single persons. The position outside London has not been examined in any detail but in the early 1980s it was estimated that there were approximately 30,000 squatters in the remainder of England. More recent media estimates are 50,000.
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> Some more recent information is available about squatting in local authority dwellings. On I April 1990 approximately 5,200 dwellings in England were reported as being unlawfully occupied; some 90% of them in London. Three boroughs, Southwark, Lambeth and Hackney, accounted for 65% of the national total.[2]

At the time, the use of figures from a survey which was over seven years old and the citing of 'recent media estimates' was criticised by the Chartered Institute of Housing as an unsound basis on which to discuss a complex subject.[3] The National Federation of Housing Associations[4] pointed out:

> The 'media estimates' of the extent of squatting are quoted in paragraph 9 at 50,000, but there is no attempt to justify this. Indeed, a correlation between the 1986 London Housing Survey, showing 74% of squatted properties were in the social rented sector and the figures in paragraph 10, showing 90% of local authority squatted properties in London, would suggest a very much lower figure than 50,000. Indeed, unless housing associations accounted for a disproportionate number of the squatted properties in 1986, there has been a decline in local authority squatted property between 1986 and 1990.[5]

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1 HC Deb 10 December 2007 c140W
2 *Squatting: A Home Office Consultation Paper*, Home Office, October 1991 p3 paras 9-10
3 *Response to the Home Office Consultation Paper*, Institute of Housing, March 1992 p 2 para 12
4 Now the National Housing Federation (NHF)
5 *Squatting - A Home Office Consultation Paper*, NFHA, March 1992 p1 para 3.

Around the same time the Advisory Service for Squatters (ASS) estimated that approximately 10,800 properties were squatted in London. This figure was reached by taking the published figures of two boroughs where they believe the figures to be reasonably accurate (one with a high incidence of squatting and one with a low incidence) and extrapolating these, according to experience of numbers of squatters, to other boroughs where they believed published figures to be clearly inaccurate. Allowances were made for non-council squats according to local conditions but not for under-reporting.[6] The ASS also analysed ownership of a sample of over 2,000 squats from April to September 1991 with the following results:[7]

	No.	%
Local Authorities	1640	74.1
Housing Association	365	16.5
Building Societies, banks	81	3.7
Breweries and commercial organisations	49	2.2
Department of Transport	29	1.3
Other public bodies	24	1.1
Commercial residential landlords	15	0.7
Church bodies	4	0.18
Disputed Ownership	4	0.18
Private individuals (both deceased)	2	0.09
Total	2213	100.05

Research carried out by Surrey University in 1990 estimated that around 50,000 people were squatting of which one third were in families.[8] The Home Office consultation paper's assertion that 'cases involving young children were negligible'[9] was challenged by the ASS on the basis that 32 per cent of calls received from squatters between April to September 1991 were from people with children.[10]

The 1999 local authority Housing Investment Programme returns (England) noted that there were 1,176 unlicensed occupiers in local authority properties of which 196 were squatters.[11]

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6 *Squatting and Homelessness in the 90's; A response to the Home Office Consultation Paper on Squatting,* Squatters Action for Secure Homes (SQUASH), 1992 p3

7 *ibid*, p 3

8 *Faces of Homelessness,* University of Surrey, July 1991

9 *Squatting,* Home Office, October 1991, p3, para 9

10 Sq*uatting and Homelessness in the 90s: A response to the Home Office Consultation Paper on Squatting,* SQUASH, 1992 p5

11 Some authorities may not have completed this part of their returns.

A more recent indication of squatting levels in London can be estimated using a report published by Crisis in 2004, *Life on the Margins: The experiences of homeless people living in squats*.[12] The authors, Reeve and Coward, found that 1 in 4 homeless people in London had squatted some time during their current period of homelessness. CLG gave a provisional estimate of around 15,390 statutorily homeless households in London in 2006/07, therefore, a crude estimate of the number of squatters in London in 2006/07could be set at around 4,000. However, this crude figure may well underestimate the actual number as it is based only on recorded figures for statutory homelessness.

In addition, the Reeve and Coward estimate of 1 in 4 people having squatted is based on questionnaire responses from only 82 homeless individuals in London. The sampling strategy applied is such that the representative nature of the sample cannot be statistically estimated.

B. Legal remedies for dealing with squatters

Squatters are normally defined in housing law terms as trespassers as they have no rights of occupation and, because they pay no rent, are subject to no rent control. Strictly speaking there used to be no need for landowners to bring court proceedings to evict trespassers. They were entitled to use 'self-help' and to evict trespassers without a court order.[13] However, this course of action is generally not recommended because of the 'possible disturbance' that might be caused.[14] Additionally, a landowner risks prosecution under the *Criminal Law Act 1977*[15] if violence is used or threatened for the purpose of securing entry to premises when there is someone present on those premises.

Both civil and criminal law procedures can be used against squatters.

1. Civil law procedures

a. Part 55 of the Civil Procedure Rules

In possession procedures against trespassers landowners need prove only their title and an intention to regain possession.[16]

Proceedings may be issued as ordinary possession summonses claiming possession on the ground that the defendants are trespassers. However, it is far more common for landlords to use special speedy proceedings that enable landowners to regain possession in cases where there is no dispute about occupancy rights.[17] These proceedings used to be invoked under either County

[12] Reeve, K and Coward, C. (2004)
[13] *R v Blankley* [1979] Crim LR 166; *McPhail v Persons Unknown* [1973] 3 All ER 393.
[14] *McPhail v Persons Unknown* per Lord Denning MR at p 396.
[15] Section 6
[16] *Portland Managements Ltd v Harte* [1976] 1 All ER 225.
[17] These rules were introduced in 1970 to assist landowners against the resurgence of the squatting movement.

Court Order 24 (CCR Ord 24) or Order 113 proceedings in the High Court (RSC Ord 113) – since 15 October 2001 these Orders have been replaced by Part 55 of the Civil Procedure Rules which cover all possession proceedings including those against tenants, mortgagors, and squatters.[18]

The procedures specify that landlords are not required to identify the occupiers against whom they are seeking possession. A summons may be issued against a named person or against persons unknown stating the landlord's interest in the property, that the property has been occupied without his consent and, if the summons is against persons unknown, that the landlord does not know the names of some or all of the people on the property. The summons can be served by personal service or by fixing it to the door of the premises.

Once the summons is served five clear days must elapse before the court hearing unless it is an urgent case, when an application can be made to the judge to have an earlier hearing. If the court finds that the occupiers are trespassers, then it is obliged to make an immediate order for possession to take effect 'forthwith'.[19] Once an order for possession has been made landlords will still normally have to effect eviction by using court bailiffs, which may cause some delay.

If occupiers wish to claim some right of occupation that amounts to a defence, for example a continuing tenancy, the burden of proving its existence lies on them. If a triable issue is raised over occupancy rights judges have a wide discretion either to dismiss the application or allow the affidavits which have already been filed to stand as pleadings or try the case by hearing oral evidence. Such issues arise in only a small minority of cases under these orders.

These procedures cannot be used against a tenant or former tenant or against sub-occupiers where the head tenancy has not been terminated.[20]

Where ordinary possession procedures are used against squatters it is open to the landowner to seek an order for damages for trespass. Under the speedy procedures the court can make an order for costs against an occupier but there is no provision for awarding any monetary compensation by way of damages to a landlord.

b. Interim Possession Orders

The *Criminal Justice and Public Order Act 1994* amended CCR 24 to create a new form of interim possession order (IPO) which can only be granted against trespassers. The new rules came into force on 24 August 1995.[21]

Landlords can only use this procedure if:

- They are only claiming possession;

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[18] See Part 55 rules on the Ministry of Justice website.
[19] *McPhail v Persons Unknown* [1973] 3 All ER 393.
[20] *Wirral BC v Smith* [1982] 43 P & CR 312
[21] *The County Court (Amendment No 2) Rules 1995* SI 1995/1582

- The applicant has an immediate right to possession and has had this right throughout the period of unlawful occupation;
- The respondents entered the premises as trespassers;
- The application is issued within 28 days of the date when the owner first knew, or ought reasonably to have known, that the respondents were in occupation.

On discovery of an unlawful occupant the owner of the premises may, within 28 days, serve a notice of intention to commence proceedings on the alleged squatter(s) before applying to the county court for an IPO; occupiers must be given at least 48 hours notice. The occupier(s) may make written representations to the court; their arguments will be taken into account before an IPO is granted but if they do not file an affidavit to defend the proceedings they lose the right to attend the hearing. The hearing date for an IPO must be set not less than three days after an application for an IPO is made. If an interim possession order is refused, the case will be referred to the existing summary possession procedures. If an order is granted it must be served on the occupiers within 48 hours and at that point the occupiers have 24 hours to leave the premises. An occupier with a right of occupation may apply to the court to have the order set aside, provided he or she has obeyed the order and left the premises.

The 1994 Act[22] has made it an offence to make a false or misleading statement in order to obtain an IPO in civil proceedings to remove squatters from premises.[23] This provision is intended to protect lawful occupiers from unscrupulous landlords who try to use the interim possession procedure to evict them. The Act also makes it a criminal offence for a person who is the subject of an interim order to fail to leave the premises concerned with 24 hours of the order being granted, or to enter the premises again as a trespasser within one year.[24] If squatters refuse to leave the premises the landlord may ask the police to arrest them; there is no need to apply for a warrant or wait for the county court bailiffs to remove them.

The 1994 Act did not made squatting in either residential or commercial premises an automatic criminal offence.

A useful fact-sheet on IPOs can be found online.

2. Criminal law procedures

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

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22 Received Royal Assent on 3 November 1994
23 Section 75
24 Section 76

An offence under section 6 will not be committed by a person if he, or someone acting on his behalf, is a displaced residential occupier of the premises concerned. A displaced residential occupier is any person, other than another trespasser, who was using the premises or part of them as a residence immediately before the trespasser entered.[25] This exception is designed to permit the owner occupier or tenant who is absent from his home for a short period, and who returns to find his premises squatted, to take direct action to evict trespassers without any need to initiate court proceedings and without fear of committing an offence. A displaced residential occupier must still take care not to commit other offences such as assault or actual bodily harm.

The 1977 Act introduced a major new criminal offence against would-be squatters. It is an offence for any trespasser who enters as a trespasser to fail to leave premises if asked to do so by a displaced residential occupier or a person who is a protected intending occupier (PIO). PIOs are those who have been designated to occupy a property by a local authority or housing association, or those who find that a property that they have just bought has been occupied while the sale was being transacted.[26] There is no offence of failing to leave until a request has been made to do so. PIOs must produce statements proving their status; if this is done satisfactorily the police can be requested to remove the trespassers.

The *Criminal Law Act 1977* introduced other criminal offences in connection with squatting. It is a criminal offence for a person on the premises as a trespasser, having entered as such, to have with him any weapon of offence, i.e. anything which has been made or adapted for causing injury to another.[27] Section 9 made it an offence for a trespasser to enter diplomatic or consular buildings, unless he can show that he does not believe them to be diplomatic or consular premises. It is also an offence to resist or intentionally obstruct any person who is an officer of the court executing a possession order issued by the County or High Court.[28] Section 10 is worded so that it applies to resistance or intentional obstruction of an officer executing any order which **could** have been brought under Part 55 of the Civil Procedure Rules, even if the landowner used ordinary possession proceedings.

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[25] Section 12 of the *Criminal Law Act 1977*
[26] Section 7
[27] Section 8
[28] Section 10