

Section 144 of Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Offence of squatting in a residential building)

An overview of the new offence – guidance for police
provided in conjunction with the Ministry of Justice



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Introduction

- 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 was introduced following public concern about the harm that trespassers can cause, and 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, but it will also protect landlords, second homeowners and local authorities who discover trespassers in any residential property that they own or control even if no one is living there at the time the trespassers enter.



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Objectives

- To provide an overview of the new offence
- To explain police powers
- Provide a consideration of alternative offences
- To explain police action in response to Section 6 Criminal Law Act 1977 'Squatters' rights'
- Managing enforcement issues



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Subsection 1 - The Offence

Points to prove

- 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.



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A person is in a residential building as a trespasser having entered it as such;

- Offence will not apply to a person who entered building with property owner's permission e.g. 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 civil courts if they wanted to regain possession of their property in such circumstances.



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The person knows or ought to know that they are a trespasser;

- Will not capture people who entered property in good faith reasonably believing they had permission to do so
- For example, where bogus letting agent encouraged an unsuspecting tenant to occupy somebody else's property.



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The person is living in the building or intends to live there for any period

- 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 somebody's entrance hall or porch to deliver junk mail will not be guilty of an offence!



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Subsection 2 - 'Holding Over'

- Land law term where a tenancy or licence comes to an end, but the tenant or licensee remains in occupation
- Offence cannot be committed by a person 'holding over' (even if the person leaves and re-enters the building).



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Subsection 3 - Residential Building

- Definition of 'residential' building:
 - A) any structure or part of a structure which has been designed or adapted for use as a place to live.*
- This ensures the offence covers barn conversions etc.
 - B) Building must have been designed or adapted before the time of entry for use as place to live.*
- A person who modifies a non-residential building by placing his bedding and personal effects in it would not be committing an offence



Subsection 5 - Penalties

- Summary trial only
- Maximum penalty of six months' imprisonment and/or level 5 fine



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Subsection 7

- Provides that the offence applies regardless of whether the trespasser entered the property before or after commencement of section 144
- Designed to stop trespassers rushing to occupy residential buildings before the offence comes into force
- Also mean that trespassers who have been living in the premises for many months or years prior to commencement may be guilty of an offence



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Subsection 8 - Powers of entry

- Section 17 of the Police and Criminal Evidence Act 1984 amended to give police the power to enter premises to make an arrest
- Power limited to uniformed police officers



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Power of arrest

- Provided by section 24 of PACE
- Subject to necessity and PACE Code G (Arrest)



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Alternative offences

- Section 1 Criminal Damage Act 1971
- Section 1 Theft Act 1968 - Theft
- Section 9 Theft Act 1968 - Burglary
- Section 13 Theft Act 1968 - Abstracting Electricity
- Section 76 Criminal Justice and Public Order Act 1994
Breach of interim possession order
- Section 7 Criminal Law Act 1977 - Adverse occupation
Protects 'displaced residential occupiers' and
'protected intended occupiers' with wider definition of
residential premises that includes ancillary land



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Section 6 Criminal Law Act 1977

'Squatters' rights'

- 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.



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'Squatters' rights' notices

- 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 because they have lawful authority to enter the property to make an arrest.



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'Squatters' rights' in non-residential property

- 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 other indictable offences



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Managing enforcement

- Commences 1 September 2012
- Victim expectations – what outcome is being sought?
What support can be offered?
- Proportionality and necessity – consider and document circumstances
- Protection of children – consider duty of care
- CRIS report – MPS 'recordable' offence
- CRIMINT
- Merlin PAC



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Support services

- Consider options for homeless
- Local Authorities – contact to assess housing options
- Homeless Charities – which local organisations can provide support?
- Pan London hotline 'No Second Night Out' 0870 3833333.
- Further local rough sleeping contact numbers can be found at
<http://www.communities.gov.uk/documents/housing/xls/2052062.xls>



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