

Operational

1 Offence of squatting in a residential building - s144 Legal Aid, Sentencing and Punishment of Offenders Act 2012

1. Section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 creates a new offence of squatting in a residential building, and comes into force on 1 September 2012.

Elements of the offence – points to prove

2. Subsection (1) 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.

3. 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 civil courts if they wanted to regain possession of their property in such circumstances.

4. 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.

5. 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.

'Holding over'

6. Subsection (2) makes clear that the offence cannot be committed by a person holding over after the end of a lease or licence (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.

Definition of Residential Building

7. 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 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.

Claiming title from a trespasser

8. 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.

Application of offence

9. 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 an 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.

Powers of entry and arrest

10. 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 and PACE Code G (Arrest).

11. The offence is triable summarily only and carries a maximum penalty of six months' imprisonment, a level 5 fine or both.

Police powers and 'squatters' rights'

12. 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.

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

14. The offence in section 6 of the 1977 Act does 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 indictable offences, including offences under the Theft Act 1968 and the Criminal Damage Act 1971.

Police action

15. Upon receipt of an allegation of squatting in a residential building, police are required to investigate the circumstances. The investigation and related actions should be recorded in an EAB.

In doing so investigating officers should consider

- Nature of premises involved and whether it falls within the definition of a 'residential building'.
- Whether there are reasonable grounds to consider the person on premises to be a trespasser. Is there evidence to suggest entry into the building without permission?
- Is the alleged trespasser claiming they have permission to be in the building, and from whom? Police should seek to identify persons who may have occupied or controlled such premises as owner or tenant, and who may have authority to grant permission for others to enter and remain on premises. This may need to

be the subject of further investigation.

- Evidence to suggest that the alleged trespasser lives or intends to live in the building. This could be found in evidence of occupation over a period of time, or the presence of clothing, bedding or food used by the alleged trespasser.
- An investigation will be assisted by statements from the complainant or other witnesses. This includes the property owner or lawful tenant, managing agents and neighbours.

16. Although the offence is Summary only it is recordable under Metropolitan Police Service (MPS) reporting standards. All allegations should therefore be entered onto CRIS.

17. Should there be reasonable grounds to suspect an offence, investigating officers should consider the proportionality and necessity for arrest in accordance with PACE Code G. Attention is drawn towards the necessity criteria as described in section 2.9.

18. Relevant factors when considering the necessity for arrest when investigating an allegation of squatting in a residential building may include:

- Appropriate identification of a name for the persons in question, and the availability of a satisfactory address for the service of a summons
- Preventing the person in question causing loss of damage to property
- Protection of child or other vulnerable person
- Requirement for the prompt and effective investigation of the offence e.g. where statements made by the person in question cannot be readily verified
- To prevent any prosecution for the offence from being hindered by the disappearance of the person in question

19. Section 2.8 describes the responsibility of police to take into account individual circumstances. This includes the situation of the victim, nature of the offence, circumstances of the suspect and the needs of the investigation. The need to make an immediate arrest may, therefore, be balanced against the intentions and expectations of the victim, the offence, and the personal circumstances of the suspect. Investigating officers may be presented with a situation where a suspect is accompanied by children, or be otherwise deemed vulnerable. In these cases there may not be the need to make an arrest if the officer assesses the priority is to ensure the safety and well being of those parties involved. This may include access to support services provided by Local Authorities and relevant charities.

20. Attention is drawn to the MPS Safeguarding Children Standard Operating Procedures and the principles outlined by policy relating to 'Every Child Matters'. When dealing with reports of squatting, investigating officers are reminded of their responsibility for taking immediate action should they identify a child at risk and for completing the relevant

MERLIN Pre-Assessment Checklist.

21. Where relevant, persons should be referred to Local Authority Housing and Social Services departments. A list of charities that offer support to the homeless can be found at:

www.communities.gov.uk/documents/housing/xls/2052062.xls

Alternatively there is a 24 hour referral service offered by a pan London hotline for 'No Second Night Out' on public telephone number 0870 3833333.

For more information regarding this Notice please contact ¹ by email
² or on extn ³

MPS FOIA Disclosure