

# **Options for dealing with squatting – Equality Impact Assessment**

## **Introduction**

This Equality Impact Assessment (EIA) relates to amendments to the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill for proposals to deal with squatting. The proposals are to be tabled as amendments to the LASPO Bill at Commons Report Stage.

The amendments if passed will create a new offence of squatting in residential buildings. The offence will be committed where a person who knows or ought to have known that they are trespassing is in a residential building as a trespasser (having entered it as such), and either they are living there or it can be shown that they intend to live there. The new offence will be subject to a maximum penalty of 6 months, or a fine, or both.

The new offence will apply in England and Wales.

## **Equality duties**

Under the Equality Act 2010 section 149, when exercising its functions, Ministers and the Department are under a legal duty to have 'due regard' to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct under the Equality Act 2010;
- Advance equality of opportunity between different groups (those who share a protected characteristic and those who do not); and
- Foster good relations between different groups.

Paying 'due regard' needs to be considered against the nine "protected characteristics" under the Equality Act – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

MoJ has a legal duty to investigate how policy proposals are likely to impact on the protected characteristics and where a potential disadvantageous effect is identified how that is either mitigated or justified by reference to the objectives of the policy . MoJ records its fulfilment of its duties by completing an Equality Impact Assessment (EIA).

## **Summary**

This EIA relates to amendments to the LASPO Bill for proposals to deal with squatting. The amendments if passed will create a new offence of squatting in residential buildings.

The government has become increasingly concerned about the harm that can be caused by squatters following correspondence from property owners and members of the public and reports in the press. The government consulted publicly on this issue between 13 July and 5 October 2011 to gain a better understanding of the scale and nature of squatting and to invite views on whether the law should be strengthened.

Following the conclusion of the consultation exercise and consideration of consultation responses, the government has decided that decisive action needs to be taken to reassure owners and lawful occupiers of property that the law can and will protect them from squatters occupying their premises. The government is concerned about the serious direct financial and emotional impact squatting can have on the owner and occupiers of property and believe that measures should be taken to deal with this issue.

We have considered the impact of the proposals against the statutory obligations under the Equality Act 2010. These are outlined below.

#### *Direct discrimination*

The new offence would apply to all members of the public who commit the act of squatting (as defined in the legislation) in England and Wales. There is therefore no direct discrimination within the meaning of the 2010 Act.

#### *Indirect discrimination*

Although the proposed new offence will apply equally to those who share a protected characteristic and those who do not, we have in this analysis identified how those who share a certain characteristic may be more likely to squat, and therefore more likely to be criminalised, with the attendant consequences of criminalisation. Although clear conclusions are difficult to draw from the available data, we have identified in particular potential differential effects in respect of age, disability, race and sex. However, even if it were established that these effects constituted a particular disadvantage, we believe that the new offence represents a proportionate response to the problem of squatting and the aim of protecting the legitimate rights of residential property owners.

#### *Discrimination arising from disability and duty to make reasonable adjustments*

In so far as the offence extends to the disabled, we believe that the policy is proportionate, having regard to its aim. It would not be reasonable to make any adjustment for disabled persons which did not extend the criminal offence to them, given its aim.

#### *Harassment and victimisation*

We do not consider there to be a risk of harassment or victimisation as a result of these proposals.

#### *Advancing equality of opportunity*

We have had regard to this aspect of the equality duty but do not consider that the proposals will either positively advance equality or impact negatively on the advancement of equality of opportunity. However, it should be noted that some of the strategies discussed in the "Mitigation" section of this document, for example in relation to homelessness, could contribute to advancing equality of opportunity. Assessment of these policies is not the focus of this document.

### *Fostering good relations*

We have considered this objective but do not think it is of particular relevance to the proposals.

Having had due regard to the potential differential impacts identified below, the government is satisfied that it is right to take action to criminalise squatting in residential buildings. Whilst action against squatting has the potential to give rise to differential impacts in relation to certain protected characteristics, the actions of squatters also impact on the rights and interests of whose property they occupy. Given the competing interests, the government is satisfied that it is justified to proceed to criminalise the act of squatting in residential buildings, and that the proposals it will put before Parliament strike an appropriate balance between those interests.

### **Aims and outcomes for the policy**

The government has become increasingly concerned by reports of squatting in buildings.

The main issue raised in relation to the existing law is that the act of squatting is not in itself currently a criminal offence (it is a form of trespass, which is normally regarded as a civil wrong). Residential occupiers who have effectively been made homeless by the actions of squatters have some protection under the existing criminal law - section 7 of the Criminal Law Act 1977 makes it an offence for a trespasser 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. However, the offence does not extend to owners or occupiers of non-residential property (e.g. commercial property) or owners of residential property who are not displaced or intending occupiers. This would include, for example, landlords and local authorities who find squatters in their properties in between tenancies, but it could also include second home owners or people who find squatters in the properties of deceased relatives during probate.

In these circumstances, unless there is evidence that squatters have committed other offences, such as criminal damage or burglary, the police may not be able to intervene. Even where there are visible signs of a break in or damage to the property, it may be difficult for the police to prove that the squatters inside the property were responsible, particularly if there are no eye witnesses and the squatters claim the damage was caused by somebody else. The onus is therefore often on property owners to regain possession of their properties in the civil courts.

The government is concerned about the serious financial and emotional impact squatting can have on the owner or lawful occupier of a property. This prompted Ministers to consult publicly on options for addressing this issue. The consultation period ran from 13 July to 5 October 2011. The consultation document can be viewed on the [Justice website](#).

Following consideration of consultation responses, the government intends to include a new offence of squatting in residential property in the Legal Aid, Sentencing and Punishment of Offenders Bill at Commons Report. Of the respondents who had experienced difficulties in evicting squatters, the majority were residential property owners. Although the government does not propose to create a similar offence to protect non-residential property owners, it will continue to explore whether existing

eviction processes and enforcement of criminal offences such as burglary and criminal damage could be improved to protect non-residential property owners.

## **Methodology and evidence sources**

Information is not available on the characteristics of defendants in cases relating to interim and full possession orders. Data is available on the sex of defendants proceeded against in the magistrates' courts in England and Wales for failure to leave residential premises when required to do so (under the Criminal Law Act 1977, section 7); failure to leave within 24 hours of an interim possession order or returning as a trespasser or attempting to do so within one year of the service of the order (under the Criminal Justice and Public Order Act 1994, section 76) ("the existing offences"). 37 defendants were proceeded against for offences in the period 2001-2010. This data is from the Court Proceedings Database, which holds information on defendants proceeded against, found guilty and sentenced for criminal offences in England and Wales.

The following analysis about the potential impacts of the government's proposals draws on the Court Proceedings Database, available research reports and responses to the consultation. The relevant research evidence is mainly concerned with single homeless people, or with single homeless people who squat. There is no evidence on the number and characteristics of people who squat as a lifestyle choice, or on the numbers and characteristics of people who squat in residential properties. The research evidence on squatting is based on relatively small samples, and on a small number of geographical locations. For all these reasons it is difficult to draw conclusions on whether there is the potential for some groups to be differentially affected by the creation of the specific offence of squatting in residential property.

In order to attempt to identify differential effects, we have compared available data on:

- the percentage of those proceeded against in the magistrates' courts for the existing offences, who share a protected characteristics, with the percentage of the general population of England and Wales who share a protected characteristic;
- the percentage of homeless squatters who share a protected characteristic, with the percentage of the general population of England and Wales who share a protected characteristic;
- where this has not possible we have compared what is known about the protected characteristics of homeless squatters against the characteristics of the non-squatting homeless population.

Where certain groups are over-represented in the squatting population we have noted that the evidence we have available suggests the potential for a differential impact.

The government has considered the following evidence sources:

- 2,217 responses to the public consultation exercise on squatting. A summary of responses is being published alongside this document;
- Data on the number of applications for interim possession orders and full possession orders and the number of such orders granted;
- Data on the number proceeded against at magistrates' courts for the existing offences;

- Research evidence relating to squatting and homelessness. The research reports reviewed are as follows:
  - **‘Squatting: a homelessness issue - an evidence review’ by Keisa Reeve at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (Sept 2011);**
    - This report presents evidence from ‘The hidden truth about homelessness: experience of single homelessness in England’, ‘Life on the Margins: The experiences of homeless people living in squats’ and 2 other studies.
  - **‘Homelessness among A8 Nationals in the UK’ Paper presented at: Housing Studies Association Annual Conference by Dr Carol Corinne McNaughton, Centre for Housing Policy at the University of York (April 2008);**
    - This paper includes a literature review of relevant reports.
  - **‘Homelessness among migrant groups: a survey of homelessness and refugee agencies across England’ by Homeless Link Migration Project (March 2010);**
    - This report presents evidence from 160 organisations who responded to an on-line survey who said they provided help to migrant groups.
  - **‘The hidden truth about homelessness: experience of single homelessness in England’ by Kesia Reeve with Elaine Batty at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (May 2011);**
    - This research included a survey during July 2010 of 437 single homeless people in day centres in 11 towns and cities in England. 365 respondents were non-statutory homeless.
  - **‘Squatting in residential properties, Standard Note SN/SP/355’ by House of Commons Library (August 2011);**
    - This note presents information on the nature of squatting mainly from the 1990s, and outlines the legal remedies that are available to landlords and homeowners to evict squatters from their properties in England and Wales.
  - **‘Life on the Margins: The experiences of homeless people living in squats’ by Keisa Reeve with Sarah Coward for CRISIS and the Countryside Agency (March 2004);**
    - This research included a questionnaire survey of 165 single homeless people in 3 case study areas.
  - **‘How Many, How Much? Single homelessness and the question of numbers and cost’ by Peter Kenway and Guy Palmer from the New Policy Institute for CRISIS (2003);**
    - This research assesses the number and cost of single homelessness.
  - **‘Hidden in Plain Sight: Homelessness amongst lesbian and gay youth’ by William O’Connor and Donna Molloy, National Centre for Social Research in collaboration with Stonewall Housing (2001);**

- This research included in-depth interviews with 33 young lesbian or gay people who were or had been homeless.
- Correspondence received from MPs and members of the public representing both sides of the argument;
- Media reports in relation to the arguments for and against criminalising squatting.

## **Stakeholder consultation and engagement**

The consultation exercise ran for twelve weeks between July 13 and 5 October 2011. During the consultation period, MoJ officials met with groups of homeless charities and property owners. Representatives of groups with an interest in equalities were also invited to attend a meeting. The consultation paper included the following options for dealing with squatting and these options were also discussed at the face to face meetings:

- 1) Create a new criminal offence of squatting in all buildings;
- 2) Extend the offence in section 7 of the Criminal Law Act 1977 so that it is committed when trespassers refuse to leave any building when required to do so by or on behalf of the owner or lawful occupier or as an alternative when required to do so by the police;
- 3) Widen the exemption to the offence in Section 6 of the Criminal Law Act 1977 to include all property owners or lawful occupiers who seek to gain entry to the property where the person who opposes the entry is a trespasser;
- 4) Leave the criminal law unchanged but work with the enforcement authorities to improve the enforcement of existing offences; and
- 5) Do nothing.

Victims of squatting and owners of residential property who fear their buildings might be occupied without their authority are generally supportive of the government's proposals to criminalise squatting in residential property. On the other hand, homelessness charities and squatters' advisory groups argue that squatting is a symptom of a housing crisis and that many people who squat are homeless and vulnerable. They consider that more should be done to tackle the root causes of homelessness and to bring empty homes back into use.

## Analysis

This analysis examines the proposal to create a new offence of squatting in residential buildings, which will be committed where a person is in a residential building as a trespasser (having entered as a trespasser), knows or ought to know he or she is a trespasser, and is living in the building or intends to live there for any period. The government recognises that this is a controversial area of policy and considers that its preferred option strikes the best balance in that it will protect those who are likely to suffer most from squatting – those with property rights in respect of residential property. We will continue to explore options in respect of commercial property.

### Impact on residential property owners

The government's proposals are designed to reassure lawful occupiers of residential property that the law will protect them should trespassers occupy their properties. A 'lawful occupier' could be the owner of the property (e.g. somebody with a freehold or leasehold interest), but it could also be a tenant who has an agreement to live in somebody else's property. As such, the proposals may benefit people belonging to any one of the nine protected equality groups (i.e. race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender identity, pregnancy and maternity) who are lawful occupiers of the residential property.

It is difficult to estimate the precise impact as there is no consensus on the true extent of squatting, and the proportion of squatting that is in residential buildings. Based on a number of assumptions we estimate that there might be between 200 and 2,100 criminal squatting cases in residential property across England and Wales. The creation of a new criminal offence of squatting would mean that residential property owners/occupiers could avoid the costs incurred in evicting squatters (legal fees etc) and repairing the damage that may have been caused to properties. It would allow them to regain possession of their properties more quickly, which again could limit the amount of damage they may face on re-entering the property. In general, residential property owners may feel more protected by the law if potential criminal sanctions apply to squatters. This may reduce the serious direct financial and emotional impacts suffered by residential property owners/occupiers. It has not been possible to quantify these impacts, but they may be significant. For example, members of a 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.

Consultation responses from local authorities and private providers of social housing indicated that squatting often occurs in social houses that have been left empty while they are awaiting renovation or refurbishment. The eviction process takes time and money, which can increase the length of time that people in priority need of social housing may have to wait for accommodation. One private provider of residential housing 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.

If criminalisation deters people from squatting in residential property or allows local authorities to regain possession of their properties more quickly, this could benefit the council taxpayer and people who are waiting for social housing. Section 189(1) of the Housing Act 1996 Act sets out the categories of homeless applicants who have priority need for accommodation, including, for example, a pregnant women, a person with whom dependent children reside, a person who is vulnerable as a result of old age or a person who is vulnerable as a result of mental illness or disability.

A number of residential landlords who responded to the consultation expressed concern about squatters occupying their properties in the void period in between lets. The cost of the eviction process and the loss of income arising from not being able to let the property varied in each case, but the British Property Federation said:

*“We would like it to be noted... that the financial cost and social strain of squatting can be huge, especially for smaller landlords. Many of our members have described feelings of helplessness when trying to deal with squatter situations and although the ultimate goal of getting rid of squatters is key in all landlords’ minds, the costs of the process can also be significant.”*

#### Impacts on squatters

Regional and national homelessness charities have expressed concerns about any proposals to criminalise squatting. They argue that squatting is a symptom of a housing crisis: if homelessness were addressed through better provision of services and support, people would not squat. They add that for many homeless and vulnerable people, squatting is the only way of avoiding rough sleeping. They cite the evidence that up to 40 per cent of single homeless people had squatted at some point and that 6 per cent of single homeless people squatted on any one night<sup>1</sup>. There is no consensus about the total number of people who are squatting at any one time. However, a number of charities believe that the estimated figure of 20,000 which is often quoted in the media could be an underestimate<sup>2</sup>.

One national homelessness charity said in response to the consultation that:

*“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.”*

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<sup>1</sup> ‘The hidden truth about homelessness: experience of single homelessness in England’ by Kesia Reeve with Elaine Batty at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (May 2011)

<sup>2</sup> The 1986 London Housing Survey (quoted in Squatting: A Home Office Consultation Paper, Home Office, October 1991 p3 para9) found that about 7,500 properties were occupied by 12,500 squatters in London. The position outside London was described as ‘not been examined in detail since the early 1980s [when] it was estimated that there were approximately 30,000 squatters in the remainder of England’. The media estimates quoted in the same report from 1991 estimated 50,000 squatters. (ibid.).

A London-based charity added:

*“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.”*

The **SQUASH<sup>3</sup> campaign**, which generated around 2,000 individual responses to the consultation, echoed the views of the homeless charities, and also described dilapidated buildings being brought back to life by squatters and the positive impact, as they saw it, that this could have on a neighbourhood. They called for the government to do more to bring empty homes back into use and to tackle the shortage of affordable housing. They also criticised the consultation process for not reaching out to ‘hard to reach’ groups (such as asylum seekers, migrants, Gypsies and Travellers and people on low incomes who they say might be threatened by homelessness and forced to squat). Given the number of individuals and organisations who participated in the consultation process on behalf of these groups, including several major homelessness charities, the government does not accept this criticism.

Based on a number of assumptions set out in the Impact Assessment, the government estimates that there could be between 350 and 4,200 defendants proceeded against for the new offence of squatting in any one year. The threat of conviction may not deter some squatters and it is likely to be those squatters that are convicted who will be most negatively impacted by the proposals.

Some would-be squatters may be deterred from squatting as a result of a criminal offence. This could lead them to look for alternative forms of accommodation. The homelessness charities who responded to the consultation argued that it could also increase the likelihood of rough sleeping. However, it has not been possible to quantify these potential impacts and they may be mitigated by ongoing government initiatives to address the root causes of homelessness.

The Court Proceedings Database, the research evidence outlined above, and a number of consultation responses, provide some information on the demographic profile of squatters, including whether they share any of the nine protected characteristics. The potential impacts on people with any of these characteristics arising from the government’s proposals to criminalise squatting in residential property are described in more detail below.

### *Potential Age Impacts*

‘Squatting: a homelessness issue - an evidence review’ states that the 2011 report on single homeless people found that a larger proportion of people who squat were aged 21-40. A substantial number (37 per cent) reported to be aged over 40<sup>4</sup>, but this is less than the proportion of the general population of England and Wales in 2010 (48 per cent). Therefore, this research suggests that those aged 40 or under may be over-represented in the single homeless squatting population in comparison to the general population of England and Wales.

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<sup>3</sup> Squatters’ Action for Secure Homes

<sup>4</sup> ‘Squatting: a homelessness issue - an evidence review’ by K. Reeve at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (Sept 2011)

Based on this evidence, we consider that there is the potential for the new offence to have a differential impact in relation to age.

We also note that a number of respondents to the consultation raised issues in relation to age. They suggested that people who squat might include vulnerable young adults leaving care; children and young people because of difficulties in finding housing; those aged under 16, and those aged under 18, because of limited access to housing benefits and hostels; students and young people who can no longer live with their families due to sexual abuse/domestic violence issues. These responses tend to support the evidence above that a large proportion of single homeless people who squat are young.

### *Potential Disability Impacts*

'Squatting: a homelessness issue - an evidence review' reports that the 2011 report on single homeless people found that that 41 per cent of single homeless people who squat had self reported mental health issues<sup>5</sup>. It is a reasonable assumption that at least some of these people will be disabled under the Equality Act 2010. The 2011 report also found that 32 per cent of single homeless people who have not squatted had self reported mental health issues<sup>6</sup>. Figures for the general population of England suggest that in 2007 18 per cent of people aged 16-64 in England had at least one common mental disorder, and 23 per cent had at least one psychiatric disorder<sup>7</sup>. These statistics are not directly comparable to the statistics on the prevalence of mental health issues in the homeless squatting population so comparisons should be made with caution.

The 2011 survey also found that 42 per cent of single homeless people who squat had physical ill health or a disability compared with 27 per cent of single homeless people who have not squatted<sup>8</sup>. Within this figure, it has not been possible to quantify the proportion who have a physical disability within the meaning of the Equality Act 2010.

Based on the evidence that suggests that those with mental health issues may be over-represented in the single homeless squatting population in comparison to the general population, we consider that there is the potential for the new offence to have a differential impact in relation to disability.

We note that a number of respondents to the consultation raised issues in relation to disability. These suggested that people who squat may include people who may have some difficulty in understanding the law if it is changed; people with physical disabilities which need to be taken into account in leaving a squat; and people with serious illnesses who should be given time to leave a squat. Again, this tends to support the data set out above.

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<sup>5</sup> 'Squatting: a homelessness issue - an evidence review' by K. Reeve at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (Sept 2011) states that 'respondents in each study were presented with the statement 'I have mental health problems' and asked whether that statement applied to them. The term 'mental health' was not defined for them.

<sup>6</sup> *ibid*

<sup>7</sup> 'Adult psychiatric morbidity in England, 2007' by the NHS Information Centre

<sup>8</sup> 'Squatting: a homelessness issue - an evidence review' by K. Reeve at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (Sept 2011)

### *Potential Gender Reassignment Impacts*

We note comments raised during the consultation that those who squat might include transgender people who have been driven out of their families'/previous homes due to prejudiced parents or landlords. More widely, concern was raised that transgender people experience transphobia, harassment and domestic abuse in relation to housing and that there was a lack of emergency or shared accommodation suitable for transgender people.

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact. However, no statistical evidence was provided on the percentage of squatters who are transgender to permit further analysis of such an impact.

### *Potential Marriage and Civil Partnership Impacts*

It was suggested by some consultees that squatting was likely to occur in the context of marital or relationship breakdown.

However, although due to limitations in the available evidence we are unable to rule out the potential for any differential impact, no statistical evidence was provided to permit further analysis of such an impact.

### *Potential Pregnancy and Maternity Impacts*

We note the comments raised during the consultation included concerns about the prospect of pregnant women or mothers with young children being asked to leave squats at short notice. As noted in the section on mitigation, families with children are counted as a social housing priority need group.

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact. However, no statistical evidence was provided to permit further analysis of such an impact.

### *Potential Race Impacts*

The research evidence we have reviewed suggests that a large proportion of single homeless people who squat are White British, but a substantial proportion are from other ethnic groups. 38 per cent of single homeless people squatting who were interviewed as part of the 'The Hidden truth about homelessness' research were from these other ethnic groups<sup>9</sup>, compared to 17 per cent of the general population of England and Wales in 2009.

We are aware of research evidence that suggests single homeless A8 (the accession of the 8 Central and Eastern European countries to the EU in 2004) nationals are more likely to be squatting than other groups. 'The hidden truth about homelessness' research suggested that 22 per cent of single homeless A8 nationals who were interviewed for this research were squatting on the night they were interviewed. This compares to 6 per cent of single homeless people interviewed. However, there was no difference in the proportion of single homeless A8 nationals reporting that they had ever squatted compared to all single homeless people interviewed for this

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<sup>9</sup> 'Squatting: a homelessness issue - an evidence review' by K. Reeve at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (Sept 2011)

research<sup>10</sup>. We do not have information on the proportion of single homeless people who squat who are migrants.

Based on the evidence that ethnic groups other than White British may be over-represented in the single homeless squatting population compared to the general population, there is the potential for the new offence to have a differential impact in relation to race.

We note that a number of respondents to the consultation raised issues in relation to race. They suggested that people who squat might include Gypsies and Travellers who use the land around disused or derelict buildings (e.g. former factories in urban areas). However, the new offence is targeted at trespassers who occupy residential buildings. It is not concerned with trespassers who occupy open land or land ancillary to buildings.

Consultation responses also suggested that people who squat include asylum seekers, who have no recourse to public funds or housing assistance and prohibited from taking paid employment. Research by Oxfam was cited that showed many asylum seekers experience homelessness<sup>11</sup>.

Respondents to the consultation also suggested that many migrants squat, especially those from A8 countries, who have restricted access to benefits. For example, it was suggested that in London, migrants from accession countries account for half of the bed spaces in night shelters. Another respondent suggested A8 nationals may be in the UK to take advantage of the UK's "squatter status". Again these responses tend to support what data is available.

#### *Potential Religion or Belief Impacts*

Little evidence was provided on the linkages between religion and homelessness during the consultation, and the limited evidence available suggests that people who squat hold a range of religious beliefs.

Therefore, we do not consider that there is evidence for a potential differential impact.

#### *Potential Sex Impacts*

Of the 37 people proceeded against at magistrates' courts in 2001-2010 in respect of the existing offences, 86 per cent were male. This compares to 49 per cent of the general population of England and Wales in 2010.

The research evidence we have reviewed suggests that more homeless squatters are male than female. The 'Life on the Margins' research found that 87 per cent of single homeless squatters interviewed in that study were male<sup>12</sup>. This compares to 49 per cent of the general population in England and Wales in 2010.

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<sup>10</sup> 'The hidden truth about homelessness: experience of single homelessness in England' by Kesia Reeve with Elaine Batty at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (May 2011)

<sup>11</sup> 'Coping with destitution: survival and livelihood strategies of refused asylum seekers living in the UK' by Oxfam (February 2011)

<sup>12</sup> 'Life on the Margins: The experiences of homeless people living in squats' by Kesia Reeve with Sarah Coward for CRISIS and the Countryside Agency (March 2004)

'The hidden truth about homelessness' research suggests that single homeless men are more likely than single homeless women to have squatted (29 per cent of single homeless women had squatted compared to 42 per cent of single homeless men)<sup>13</sup>. Research also suggests that some women find squats unsafe. However, this research suggested that in some circumstances squatting is safer than rough sleeping for women<sup>14</sup>.

Responses to the consultation suggested that amongst those who squat were single women escaping violence. 'Squatting: a homelessness issue - an evidence review' also suggests a significant proportion of homeless street sex workers who were surveyed for the 'Complex Needs' research had squatted (59 per cent)<sup>15</sup>. The 2003 report by the New Policy Institute for Crisis cited research that found 40 per cent of homeless women had reported that domestic violence was connected to their homelessness<sup>16</sup>.

Our current assessment, based on this evidence, is that there is a potential for a differential impact in relation to sex, as in aggregated terms men are more likely to be affected than women in comparison to the general population. However, there may be specific issues that affect women.

#### *Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact. However, no statistical evidence was provided on the percentage of squatters by sexual orientation to permit further analysis of such an impact.

We note comments raised during the consultation that people who squat might include lesbian, gay and bisexual people who have been made homeless by prejudiced parents/landlords. More widely, concern was raised that lesbian, gay and bisexual people experience homophobia, harassment and domestic abuse in relation to housing and that there was a lack of emergency or shared accommodation suitable for them.

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<sup>13</sup> 'The hidden truth about homelessness: experience of single homelessness in England' by Kesia Reeve with Elaine Batty at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (May 2011)

<sup>14</sup> 'Life on the Margins: The experiences of homeless people living in squats' by Keisa Reeve with Sarah Coward for CRISIS and the Countryside Agency (March 2004)

<sup>15</sup> 'Squatting: a homelessness issue - an evidence review' by K. Reeve at the Centre for Regional Economic and Social Research, Sheffield Hallam University for CRISIS (Sept 2011)

<sup>16</sup> 'How Many, How Much? Single homelessness and the question of numbers and cost' by Peter Kenway and Guy Palmer from the New Policy Institute for CRISIS (2003)

## Mitigation and Justification

The actions outlined below will mitigate some of the potential impacts on squatters. The government accepts, however, that not all potential differential effects will be mitigated.

Nonetheless, the government is satisfied that it is right to take action to criminalise squatting in residential buildings. Whilst action against squatting may create potential adverse impacts against individuals who share certain protected characteristics, the actions of squatters have a significant impact on those whose property they occupy. Given the competing interests, the government is satisfied that it is justified to proceed to criminalise the act of squatting in residential buildings, and that the proposals it will put before Parliament strike an appropriate balance between those interests.

If the legislation is passed, it should be noted that any adverse effects of criminalisation will only materialise if a squatter commits the offence once it is commenced. Steps will be taken to publicise the new law, in particular in relation to those who may be affected by it. Those affected will have a period before the new offence comes into force to change their behaviour.

The responses to the consultation document included those whose homes have been occupied thus rendering them impossible to live in, from both local authorities who have been unable to refurbish social houses to make them available for priority categories, and landlords who have been unable to let their property as a result of squatting. The latter are adversely affected financially; and they are prevented from reducing the numbers of homeless people as they are unable to offer those homes to legitimate prospective tenants.

Whilst there are various civil remedies available to property owners and occupiers, the government is persuaded that it is right that the criminal law should offer a greater degree of protection. However, the government has also listened to those who are concerned about the potential consequences in terms of homelessness, and it has therefore decided that it should in the first instance adopt a cautious approach. The government therefore proposed to criminalise squatting in residential premises. This will deal with what we understand to be the greatest mischief and the greatest distress to victims, that of being unable to use one's own home. 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 will continue to keep the law under review to measure the effects of the changes and to determine if any further action is needed.

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, Department for Communities and Local Government (DCLG), 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.

### *Publication of information about the new offence*

We will publish a departmental circular explaining the new offence, and will liaise with other interested departments, the enforcement authorities and key interest groups prior to commencement to consider the best way of disseminating information so that it reaches the people most likely to be affected.

### *Addressing the root causes of homelessness*

The government has taken into account the evidence submitted by homeless charities that many people who squat may have mental health problems or suffer from drug or alcohol addiction or other vulnerabilities. The consultation responses illustrated that for many homeless people, squatting could be as precarious and damaging to health as sleeping on the streets. It is clearly not desirable for anybody to live in these conditions and the government will continue to provide funds to address the root causes of homelessness and to bring more empty homes back into use.

The government has prioritised spending on homelessness prevention, investing £400m over the next 4 years, with the Homelessness Grant being maintained at 2010-11 levels. We have also secured £6.5 billion investment for Supporting People services that help vulnerable people to live independently – this equates to an average annual reduction over the 4 years of the Spending Review of less than 1% in cash terms.

We have also, for the first time, brought together 8 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.

We have announced a new £20m Homelessness Transition Fund for the voluntary sector to help implement No Second Night Out. And we are providing an additional £10m to Crisis to support single homeless people, including priority client groups, such as recovering drug-users and ex-offenders, to access stable accommodation in the private rented sector.

### *Providing more housing*

The government intends to publish its strategy on housing later in the Autumn. The Strategy will set out our overall approach to housing policy, including how we are 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.

For example, the government has already made available £4.5 billion to help deliver new affordable housing through the Affordable Homes Programme.

### *Bringing empty homes back into use*

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 the 'hardest to reach' empty homes - properties that are likely to remain empty without extra direct financial 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.

Empty homes brought back into use will qualify for the New Homes Bonus. Under this powerful new incentive scheme, government will match fund the council tax for 6 years, using the national average in each band, for any empty homes that become a new home for somebody, with an additional amount being provided for those brought back into use as new affordable homes.

This has already proved to be effective in encouraging more local authorities to tackle empty homes in their area. 42 per cent of Local Authority respondents to an online survey reported being "more supportive" or "significantly more supportive" of tackling empty homes as a result of the New Homes Bonus. In the first year alone, around 16,000 long term empty homes were brought back into use and rewarded through the New Homes Bonus scheme, with local authorities benefiting from around £19m additional funding as a result.

DCLG are also considering where this can go further, and plan to consult shortly on the option to levy an "empty homes premium" on the council tax payable on homes that have been left empty for a long time.

We have worked with the Homes and Communities Agency (HCA) to launch an online Empty Homes Toolkit and an interactive mapping toolkit which provide information and practical advice on tackling empty homes. The Empty Homes Toolkit is the most popular resource on the HCA website and is one of the top10 most popular pages on the site.

Where long term empty properties have become dangerous or are causing a nuisance to neighbours, the local authority, as a last resort, can seek to take direct control of the management of the property. We are proposing some changes to Empty Dwelling Management Orders, to ensure that their use is limited to the very worst long term empty homes, while still ensuring Local Authorities have the power to act when needed.

Tackling empty homes will have a particular focus in London. From next year, the Mayor of London will have new housing and regeneration powers in line with the government's broader approach to housing and localism. The Mayor proposes to:

- maintain his target that no more than one per cent of London's homes should stand empty or unused for more than six months;
- maintain and update his empty homes audit, to help target action and investment to tackle abandoned and derelict homes;
- target a share of London's funding for empty homes to bring residential buildings on the English Heritage at risk register back into use and explore options to engage the public in this process;
- encourage boroughs to remove any financial incentives to leaving homes empty;

- encourage the involvement of the community in bringing empty homes back into use, for example self-help organisations;
- make investment decisions which prioritise bringing back into use homes for affordable housing.

### *Gypsies and travellers*

The offence is targeted at trespassers who occupy residential buildings. It is not concerned with trespassers who occupy open land or land ancillary to buildings. The SQUASH campaign argued that gypsies and travellers would be adversely affected by the government's proposals because they are known to occupy land around disused factories, etc. especially in urban areas, however, the offence will not cover this type of encampment. The only circumstances in which Gypsies and Travellers can be charged with this offence, is if they occupy residential buildings without the authority of the owner.

The government is working with local authorities to improve the provision of authorised sites for Gypsies and Travellers. Councils will be given incentives through the New Homes Bonus scheme to deliver new traveller sites and we have secured £60m funding to help councils and other registered providers build new traveller sites.

### *Asylum Seekers*

Asylum seekers are not entitled to mainstream benefits. However, asylum seekers who would otherwise be destitute can obtain support from the UK Border Agency (UKBA). This support comprises of rent, utility and council tax free accommodation and cash subsistence to meet their essential living needs. Asylum seekers who need support to avoid destitution are given it from the time they arrive in the UK until their claim is fully determined (appeal rights exhausted). This support continues for destitute failed asylum seeking families with dependant minors until they leave the UK or are granted status.

In addition, failed asylum seekers who would otherwise be destitute can obtain support from the UK Border Agency if there is a legitimate reason which prevents their immediate return. This support comprises of rent, utility and council tax free accommodation and subsistence support to meet their essential living needs.

When UKBA and the courts have decided that an asylum seeker does not need international protection, and where there is no legitimate barrier to their return, support is discontinued and we expect the person to return home voluntarily. Returning home will provide these individuals with a long term sustainable solution to their situation.

Assistance to return home voluntarily can be provided by UKBA or by making an assisted voluntary return through Refugee Action's Choices service. Support can be provided for a period of three months whilst arrangements to return home voluntarily are made.

Those recognised as refugees obtain immediate access to mainstream benefits. UKBA continue to provide accommodation and support for 28 days, during which period the refugee can make arrangements to access mainstream support and find alternative accommodation.

This year, the UK Border Agency has cut the grants awarded to voluntary sector agencies to provide advisory services to asylum seekers and refugees. This reflects the tough financial climate and the fact that asylum intake has reduced significantly since grants were first put in place. However, this will not affect the provision of accommodation and support to asylum seekers in need. Accommodation will always be provided where the asylum applicant would otherwise be destitute.

### *Migrants*

The rights of EEA nationals and their family members to live and work in other European countries are set out under the Free Movement Directive (2004/38/EC), by which all EU Member States are bound. EEA nationals' free movement rights are not unlimited. Those who wish to live in the UK for longer than three months must be exercising a Treaty right as a worker, a self-employed person, a self-sufficient person or a student. Where EEA nationals do not meet one of these requirements, including those who are rough-sleepers, they will not have a right to reside in the UK and may be liable to removal.

The government is clear that EEA nationals who benefit from the right to free movement must adhere to the responsibilities this brings with it and abide by our laws.

## **Monitoring**

We will be monitoring the implementation of these reforms for positive, negative and mixed equality effects. The new offence is to be tabled as an amendment to the Legal Aid, Sentencing and Punishment of Offenders Bill at Report in October 2011. Royal Assent is expected in spring 2012, with implementation to follow at a later date. We would require a full year's data on a number of protected characteristics following implementation on which to base a review. This data would come from the MoJ's Court Proceedings Database and would include information on age, gender and ethnicity. We will also explore the possibility of whether other sources of data can provide useful information on disability.