



## Squatters and the law

(The Civil Procedure (Amendment) Rules 2001 & Criminal Justice and Public Order Act 1994

Legal Aid, Sentencing and Punishment of Offenders Act 2012)

### Commencement:□

The new criminal rules came into force on 1<sup>st</sup> September 2012.

### Background:□

The existing civil system was established in 1995 by the [Criminal Justice and Public Order Act 1994](#). It attempted to protect ordinary homeowners whose property was empty and broken into by squatters. The court procedure of 1995 and the Interim Possession order (IPO) allowed for a fast track eviction process in specific circumstances. In 2001 The Civil Procedure (Amendment) Rules brought this area into line with the new possession procedures for other types of property and property occupiers.

Squatting under the earlier framework was not itself a criminal offence, and in order to become a criminal offence it had to take place alongside other criminal acts such as criminal damage, abusive behaviour etc. The [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) has now brought about changes which create a criminal offence to trespass in residential property.

### Scope:□

#### Who is a squatter?

A squatter is a person who is in a residential building as a trespasser, having entered as a trespasser, who knows or ought to know that they are a trespasser and is living in the building

or intends to live there for any period ( [s144 Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) ).

### Who is not a squatter?

Occupiers holding over at the end of their agreements are not squatters (even if they leave and re-enter the building) ( [s144 \(2\)](#) ) because they originally occupied the premises lawfully. The distinction is important, as many procedures available to evict squatters cannot be used against former licensees or ex-tenants.

## Rights:

### What rights do squatters have?

As of 1<sup>st</sup> September 2012 squatting in residential property, but not commercial property, is a criminal offence. The new offence is intended to give more power to the police to arrest squatters in residential premises. Under previous rules the police were only able to evict a squatter if they failed to leave the premises within 24 hours of receiving an Interim Possession Order (IPO) under [section 74](#) of the Criminal Justice Act of 1994. Squatters have the least security of all occupiers and, because they do not pay rent, are not subject to rent control. Court proceedings can be taken against them at any time. Since squatters do not have accommodation that they have a legal right to occupy, they will be homeless within the meaning of part III of the Housing Act 1985 (2) and they should be informed of their possible rights to housing from the council.

## The Rules:

1) The rules enabling a fast track eviction of squatters came into force on 24th August 1995 and have been amended by the Civil Procedure (Amendment) Rules. These rules cover all elements of possession claims against trespassers except enforcement. Under this eviction procedure, landlords and homeowners can go to court to obtain an 'Interim Possession Order' (IPO) against alleged squatters. Once an order is granted, the squatter has 24 hours after receiving the IPO to vacate the property. Refusal to comply is a criminal offence under [section 76](#) of the Criminal Justice Act 1994. A person guilty of an offence can be imprisoned for up to 6 months and/or fined.

2) The most significant aspect in the 2001 rules is the discouragement of commencing actions in the High Court. Other than in **exceptional circumstances** actions should be started in the County Court. The standard claim form for possession of property (Form N5) should be used together with a form of particulars of claim (Form 121) which specifically relates to trespassers. For copies of these forms see the [Co](#)

[urt & Tribunal Service website](#)

. Where the identity of the trespasser is not known then an action can be brought against 'persons unknown'. But if this is the case then there are special service rules (rule 55.6). As noted above the provisions for enforcement remain unchanged.

3) Under [Section 72](#) of the Criminal Justice and Public Order Act 1994 (which amended Section 6 of the Criminal Law Act 1977) it is no longer an offence for a protected intended occupier (PIO), a displaced residential occupier (DRO), or someone acting on behalf of a PIO or DRO, to force entry into the premises when there is someone in the property.

### Exclusions

- You cannot use the fast track procedure unless you make your claim for possession within 28 days of the date you first knew your premises were being occupied without your consent.
- The new procedure cannot be used if the occupier is or was a licensee or tenant. It is also a criminal offence to give false or misleading information in order to obtain an IPO.
- There is a defence if it can be proved that the trespasser did not believe the person was, or was acting on behalf of, a PIO or a DRO or if the premises s/he was trespassing on were not used for residential purposes.

### Definitions

**Protected intending occupier (PIO)** may be a freeholder, a private tenant, a licensee, a leaseholder with at least two years of the lease left to run of a property bought for their own occupation and prevented from moving in by squatters, or a person who has been given permission to occupy a premises by a public sector landlord (or housing association landlord). The PIO must have been denied occupation because of the squatter and can have a person acting on their behalf. The PIO must require the accommodation at that time. It is not sufficient that someone has been allocated the property although it will not be ready for occupation for months ahead.

The amended section 74 of the Criminal Justice and Public Order Act 1994 created a new section 12A of the Criminal Law Act. It is an offence if a person deliberately makes a false statement about whether they are a PIO. When evicting a trespasser, PIOs should be able to produce a statement or a certificate which proves their status if requested by the trespasser.

**Displaced residential occupier (DRO)** is a person who was already living in a property before being excluded by squatters.

## The Criminal Rule:□

[Section 144](#) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 creates an offence of squatting in a residential building. The maximum penalty for this offence is six months' imprisonment and/or a fine not exceeding Level 5 on the standard scale.

The offence is intended to protect owners and lawful occupiers of any type of residential building. This will include homeowners and lawful occupiers who might have been excluded from their homes by trespassers. 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 occupy the building. The intention of the new offence is that residential home owners will not need to use the civil court system to regain possession of their property as they will be able to notify the police immediately if squatters are occupying their property. The police would then be able to arrest the squatters and prosecute under section 144. However, as at present, much will depend on the willingness of the police to intervene and, where the police are unwilling to make an arrest, landlords will have to fall back on the civil law rules which are still in force.

## Sources for Further Information:□

- Advisory Service for Squatters, 84b Whitechapel High St, London, E1 7QX. Tel 020 3216 0099 or [advice@squatter.org.uk](mailto:advice@squatter.org.uk)
- For guidance on the offence of Squatting in a Residential Building see [Ministry of Justice Circular 2012/04](#)
- The Letting Centre website: [www.letlink.co.uk](http://www.letlink.co.uk)

*This summary is intended to assist landlords and letting agents to understand the effect of the new procedures.□ It is not an authoritative interpretation - this is a matter for the courts.□ For more detail, you should refer to the text of the respective legislation itself.*