



## BRIEFING PAPER

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# Trespass to land

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**Contents:**

1. Trespass in criminal law
2. Trespass in civil law
3. Policy developments



# Contents

<b>Summary</b>	<b>3</b>
<b>1. Trespass in criminal law</b>	<b>4</b>
<b>2. Trespass in civil law</b>	<b>6</b>
<b>3. Policy developments</b>	<b>8</b>

## Summary

Trespass to land is not generally a criminal offence unless some special statutory provision makes it so. Any damage done by a trespasser while trespassing may amount to the offence of criminal damage.

In civil law, trespass to land consists of any unjustifiable intrusion by a person upon the land in possession of another. Civil trespass is actionable in the courts, but a claim must be brought by the owner of the land.

In opposition, the Conservatives published a “Green Paper” on planning, including a proposal (in the context of travellers) to introduce a new offence of trespass: In 2012, the Coalition Government introduced a new offence of squatting in residential buildings, but also indicated that it had no plans to criminalise any other forms of trespass.

In 2018 the Government launched a consultation on powers to deal with unauthorised development and encampments. The Government response, published in February 2019, set out plans to strengthen police powers to deal with trespass. The Government intends to consult further on these proposals.

Separate Library Briefing Papers provide more detail on [Gypsies and travellers](#) and [Evicting squatters](#).

# 1. Trespass in criminal law

In criminal law, trespass can form the background to a number of offences, including burglary and trespass with intent to commit a sexual offence. However, it is not a criminal offence in the absence of some special statute that makes it so.<sup>1</sup>

There are a number of exceptions to this general rule.

## Criminal Justice and Public Order Act 1994

Part V of the [Criminal Justice and Public Order Act 1994](#) (the '1994 Act') gives the police certain powers to deal with trespassers and created offences relating to various forms of trespass.

Section 61 enables a police officer to direct trespassers on land (who are there with the common purpose of residing there for any period) to leave the land where the occupier has taken steps to ask them to do so, and either

- they have damaged the land; or
- they have used threatening, abusive or insulting behaviour to the occupier, his family, employees or agents; or
- between them they have six or more vehicles on the land

Failure to obey a direction to leave or returning to the land as a trespasser within three months is also an offence.<sup>2</sup>

Section 62 provides for a power to seize and remove vehicles following a direction under section 61.

Sections 62A and 62B enable police to direct trespassers to an alternative site, where available, and create corresponding offences.

Section 63 of the 1994 Act gives a police officer power to direct persons gathering on land for a rave (or preparing or waiting for one) to leave the land. Failure to comply with a direction, or returning to the site within seven days are offences.

Section 68 provides for an offence of aggravated trespass, covering trespassers who engage in conduct intended to obstruct or disrupt lawful activity on that land or who intend to intimidate those taking part in that lawful activity. The offence is capable of being committed by hunt saboteurs or motorway protesters, but it is not formally limited to protest groups.

## Serious Organised Crime and Police Act 2005

It is an offence under section 128 of the [Serious Organised Crime and Police Act 2005](#) to trespass on a "protected site". This is either a nuclear site or a site designated by the Secretary of State. The Secretary can designate sites for this purpose that are: Crown land; land belonging to

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<sup>1</sup> Winfield and Jolowicz on Tort, 17<sup>th</sup> Edition, Sweet and Maxwell, 2006, p619

<sup>2</sup> Crown Prosecution Service, Legal Guidance, [Trespass and nuisance on land](#) [accessed 14 May 2019]

the Queen or her immediate heir in their private capacity; or, if appropriate for reasons of national security.

## Damage by trespassers

Any damage done by a trespasser while trespassing may amount to the offence of criminal damage. The elements of that offence are set out in section 1 of the [Criminal Damage Act 1971](#):

A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether such property would be destroyed or damaged shall be guilty of an offence.

If the damage is trivial, or it is difficult to obtain evidence about which culprit is responsible for any damage, the Police or Crown Prosecution Service may conclude that criminal proceedings could not, or should not be brought.<sup>3</sup>

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<sup>3</sup> See Crown Prosecution Service, Legal Guidance, [Trespass and nuisance on land](#) for further information [accessed 14 May 2019]

## 2. Trespass in civil law

In civil law, trespass to land consists of any unjustifiable intrusion by a person on the land in possession of another. It is actionable in the courts whether or not the claimant has suffered any damage (unlike other causes of action in civil law). This reflects the fact that in the past trespass was likely to lead to a breach of the peace. However in practice actions for trespass are not normally brought in the absence of damage unless the claimant wishes to deter persistent trespassing or there are disputes over boundaries or rights of way.<sup>4</sup>

The slightest crossing of the claimant's boundary is sufficient to result in a trespass. In the case of *Ellis v Loftus Iron Co*<sup>5</sup> the court stated that "if the defendant place[s] a part of his foot on the claimant's land unlawfully, it is in law as much a trespass as if he had walked half a mile on it."<sup>6</sup>

Examples of civil trespass include removing any part of the land in the possession of another, or any part of a building or other erection attached to the soil. It can also be a trespass to place something on, or in, land in the possession of another – such as dumping rubbish.<sup>7</sup>

There are a number of legal justifications to trespass, including:

- licence to enter by law;
- justification by right of way or easement;
- justification by licence or necessity; and
- various powers of entry granted to officers of the law, such as the police.<sup>8</sup>

### Recovery of items

In civil law, if a person places his property on another's land, without permission, (such as by kicking a ball there) that may amount to the civil wrong of trespass to land, as may the act of going onto the land without permission in order to retrieve the property.

A leading practitioner text, *Clerk & Lindsell on Torts*, explains that a person may justify entering another person's land to recover goods if they were wrongfully taken and put there by the claimant. However, in other circumstances, such as where the goods are on another person's land by accident, the case law is unclear.<sup>9</sup>

The ownership of the property in question is not affected. It would still belong to its original owner, who would be entitled to have it returned. "Confiscation" by, for example, an aggrieved garden-owner could

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<sup>4</sup> Winfield and Jolowicz on Tort, 17<sup>th</sup> Edition, Sweet and Maxwell, 2006, p 621

<sup>5</sup> (1874) L.R. 10 C.&P 10

<sup>6</sup> *Ibid*, Per Coleridge C.J. at 12

<sup>7</sup> Clerk and Lindsell on Torts, 20<sup>th</sup> Edition, Sweet and Maxwell, 2010, para 19-02

<sup>8</sup> See *e.g.* Clerk and Lindsell on Torts, 20<sup>th</sup> Edition, Sweet and Maxwell, 2010 at para 19-29 *et seq.*

<sup>9</sup> Clerk and Lindsell on Torts, 20<sup>th</sup> Edition, Sweet and Maxwell, 2010, para 19-33

amount to theft, but a temporary deprivation would be unlikely to do so.

## Damages

While general trespass is not a criminal offence, it is possible for a person to recover damages in the civil courts where they can prove a trespass by another. In practice however, substantial damages are only likely in cases where one could show physical damage to the land, the removal of items attached to the land or where the claimant has been deprived of the use of his land.

*Clerk and Lindsell on Torts*, indicates that “in general, and subject to the usual exceptions for disabilities, all actions of trespass to land must be brought within six years after the cause of action arose” under section 2 of the *Limitation Act 1980*.<sup>10</sup>

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<sup>10</sup> *Ibid*, at para 19-77

## 3. Policy developments

### Conservative policy in opposition

In opposition, the Conservatives published an '[Open Source Planning Green Paper](#)' in February 2010. The proposals on the subject of travellers included one to introduce a new offence of trespass:

Conservatives believe in social responsibility. Different people, from different communities, should be free to lead their lives in different ways. But this freedom must come with a responsibility to the wider community. The vast majority of travellers accept this, but a very small minority do not.

Planning rules should ensure fairness between the settled and the traveller communities. Local authorities have a role to ensure the provision of suitable authorised sites to tackle genuine local need for their area in consultation with local communities. In addition, recent case law has clarified that councils need to provide authorised sites locally if they are to be able to take effective action against unauthorised sites, even though enforcement still remains a major problem.

Where, therefore, councils have made appropriate provision for authorised sites in their area, which reflect local need and historic demand, we will provide them with stronger enforcement powers to tackle unauthorised development and illegal trespass. In addition, we will introduce a new criminal offence of intentional trespass.<sup>11</sup>

An accompanying press release - [Conservatives pledge to tackle trespass](#) - stated:

The Conservatives have today announced new plans to tackle widespread public concern about the exploitation of the planning system. A new policy blueprint will pledge to address the small minority of travellers who occupy illegal or unauthorised sites. The proposals will include plans to:

- Create a new criminal offence of intentional trespass, as already in place in the Republic of Ireland. Trespassers who refuse to move after being asked to do so by a uniformed police officer will face arrest. At present, trespass (which does not involve criminal damage) is a civil offence - forcing the landowner to go to court. This will allow both squatters and travellers occupying property without permission of the landowner to be removed quickly.<sup>12</sup>

### New squatting offence

A new offence of squatting in residential buildings was brought into law in September 2012<sup>13</sup> by section 144 of the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#). The new offence is committed if a person enters the building as a trespasser and lives there or intends to

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<sup>11</sup> Conservative Party, [Open Source Planning Green Paper](#), February 2010, p18

<sup>12</sup> "[Conservatives pledge to tackle trespass](#)", [Conservative Home](#), 12 February 2010 [accessed 15 May 2019]

<sup>13</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 1) Order 2012/1956



live there for a period of time. To commit the offence the person must know or ought to have known that they are a trespasser. The maximum penalty for the offence is a term of not more than 51 weeks imprisonment or a fine of up to £5,000 (or both).<sup>14</sup> Library Briefing Paper, [Evicting Squatters](#), gives further details.

The Government subsequently indicated that there were no plans to criminalise any other forms of trespass:

There is already an offence of aggravated trespass under the Criminal Justice and Public Order Act 1994. The Legal Aid, Sentencing and Punishment of Offenders Bill includes provision to criminalise squatting in residential buildings. We have no plans to criminalise other forms of trespass.<sup>15</sup>

## Current Government policy

In April 2018 the Government launched a consultation on powers for dealing with unauthorised development and encampments.<sup>16</sup> The consultation covered local authority and police powers; court processes; trespass; and, planning enforcement, among other things.

The Government published a summary of submissions and its response to the consultation in February 2019.

The Government's analysis of the consultation responses concluded that a majority of respondents want to see police officers given broader powers to deal with trespassers.

The Government has therefore proposed four amendments to part V of the *Criminal Justice and Public Order Act 1994*. These amendments are designed to strengthen police powers to deal with unauthorised encampments. The Government proposes to amend:

- section 62A of the Act to permit the police to direct trespassers to suitable sites in neighbouring local authorities. Currently, the police can only direct trespassers to sites within the local authority.
- section 61 and 62A to increase the period of time in which trespassers directed from land would be unable to return from three to twelve months.
- section 61 to allow the police to act on encampments where two or more vehicles are present. Currently, encampments have to have six or more vehicles for the police to intervene.
- section 61 to allow the police to remove trespassers from land that forms part of a highway. Currently, the police can only direct trespassers to leave land that forms part of a highway if there is an alternate site in the local authority.<sup>17</sup>

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<sup>14</sup> For further information see [Squatting in residential premises](#), House of Commons Library Standard Note SN/SP/355, 20 July 2012

<sup>15</sup> [HC Deb 5 March 2012 c538W](#)

<sup>16</sup> [Powers for dealing with unauthorised development and encampments](#), April 2018

<sup>17</sup> [Government response to the consultation on powers for dealing with unauthorised development and encampments: A summary of consultation responses and the way forward](#), 6 February 2019, p23

## 10 Trespass to land

The response states that the Home Office will launch a further consultation on these measures "soon".<sup>18</sup>

The response also notes that a narrow majority of respondents were supportive of making deliberate trespass a criminal offence. The Government has therefore committed to conduct a review on the potential criminalisation of unauthorised encampments.<sup>19</sup>

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<sup>18</sup> Ibid, page 9

<sup>19</sup> Ibid

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