



Trespass to land

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Generally speaking, trespass to land is not 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.

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 Government introduced a new offence of squatting in residential buildings, but it also indicated that it had no plans to criminalise any other forms of trespass. Two separate Library Standard Notes on [Gypsies and travellers: camp sites and trespass](#) and [Squatting in residential premises](#) provide further information on these issues.

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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 important to note (as stated in *Winfield and Jolowicz on Tort*¹ a leading text) trespass is “not a criminal offence in the absence of some special statute that makes it so.” The punitive element which originally attached to trespass disappeared in 1694. However, there are a growing number of exceptions to the basic rule. These include the *Criminal Justice and Public Order Act 1994* (discussed below) and the *Serious Organised Crime and Police Act 2005*, which makes it an offence to trespass on a site designated by the Secretary of State. Some examples of offences are shown below, but the list should not be taken to be exhaustive.

Section 61 of the *Criminal Justice and Public Order Act 1994* 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.²

Section 63 of the 1994 Act gives a police officer (of at least superintendent rank) 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.³

Trespassers on land in the open air 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 commit an offence under Section 68 of the 1994 Act. The offence is capable of being committed by hunt saboteurs or motorway protesters or any protesters who are trespassing on land in the open air, but it is not formally limited to protest groups.⁴

Further details of relevant criminal offences can be found on the Crown Prosecution Service website: [Trespass and nuisance on land](#).

1.1 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.

¹ Winfield and Jolowicz on Tort, 17th Edition, Sweet and Maxwell, 2006, p619

² Crown Prosecution Service, Legal Guidance, [Trespass and nuisance on land](#) (accessed 30 October 2014)

³ For further information, see [Raves](#), House of Commons Library Standard Note, SN/HA/1889, 14 October 2008

⁴ Crown Prosecution Service, Legal Guidance, [Trespass and nuisance on land](#) (accessed 30 October 2014)

If the damage is trivial, and/or it is difficult to obtain evidence about which culprit caused which damage, the Police or Crown Prosecution Service may conclude that criminal proceedings could not, or should not be brought.

Another possibility to curb persistent trespass by particular children may be the use of anti-social behaviour orders ("ASBO"s).

2 Trespass in civil law

In civil law, trespass to land consists of any unjustifiable intrusion by a person upon the land in possession of another. *Winfield and Jolowicz* notes that in civil law, trespass is actionable in the courts whether or not the claimant has suffered any damage. It states that:

This rule may seem harsh but in earlier times trespass was likely to lead to a breach of the peace and even trivial deviations on to another person's land were reckoned unlawful. Whether or not there is now greater respect for the law, the theoretical severity of the rules as to land trespass is rarely exploited in practice. As an action will not normally be brought for trespass without damage unless the claimant wishes to deter persistent trespassing or there are disputes over boundaries or rights of way.⁵

The slightest crossing of the claimant's boundary is sufficient to result in a trespass. In the case of *Ellis v Loftus Iron Co*⁶ 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."⁷

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.⁸

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.⁹

2.1 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 also may the act of going onto the land without permission in order to retrieve the property.

The practitioner text, *Clerk & Lindsell on Torts*, says:

A person may justify entry onto the claimant's land for the purpose of recaption of his goods if the goods were taken and put there by the wrongful act of the claimant himself. But beyond this proposition the law is regrettably unclear. In *Anthony v Haney*, Tindal CJ was of the opinion *obiter* that entry was permissible on the land of an innocent person where (a) the goods came there by accident, (b) a thief took them to such land, or (c) the occupier refused to redeliver them. With regard to accidental presence, this would seem a reasonable allowance of law, but the justification would not extend to an owner

⁵ Winfield and Jolowicz on Tort, 17th Edition, Sweet and Maxwell, 2006, p 621

⁶ (1874) L.R. 10 C.&P 10

⁷ *Ibid*, Per Coleridge C.J. at 12

⁸ Clerk and Lindsell on Torts, 20th Edition, Sweet and Maxwell, 2010, para 19-02

⁹ See e.g. Clerk and Lindsell on Torts, 20th Edition, Sweet and Maxwell, 2010 at para 19-29 *et seq.*

of goods by whose wrong (for example, trespass) the goods came there. On the contrary, the occupier might detain pending compensation for any damage done. With regard to refusal to redeliver the Chief Justice thought that a positive refusal might be considered a conversion “or at any rate the owner might in such case enter and take his property subject to the payment of any damage he might commit”. It is suggested that such a right can be asserted at least where the owner of goods is blameless with regard to their presence on the land and where he gives reasonable notice and an explanation of the facts relating to the goods before entering for reception. Merely to enter without giving an opportunity for voluntary redelivery would be unjustifiable and therefore a trespass.¹⁰

The ownership of (for example the ball or other property) 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 amount to theft, but a temporary deprivation would be unlikely to do so.

2.2 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 truth, 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 s 2 of the *Limitation Act 1980*.¹¹

3 Further action

Where a person suffers due to the activities of trespassers or is subjected to a sustained course of conduct, s/he may well wish to seek legal advice to see whether s/he can resolve the particular issues. The Library Standard Note *Legal Help: Where to go and how to pay* provides further information about obtaining legal advice.¹²

4 Policy developments

4.1 Conservative policy in opposition

In opposition, the Conservatives published what they called an [Open Source Planning Green Paper](#) on 22 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

¹⁰ Clerk and Lindsell on Torts, 20th Edition, Sweet and Maxwell, 2010, para 19-33

¹¹ *Ibid*, at para 19-77

¹² [Legal help: where to go and how to pay](#), House of Commons Library Standard Note SN03207, 19 July 2012

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.¹³

See also a Conservative press release [Conservatives pledge to tackle trespass](#), 12 February 2010, which 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.¹⁴

4.2 Government policy since 2010

Criminalising trespass?

The issue of making trespass a criminal offence was raised by Sajid Javid in two Parliamentary Questions in 2010, at which time the Government responded that it was considering the issue.¹⁵ Mr Javid asked a further Parliamentary Question on the topic in February 2012:

Sajid Javid: To ask the Secretary of State for Justice if he will bring forward plans to create an offence of intentional trespass to permit the removal of people occupying property without the landowner's permission without the need for a court order. [95059]

Mr Blunt: The Government are considering how the law might be strengthened, but as yet no firm decisions have been made. Any changes would need to be considered against other commitments in the coalition agreement—including the right to peaceful protest—and resources available to the police and justice authorities.

In the meantime, the Government are proposing in the Legal Aid, Sentencing and Punishment of Offenders Bill to criminalise squatting in residential buildings. We hope that this will bring relief to those whose lives are blighted by having their homes occupied.¹⁶

A new offence of squatting in residential buildings was brought into law from 1 September 2012¹⁷ 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 trespasser and lives there or intends to live there for a period of time. To commit the offence

¹³ Conservative Party, [Open Source Planning Green Paper](#), February 2010, p18

¹⁴ "[Conservatives pledge to tackle trespass](#)", [Conservative Home](#). 12 February 2010 (accessed 30 October 2014)

¹⁵ HC Deb 12 July 2010 c596W and HC Deb 14 October 2010 c328

¹⁶ HC Deb 20 February 2012 c623W

¹⁷ Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 1) Order 2012/1956

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).¹⁸ Library Standard Note 355, [Squatting in residential premises](#) gives further details.

In March 2012, in answer to a question from Chris Evans, Crispin Blunt indicated that the Government had no plans to criminalise any other forms of trespass:

Chris Evans: To ask the Secretary of State for Justice whether he plans to make trespassing a criminal offence. [98047]

Mr Blunt: 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.¹⁹

¹⁸ For further information see [Squatting in residential premises](#), House of Commons Library Standard Note SN/SP/355, 20 July 2012

¹⁹ [HC Deb 5 March 2012 c538W](#)