

PREM 19/1623

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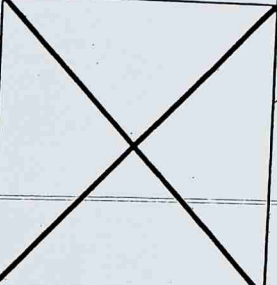
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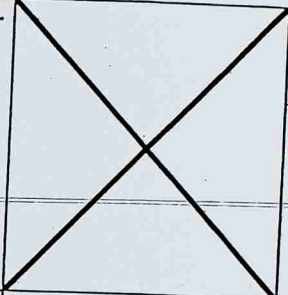
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# A The National Archives

DEPARTMENT/SERIES ..... <i>REM 19</i> ..... PIECE/ITEM ..... <i>1623</i> ..... (one piece/item number)	Date and sign
Extract details: <i>letter from Butler to Taylor dated 9 May 1985</i>	
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cc

Ps to Mr P.M.



WITH  
THE COMPLIMENTS OF THE  
PRIVATE SECRETARY

HOME OFFICE  
50 QUEEN ANNE'S GATE  
LONDON SW1H 9AT



QUEEN ANNE'S GATE LONDON SW1H 9AT

31 October 1983

*Davis*  
*11"*

Dear Lord President,

Since I circulated to colleagues last week my memorandum on trespass (H(83)37), David Mellor and Rodney Elton have had informal discussions with the Earl of Onslow and Lord Renton who, you will recall, plan to introduce another Bill on this subject in the House of Lords this Session. I thought I ought to let H colleagues know, in advance of tomorrow's discussion of my paper (which David Mellor will attend in my place), the outcome of these talks.

Lords Onslow and Renton have asked for a meeting because of their concern that we still had not announced the conclusions of our review of the law in this area. They believe strongly that a new offence is needed and needed soon. Their own Bill - which was unsatisfactory in a number of respects - of course fell with the Dissolution. But they now have indicated that they would like Government support for a reintroduced measure and are willing to adapt their earlier proposals to make them acceptable to us.

Their earlier Bill received considerable, if not unanimous, support in the Lords, and my assessment - subject of course to your and colleagues' views - is that our position in that House could become very difficult if we were seen to be brushing aside the efforts of the Bill's sponsors to be conciliatory. What this points to, I think, is that we cannot easily refuse drafting assistance to two of our supporters when there is nothing of substance between our two approaches except the priority we accord to the subject.

David Mellor will accordingly be suggesting that the Committee agree to my seeking authority for drafting assistance to be given. This would be on the understanding, of course, that such assistance carries no commitment whatsoever to our making time available in the Commons and on the footing that the sponsors would be putting forward a Bill which was entirely in line with Government policy. The Bill's sponsors have been left in no doubt that we have other priorities in this Session's programme.

I thought it might be helpful for the Committee to know of this development and I am, therefore, copying this letter to other members of H, and to Sir Robert Armstrong.

(Approved by  
the Secretary of  
State and signed  
in his absence)

*Yours sincerely*  
*H Taylor*

The Rt Hon Viscount Whitelaw, CH., MC.

(1)  
p/a  
PRIME MINISTER

TRESPASS

The Home Secretary's paper reports his conclusions on the review of the law of trespass undertaken following the intrusion into Buckingham Palace last year. He rejects both

- (i) a very narrow offence limited to specified residential premises (this could be criticised for protecting only those best able to protect themselves); and
- (ii) a wide offence of trespassing on land as well as residential premises.

X/H  
Mr. Brittan's preferred option is an offence of trespass on all residential premises. He regards this as the "least unsatisfactory" solution. If the Committee agrees, he would like to announce the Government's conclusion soon, whilst making clear that legislation on this topic cannot have a high priority.

The Home Secretary concedes that drafting will be difficult, and there are clearly some unresolved differences of view between the members of H Committee on this sensitive and potentially controversial topic.

Would you like a report of the Committee's discussion from the Lord President?

JMB

26 October 1983

No - agree X.

Note: Spoke to HS's office.  
Told them the PM supported the HS's line.

JMB  
27/10





HOME OFFICE

# **Trespass on Residential Premises**

See H(83)37 on  
CARB 134 | 4712

**A Consultation Paper**

02183

TRESPASS ON RESIDENTIAL PREMISES: A CONSULTATION PAPER

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## PART I - INTRODUCTION

1. There are a number of issues regarding the law of England and Wales in respect of unauthorised entry into residential premises on which the Government would find it helpful to have comments, both from organisations with a special interest in the matter and from members of the public at large. This process of consultation forms part of a review of the law which the Home Secretary, in consultation with the Lord Chancellor and the Attorney General, set in train in July 1982 following the intrusions into Buckingham Palace by Michael Fagan in June and July.
2. The public concern which was expressed, in the light of these incidents, about the scope of the law was directed mainly at the apparent lack of criminal sanctions to deal with trespassers on residential premises.
3. The review has therefore concentrated principally on the question whether any changes in the present law are required to provide greater protection for people in their own houses, and not only for those especially vulnerable to uninvited intrusion but also for the public at large. It has not been concerned with the very wide range of circumstances in which there might be unauthorised entry or trespass on, for example, farm land, private estates, local authority land or land or premises used for industrial or commercial purposes.
4. The Government believes that any extension of the criminal law in this area would represent an important development which ought not to be undertaken without the fullest possible consideration. This consultation paper therefore identifies the issues which the Government thinks are involved in any proposal to change the law and sets out the arguments which relate to each. In doing so, it necessarily identifies a number of practical difficulties. This is because it is important to examine rigorously all proposals for extending the criminal law to make sure that they do not go wider than is intended, and that they are workable.
5. The paper is prefaced with an account of the present state of the law, and an analysis of the criteria which we think ought to be borne in mind in considering the case for any new criminal offence.

6. The Government will welcome comments on the matters discussed in this paper. These comments should be sent to the following by 3 May 1983:

The Assistant Secretary  
C4 Division  
Home Office  
Queen Anne's Gate  
LONDON  
SW1H 9AT  
(Tel no: 01 213 3544)

Extra copies of this consultation paper may be obtained from the same address.

7. The law of Scotland differs from that of England and Wales. The Secretary of State for Scotland will be carrying out a parallel but separate review of the scope for legislation in the field covered by this consultation paper. The law of Northern Ireland is also under separate review.

## PART II - THE EXISTING LAW

### Background

8. In England and Wales, trespass on land has traditionally fallen within the province of the civil rather than the criminal law. The main exceptions are when the trespass is undertaken with intent to commit any criminal offence, or is associated with other criminal or violent conduct. The mere fact of entering private property without authority, but without any accompanying criminal conduct or intent, which for the purpose of this paper is termed "simple trespass", is not by itself a criminal offence nor has it ever been. There are a number of reasons for this, most of which will be touched on in the discussion of possible options later in this paper. Broadly, it has been felt up to now that simple trespass does not always, or even often, entail actions so hostile to the interests of an occupier or the general public that criminal sanctions are appropriate. Moreover, such trespass does not necessarily demonstrate a clearly discernible infringement of rights, still less conscious wrong-doing; thus it can frequently involve a dispute between two individuals over their respective rights to the property in question; or it can involve no more than innocent, non-malicious or trivial acts by people unaware that they are trespassers; or it can involve the eviction of occupiers whose right to occupy has ended but who have nowhere else to go. An important consideration here is the role of the police. Their task has traditionally been seen as the impartial maintenance of the Queen's Peace. Care has therefore always been taken to avoid creating situations in which they might appear to be "taking sides" in what is, in essence, a private dispute, particularly when this might adversely effect their relationship with the public. These considerations clearly do not apply in situations which involve criminal acts or the use or threat of violence. The implications for the police if the law on trespass were to be extended are dealt with in Part VII of this paper.

9. The law on conspiracy to trespass and offences of entering and remaining on property was reviewed by the Law Commission in 1976. In Part II of their Report (No.76, paras. 2.1 to 2.99) the Law Commission identified the problem of squatting - that is the unauthorised occupation of residential premises by individuals or groups of persons - as a matter which, in certain

circumstances, justified the use of the criminal law, and their recommendations were given effect in the Criminal Law Act 1977. Thus, important exceptions to the general rule that the criminal law does not involve itself in disputes over possession of property were created by the 1977 Act. The exceptions were made because of the degree of hardship which would arise if immediate action could not be taken to restore to a displaced occupier the use of his living accommodation. The general principle reflected in this legislation, therefore, is the need to protect the most pressing and urgent interests of people who are severely affected by the actions of others. An exception was also made for trespass on diplomatic premises in pursuance of the United Kingdom's international obligations to protect diplomatic property, and as a necessary consequential of the abolition of the offence of conspiracy to trespass in the Criminal Law Act of 1977.

#### The detailed provisions

10. Apart from the Act of 1977, there is a substantial body of law governing acts of a violent or otherwise criminal nature on any type of property, including residential premises. Thus trespass in a building with intent to steal, inflict grievous bodily harm, commit rape or do unlawful damage constitutes (under section 9 of the Theft Act 1968) burglary, which is punishable with 14 years' imprisonment. Under section 8 of the Criminal Law Act 1977 it is a criminal offence to enter property, on which a person opposed to that entry is present, with any weapon of offence. It is also an offence, under section 6 of the 1977 Act, to use or threaten violence to enter any premises, provided that there was someone present on those premises opposed to the entry and the person responsible for the threats or violence knows that that is the case. In addition it is an offence under the Vagrancy Act 1824 to be found on enclosed premises with intent to commit an offence.

11. These offences are supplemented by that contained in the 1977 Act directed at certain forms of squatting (see para.9 above). Section 7 of the 1977 Act made it an offence for a trespasser to fail to leave premises on being requested to do so by a displaced residential occupier or a protected intending occupier.

12. In addition to those provisions which deal specifically with offences or mischiefs committed on premises or property, there are a number of general provisions in statute and common law which could be used in suitable circumstances in order to deal with trespassers or their activities on residential premises. Thus the offence of criminal damage under the Criminal Damage Act 1971 relates to the destruction or damage of property belonging to another without lawful excuse-provided that the damage is caused intentionally or recklessly. In certain circumstances, moreover, a charge of unlawful assembly might lie where a number of trespassers are involved; and there might be circumstances, for example involving abusive words and conduct, where trespassers on residential premises could be dealt with on the complaint of the occupier for conduct likely to cause a breach of the peace, carrying liability to be bound over to keep the peace and be of good behaviour. Lastly, the general law relating to sexual assaults and other offences against the person, and to theft, applies as much on residential premises as it does elsewhere.

13. A more detailed summary of the provisions of the criminal law most relevant to the protection of residential premises, together with their related penalties, is contained for ease of reference in the Annex to this paper.

14. It is doubtless possible to criticise the way in which these existing offences have been framed, or in which they operate in practice. (For example it has been claimed that the criminal damage offence is not particularly helpful, given the need to identify the individual responsible for the damage). It would be helpful to have comments directed at the detailed structure or operation of these existing offences. This paper, however, is addressed to the particular criticism that what is left uncovered by the present criminal law is the act of intrusion which, though not violent in execution or otherwise criminal in intent, may be disturbing in other ways.

15. In such circumstances certain lawful means of redress exist. An aggrieved occupier of property has rights of self-help at common law. For example, he may use a reasonable degree of force in order to prevent a

trespasser from entering, or in order to eject him. The police, moreover, may lawfully assist the rightful occupier of property to eject trespassers, though they have no duty to do so (and when doing so are not protected by the special powers and privileges of constables).

16. An occupier, additionally, has various remedies in the civil courts. He may seek an order for the trespasser's eviction and apply for an injunction to restrain him from re-entering on the property, and may claim damages. A reasonably speedy procedure is available for the eviction of squatters, whether named or un-named. It is not the purpose of this paper to question the value or efficacy of these civil remedies. They are, no doubt, good so far as they go. But it seems likely that the ordinary citizen who finds an intruder in the home would rather invoke the protection of the criminal law and the assistance of the police than involve himself in a physical struggle or in litigation.



PART III - THE CRITERIA FOR NEW CRIMINAL OFFENCES

17. The rest of this paper discusses the case for making simple trespass, either in all or only in some circumstances, a criminal offence. There are no expressly stated criteria for determining whether or not criminal sanctions are appropriate to deal with any particular kind of act. In general, however, successive Governments, and Parliament in considering proposed legislation, have kept in mind some guiding principles.

18. One is that the criminal law should be used to prohibit or to contain only that behaviour which is seen as meriting society's explicit disapproval to the extent of criminal sanctions to deter people from it and to punish those who are not deterred. This implies that the behaviour in question goes beyond what it is proper to deal with on the basis of compensation as between one individual and another and that it concerns the public interest in general.

19. A second principle is that in general criminal sanctions should be reserved for dealing with undesirable behaviour for which other, less drastic, measures of control would be ineffective, impracticable or insufficient. Observance of this principle helps to maintain public respect for the criminal law; it also ensures - bearing in mind that arrests for an offence have resource implications for the entire system - that the burden of work carried by the police, the courts and the criminal justice system in general is not unnecessarily increased.

20. Finally, there are some practical considerations to be borne in mind. It is important that a new offence should be enforceable. Respect for and compliance with the criminal law as a whole depend on its being enforced. This, as well as natural justice, requires that the law should be clear in its scope and effect.

21. The case for a new criminal offence in the field of trespass should be tested against these considerations.

#### PART IV - THE NEED FOR CRIMINAL SANCTIONS: ASSOCIATED ISSUES

22. Part II of this paper has shown that the criminal law already protects the occupiers of residential premises from various categories of unlawful intrusion. The existing law covers certain forms of squatting, violent entry, burglary, breaches of the peace, criminal damage and offences against the person by people who have entered on the premises; but simple trespass itself is still outside the criminal law.

##### Unwelcome intruders

23. Alarm and annoyance can plainly be caused by uninvited intrusion into residential premises. Consider, for example, the case of a man trespassing on residential premises and entering the bedroom of a woman or child - whatever his motive may be - or a "Peeping Tom", who puts a ladder against a bedroom window - or "gatecrashers" at social occasions who behave objectionably and who refuse to leave on being asked to do so.

24. Many other examples may be envisaged of patently offensive and unreasonable behaviour which might not be caught by the criminal law. Do these warrant the use of criminal sanctions? It could be argued that some of these are so unusual that they do not call for the creation of a general offence of simple trespass. Are other measures for dealing with them inadequate? If certain forms of intrusion cause extreme distress, can they in law be satisfactorily distinguished from others? Should there be special sanctions for the protection of certain individuals or institutions especially vulnerable to these forms of abuse?

##### "Innocent" trespass

25. There are other forms of intrusion which might be covered by a new offence of simple trespass but which are in themselves entirely innocent or trivial and not liable to cause distress or annoyance, at least on anything approaching the same scale. Consider a friend or neighbour entering a house or garden to retrieve something left there, in the reasonable but mistaken belief that this would be acceptable to the occupier, or a child wanting to recover a ball or toy from a garden or house into which he may have accidentally thrown it. A short cut through a garden may be taken, knowingly or otherwise, in circumstances in which no harm could possibly be done to anyone. Should such transgressions be prosecuted? If a general offence is to be created, is it sufficient, in matters involving the reputation and liberty of individuals, to leave the decision entirely to the discretion of the police? Should the

right to bring a private prosecution be excluded? Should there be additional safeguards to protect the "innocent" trespasser who is simply unaware that he is trespassing? If so, what form should these take?

26. Another question is whether the scope of any criminal offence of simple trespass should be restricted to a particular time period - for example night time (on the lines of the old offence of burglary\*) or the hours of darkness? Is this a possibility worth considering - bearing in mind that this would not necessarily do away with a need for the safeguards canvassed above and elaborated in Part VI? If so, how specifically should the period of activation of the law be defined? Would such a period meet the criterion that any offence should be clear and precise in its scope and effect?

#### Disputes over residential rights

27. There is another category of people in respect of whom a new criminal offence of trespass might give rise to considerable problems - namely those who claim some right or title to the property in question or at least a right not to be evicted except by order of the court. One may envisage a variety of circumstances in which disputes could arise over a person's lawful right to be present on particular premises, and in which one of the parties might seek to prosecute for any new criminal offence of trespass. These could involve merely domestic disputes between, say, a family and a long-resident relative whose presence in the house was no longer welcome, or attempts by people who considered they had a legal claim to title seeking to enforce this by entering a premises uninvited. Here again, is it desirable that the criminal law should apply in such situations? If not, how could they be excluded from any general offence of simple trespass? If so, would any new offence need to refer explicitly to these sorts of cases? Or would it be sufficient simply to leave it for the courts to decide whether a person in a given set of circumstances was a "trespasser"? Would this create unacceptable difficulties for the courts and the police - notwithstanding that the Criminal Law Act 1977 already makes use of the undefined term "trespasser"? These issues are given further consideration in Part VII.

28. To sum up, a straightforward unqualified offence of simple trespass on

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\* This offence applied to the "night" - defined in section 46 of the Larceny Act 1916 as "the interval between nine o'clock in the evening and six o'clock on the morning of the next succeeding day".

residential property would cover a wide range of circumstances which may not all need to be dealt with in this way, or which could give rise in some cases to peculiarly difficult problems of enforcement. To avoid these difficulties and to conform with the criteria set out in Part III of the paper, it might be necessary to provide for some of the various statutory safeguards summarised in Part VI. But before coming to these it is necessary to examine the scope of "residential premises" for the purposes of any change in the law regarding unauthorised intrusion.

## PART V - NATURE OF PREMISES TO BE COVERED BY ANY NEW CRIMINAL OFFENCE

### Residential premises in general

29. It is necessary to consider whether any new criminal offence of simple trespass should apply to residential premises of all descriptions. This expression covers a very wide range and includes houses, blocks of flats, residential apartments in buildings used for other purposes, hostels and halls of residence (including, for example, nurses' homes and students' rooms in universities). How should these premises be defined in order to provide maximum coverage? Would it be sufficient (taking the definitions in section 12 of the Criminal Law Act 1977 as convenient examples) to refer to any building or part of a building under separate occupation which is habitually used as a residence? Would it be necessary to bring within the ambit of the new offence parts of premises which do not form part of the living space but which are common to the residents of the premises as a whole - for example, entrance halls, landings or corridors? On the one hand it would make sense to cover areas such as a corridor in a nurses' home, as it would be difficult (though not impossible) for any trespasser to justify being there by accident and it would seem absurd that the law could not be brought into operation until someone had completed the ultimate act of trespass by (for example) entering someone's room. On the other hand, trespass into the entrance hall of a block of flats is not necessarily as serious. Moreover, the nature of particular premises, e.g. hotels or conference centres, could make it likely that someone could stray accidentally into private apartments. There are obvious difficulties in distinguishing in law between these various situations. Would it be acceptable, within a very general definition of "residential premises", to rely on the discretion of the police and the courts in particular cases, while simultaneously providing safeguards for people who trespass in ignorance of the true nature of the premises they have entered?

30. There is the further issue of whether the new offence should require the owner or someone who had his permission to have been on the premises at the material time. The principal justification for an offence of simple trespass is the unacceptable annoyance or distress that trespass can cause to people on the premises. For example, for someone to enter someone else's holiday home in their absence (assuming no infringement of existing criminal provisions) may amount to bad manners and it is, and should be, a civil wrong entitling the owner to redress. But is it really a matter for the criminal law?

Would it be right, therefore, to provide, on the lines of section 6(1)(a) of the Criminal Law Act 1977 that a necessary condition of the offence should be that there is someone (in effect the owner or someone with his permission) present on the premises at the time of the trespass?

#### Specific types of residential premises

31. An alternative to the criminal offence which covered all forms of residential premises is to restrict it to specific types of premises which are thought to require special protection. There is already a precedent for this approach in section 9 of the Criminal Law Act 1977, which broadly makes it an offence to trespass on the premises of diplomatic missions (unless the accused can prove that he believed that the premises did not come within the category covered by this section). The advantage of such an offence is that it picks out those premises which are particularly vulnerable because of the circumstances in which they are used or the individuals who live in them. The importance and special circumstances of these premises would have to be such as to justify making the mere fact of trespass on them a criminal offence. This in itself would avoid many of the difficulties discussed in Part IV and in this part of the paper. It would be necessary merely to provide a defence for an accused person similar to that included in section 9(3) of the 1977 Act. Examples of the types of premises which might be covered include certain Royal residences or certain official Government residences deemed to be especially vulnerable. There might need to be a power to extend, by Order in Council subject to Parliamentary approval, the range of premises covered.

32. The principal objection to this approach is that it might appear invidious to provide special protection for certain premises or individuals which is denied to the public at large. The Government indeed has received no request from those directly concerned for any particular premises to be specially protected. There may also be fears of such a provision being extended by subordinate legislation to premises which do not justify this special protection to the same extent as the others. The objections of policy to this proposal are therefore substantial, but it would be helpful to the Government to know to what extent they are felt to be compelling.

#### Land associated with residential premises

33. Another issue is whether the definition of residential premises or of specific types of premises should include the surrounding land. There is, of course, a strong case in principle for doing so. It could be argued that

people are entitled to the same degree of protection in, say, their own gardens as they are in their own houses, and there are specific cases (for example that of the Peeping Tom) where it may be only the land itself which is being trespassed upon. But even given this, where does one draw the line? There would be obvious difficulties if a definition of "residential premises" went so wide that it covered not only, for example, the back garden of a semi-detached dwelling, but also the large estate of a country house. The greater the geographical area covered the greater the likelihood of the criminal law being brought into play in situations which manifestly do not justify it. Even if this could be guarded against by specific defences in the new legislation (see Part VI), it is in any case open to doubt whether a provision aimed at residential premises should also cover large areas of land simply because they surround a particular building. There are obvious difficulties in the case of land adjacent to premises which are only partly used for residential purposes. Here again, section 12 of the Criminal Law Act 1977 might be helpful. Section 12(1)(a), in defining "premises", refers to "..... any land ancillary to a building, the site comprising any building or buildings together with land ancillary thereto ....." . In the context of an offence of simple trespass on residential premises, would such a formula, suitably adapted, be sufficient to restrict its scope broadly to the land immediately adjacent to the residential part of a building? Or would there be any support for the view that any new offence should not apply to land at all?

34. One special difficulty which would arise from including adjacent land in the definition of premises covered by a new offence is that it would increase the risk of applying the criminal law to disputes between neighbours over access to, and the use of, land in circumstances which, if litigation is needed at all, are best left to the civil law. One possible example (out of many) is where someone needs to go on to a neighbour's garden in order to gain access, with gardening equipment, to another piece of his land. If the occupier objects to his doing so but he persists in his intention, he becomes a trespasser on residential premises, and if a new offence of simple trespass were created he would be liable to prosecution. Does this represent the sort of social abuse with which the criminal law ought to be concerned? Even if the complainant (as suggested in paragraph 25) has to prove a reasonable cause for annoyance etc. this does not remove the possibility that such cases, quite inappropriately, would involve the police and come before the criminal courts. It is difficult, however, if any new offence is to apply to land, to see how such a risk could be avoided. This is a point on which

it would be particularly helpful to have comments and suggestions.

35. This Part of the paper illustrates one of the central problems of creating a new offence - namely that different answers may be right as between different types of premises. Thus it might be thought desirable to exclude from the scope of an offence the entrance hall of a block of flats, those parts of a building used as offices but which happened to have in it a caretaker's flat, or the outlying areas of a large estate. But an entirely different view might be taken in the case of non-residential parts of premises in which any trespass is thought to constitute an unacceptable intrusion or in which the various uses cannot realistically be distinguished. The approach outlined in paragraph 33 offers one way round this difficulty, but this by definition would be of a specific rather than a general application. Are there other means of resolving this central problem?



## PART VI - SAFEGUARDS

36. At various points in the paper there have been references to the need for safeguards to be built into any new general offence of simple trespass to protect people who might otherwise be caught inappropriately by criminal sanctions and to close any obvious loopholes in the protection afforded by a new offence. This Part of the discussion paper summarises these various proposals - some of which might be necessary to ensure that any new offence conformed with the general criteria outlined in Part III.

i) As suggested in paragraph 25, it seems necessary to provide some protection for people who trespass unintentionally - for example by straying accidentally into unenclosed private land or by overlooking a notice which indicated that a particular section of a house was private. This suggests that it should be a defence against any proceedings under a new offence for the defendant to be able to prove on the balance of the probabilities that he believed the premises in question were not premises to which the statutory provisions apply (ie on the lines of section 9(3) of the Criminal Law Act 1977). Would such a provision be sufficient protection? Or would it be preferable to put the onus on the prosecution to prove that the person concerned had trespassed knowingly?

ii) Paragraph 23 suggests that an abuse could thereafter be caused by someone who had entered premises other than as a trespasser. Is it accepted therefore that it would be necessary for any new offence to penalise not only entry as a trespasser on residential premises but also when, having entered such premises other than as a trespasser, someone fails to leave at the request of an occupier or someone else who is lawfully present - ie someone who stays on as a trespasser?

iii) Paragraph 25 also identifies a number of situations in which various trivial and innocent forms of trespass, which might not even be objectionable to an occupier, might be caught by any new offence. To cover such situations is there a need for an additional defence whereby an accused might prove that he had reasonable cause for believing either that he could lawfully enter the premises in question or that the occupier would have consented, if asked, to his entry?

iv) Paragraph 26 raises the possibility of confining the scope of any new criminal offence to intrusion by night. Is this desirable?

v) Paragraph 30 canvasses the possibility of restricting the activation of the offence of entry as a trespasser (as opposed to failing to leave at the request of an occupier) to those circumstances where an owner or someone with his permission is on the premises at the time of trespass. Is it thought that there is a sufficient case for such a restriction?

PART VII - ENFORCEMENT AND POLICE INVOLVEMENT

Police involvement

37. If any offence of trespass on residential premises were to be created there would be no obvious body other than the police to carry out enforcement. The existing civil remedies rest in the hands of the individual concerned. On one view, if a criminal offence of trespass on residential premises were to be created, it might be possible for enforcement to be left to the individual by way of private prosecution. But in practice a criminal offence of trespass would probably need to carry with it associated enforcement powers, eg arrest, and for the grant of such powers to be restricted to constables. And if the individual was unable to take effective action himself through a lack of enforcement powers, in the natural order of events he would call on the police for them to exercise their powers. In short although there would be no duty on the police to enforce the law in this area the expectation is likely to be that they would.

38. What would be the practical effects of police enforcement? Does the activity itself in each case justify police enforcement? And what would be the resource implications for the police?

39. The present role of the police in this area is set out in paragraph 8. The creation of a criminal offence of trespass on residential premises and its enforcement by the police would often entail the police officer on the spot having to make an almost immediate decision as to whether a person was a trespasser. His decision whether, for example, to arrest a party would have to depend on his assessment of whether a person had a lawful right to be where he was - a matter on which no conclusive evidence might be available. As the paper as already indicated (paragraph 16) this difficulty would be particularly acute in relation to domestic and landlord/tenant disputes occurring on residential premises. At present when the police attend such a dispute the purpose of their presence is merely to prevent a breach of the peace and secure the departure of one of the parties as a means to that end; this can usually be achieved by persuasion and there need only be a very broad assessment of the relative rights of the parties.

40. At present most calls for police assistance to eject trespassers appear to arise from domestic and landlord/tenant disputes and disputes on commercial premises (eg in shops or restaurants); the "sit in" kind of trespass is more of a rarity. The police already have powers to deal with, for example, breach of the peace and entry with intent to commit certain criminal offences. But would the creation of a criminal offence of trespass on residential premises make trespassers, who are not committing any other offence, less willing than at present to leave voluntarily? Is it right that the owners or occupiers of residential premises should be able to look to the police to take criminal proceedings against everybody who trespasses on their premises regardless of circumstances? The police must, and must be seen to, apply the law in an even-handed way. Would their involvement in criminal sanctions in domestic disputes and **disputes over title and access threaten their impartiality?**

41. It is difficult to make any realistic estimate of the resource implications for the police of any change in the law in this field. Much would depend on the priority individual chief officers were prepared to give to such activity. But even if there were no greater amount of police time devoted to attending such incidents than at present, the time taken to prepare criminal proceedings could create a significant additional burden. Could this be justified by the nature and scale of the abuses with which a new offence would be designed to deal?

#### Penalties and mode of trial

42. The offences of entering and remaining on property in Part II of the Criminal Law Act 1977 (see paragraphs 10 and 11) are triable summarily and subject to penalties within the range of maximum fines of £1,000 and terms of imprisonment not exceeding six months. If a new offence of trespass were created - whether on residential premises generally or on specific types of premises - would similar arrangements be suitable? Many trespass cases, particularly of a domestic or landlord and tenant kind, while minor from the point of view of the public interest may involve contentious evidence and difficult questions of law. Would these be suitable for the magistrates' courts, or would it be necessary to make such offences triable either summarily or on indictment, with a consequent increase in expenditure and in the workload of the Crown Court? Indeed, given the number of cases likely to be generated, and the fact that a large proportion of them would probably be minor, would it be right to burden the criminal courts, which already have to contend with a constant increase in more serious cases, with this extra work?

PART VIII - CONCLUSION

43. This paper has considered the implications of extending the criminal law to cover simple trespass on residential premises.

44. The first option of the two broad options identified would create an offence of entering, at any time or during prescribed hours, residential premises (suitably defined) as a trespasser or, having entered such premises lawfully, failing to leave at the request of the occupier or his representative. It seems likely that such an offence would have to contain at least some of the safeguards discussed in Part VI. The definition of residential premises, moreover, might have to include suitable provision for the adjacent land.

45. The main issues raised by this option are whether, even circumscribed by these various safeguards, the offence would still stray unacceptably widely into areas which are unsuitable for the criminal law; whether, because of its inevitable complexity, it would create difficulties of interpretation for the courts and subsequent uncertainty in its application; and finally whether, for the reasons discussed in Part VII, the offence would cause undue difficulties of enforcement.

46. These issues are directly relevant to the general criteria for new criminal offences outlined in Part III of this paper. Thus while there will be many who think that some of the behaviour described in Part IV is deserving of criminal sanctions, there may be different opinions about whether any other kind of behaviour should be so stigmatised. In whatever manner the area deserving of criminal sanctions is defined there are risks of unexpected side effects and difficulties of enforcement. The crucial question is, therefore, whether society's disapproval of some forms of simple trespass and the likely effectiveness of criminal sanctions are sufficiently great to outweigh these other considerations.

47. The second option is, in effect, to extend the approach of section 9 of the Criminal Law Act 1977 (which makes it an offence to trespass on a diplomatic mission) to other important and vulnerable premises. This has the merit of simplicity and raises fewer technical and enforcement difficulties. The main problem, as indicated above, is whether it is acceptable to select particular premises for this degree of special protection

and to make no provision for the ordinary citizen in his home. The Government would welcome some indication of public feeling on this issue.

48. In the Government's view, the issues raised in this paper cannot be resolved without the benefit of informed public debate, both on the need for any change in the existing law and on the practical implications of any such change. It has been the aim of this paper to provide the basis for such a debate.

## SUMMARY OF RELEVANT PROVISIONS OF THE CRIMINAL LAW

I Criminal Law Act 19771. Violence for securing entry

The use or threatened use of violence against persons or property for the purpose of securing entry into any premises, without lawful authority, is an offence, provided that there is someone present on the premises who is opposed to that entry and the person trying to enter knows this to be the case. It is a defence to a charge for a person to prove that he or the person on whose behalf he was acting was a displaced residential occupier of those premises. The maximum penalty on summary conviction is six months' imprisonment or a £1,000 fine or both. (Section 6)

(Violence against unoccupied property may constitute an offence of criminal damage - see below.)

2. Adverse occupation of residential premises

It is an offence for someone who has entered premises as a trespasser to fail to leave on being requested to do so by or on behalf of a displaced residential occupier or a protected intending occupier (both terms are defined). The maximum penalty on summary conviction is six months' imprisonment or a £1,000 fine or both. (Section 7).

3. Trespass with a weapon

Anyone who has entered premises as a trespasser and has with him a weapon of offence (that is an article for use for causing injury) commits an offence punishable on summary conviction with a maximum of three months' imprisonment or a £1,000 fine or both. (Section 8).

4. Trespass on premises of a foreign mission

It is an offence to trespass in a diplomatic mission, consular premises, the private residence of a diplomat or similar premises. The maximum penalty on summary conviction is six months' imprisonment or a £1,000 fine or both. (Section 9).

## II Vagrancy Act 1824

### Being found on enclosed premises

It is an offence to be found in any dwelling house, warehouse, coach-house, stable or outbuilding or in any enclosed yard or garden for an unlawful purpose. In this context unlawful purpose has been held to mean the commission of a criminal offence. The maximum penalty on summary conviction is three months' imprisonment or a £200 fine. On a second conviction the offender can be committed to the Crown Court for sentence and is liable to a maximum penalty of one year's imprisonment. (Sections 4, 5 and 10).

## III Criminal Damage Act 1971

### 1. Simple Damage

Intentional or reckless destruction of or damage to someone else's property is punishable on summary conviction by up to six months' imprisonment or a £1,000 fine or both or on conviction on indictment with a maximum of ten years' imprisonment. (Section 1(1))

### 2. Aggravated Damage

Intentional or reckless destruction of or damage to any property with intent to endanger someone else's life or where an obvious risk of danger to life is created is punishable on conviction on indictment with a maximum of life imprisonment. (Section 1(2))

### 3. Arson

Simple or aggravated damage caused by fire is an offence of arson punishable on conviction on indictment with a maximum of life imprisonment. (Section 1(3))

### 4. Threats to destroy or damage

To threaten to destroy or damage someone else's property (or one's own property if one knows that to do so would be likely to endanger someone



else's life) is punishable on summary conviction with up to six months' imprisonment or a £1,000 fine or both or on conviction on indictment with up to ten years' imprisonment.

(Section 2)

#### 5. Possession with intent

The possession of anything intended for use to destroy or damage someone else's property (or one's own property if its destruction or damage would thereby endanger someone else's life) is punishable on summary conviction with up to six months' imprisonment or a £1,000 fine or both or on conviction on indictment with up to ten years' imprisonment.

(Section 3)

### IV Theft Act 1968

#### 1. Theft

Theft (dishonestly appropriating property belonging to someone else with the intention of permanently depriving that person of the property) is punishable on conviction on indictment with a maximum of ten years' imprisonment or on summary conviction with a maximum of six months' imprisonment or a £1,000 fine or both.

(Section 1)

#### 2. Robbery

A person who steals and in order to do so uses force or puts someone in fear of being subjected to force is guilty of robbery. This is punishable with a maximum of life imprisonment on conviction on indictment.

(Section 8)

#### 3. Burglary

Burglary, that is:

(a) entering any building or part of a building as a trespasser with intent to steal anything, to inflict grievous bodily harm on anyone, to rape any woman or to do unlawful damage either to the building or to anything within the building; or

(b) having entered any building or part of a building as a trespasser, then stealing or attempting to steal anything therein or inflicting or attempting to inflict grievous bodily harm on anyone therein:

is punishable on conviction on indictment with a maximum of fourteen years' imprisonment. (Section 9)

#### 4. Aggravated burglary

Burglary with a firearm, imitation firearm, weapon of offence or explosive carries a maximum penalty of life imprisonment. (Section 10)

#### 5. Going equipped for stealing

It is an offence to have in one's possession, outside of one's own place of abode, any article for use in the course of or in connection with burglary. The maximum penalty on conviction on indictment is three years' imprisonment. (Section 25)

### V Offences Against the Person Act 1861

Acts of violence against another person are chargeable under any one of a number of statutory provisions depending on the nature and degree of severity of the assault. These include: common assault punishable under section 47 of the 1861 Act with up to six months' imprisonment or a £1,000 fine or both on summary conviction or up to one year's imprisonment on conviction on indictment; assault punishable under section 42 with up to two months' imprisonment or a £200 fine on summary conviction; aggravated assault upon a male child under 14 or upon a woman punishable under section 43 with up to six months' imprisonment or a fine of £500; assault occasioning actual bodily harm punishable under section 47 with up to six months' imprisonment or a £1,000 fine or both on summary conviction or up to five years' imprisonment on conviction on indictment; unlawful and malicious wounding or the infliction of grievous bodily harm is punishable under section 20 with up to six months' imprisonment

or a £1,000 fine or both on summary conviction or up to five years' imprisonment on conviction on indictment; and wounding or the causing of grievous bodily harm with intent is punishable under section 18 on conviction on indictment with a maximum of life imprisonment.

#### VI Sexual Offences Act 1956

Assaults of a sexual nature are punishable under the provisions of the Sexual Offences Act 1956. Offences include: rape (section 1) punishable with a maximum of life imprisonment; procuring unlawful sexual intercourse by threats or intimidation or by false pretences (sections 2 and 3) punishable with up to two years' imprisonment; indecent assault on a woman (section 14) punishable on conviction on indictment with up to five years' imprisonment if the victim is under 13, otherwise up to two years' imprisonment or on summary conviction with a maximum of six months' imprisonment or a £1,000 fine or both; and indecent assault on a man (section 15) punishable on conviction on indictment with up to ten years' imprisonment or on summary conviction with up to six months' imprisonment or a £1,000 fine or both.

#### VII Offences against the public peace

At common law there exist several offences dealing with situations in which a number of people gather together in circumstances likely to cause or actually causing a breach of the peace. These are the offences of unlawful assembly, rout, riot and affray which carry an unlimited penalty. The particular charge to be brought will depend on the circumstances of the individual case, in particular whether actual violence has taken place. It would appear from decided cases on these offences that they apply to private premises as well as to public places.

#### VIII Binding Over

Magistrates have power under common law and under Statute (Justices of the Peace Act 1361 and section 115 of the Magistrates' Courts Act 1980) to bind a person over to keep the peace and/or to be of good behaviour. Binding over may be on complaint by another person and it may follow arrest in circumstances in which a breach of the peace has been committed

or is apprehended. Binding over is not a punishment but is to prevent a likelihood of future misbehaviour. Refusal to be bound over can result in an immediate committal to custody. The court will order the person to be bound over to enter into a recognisance. Breach of the conditions of the order is punishable with forfeiture of the sum stipulated to be paid by the recognisance.

file

2 February 1983

Thank you for your letter of 1 February about the recent articles and leaders in The Times on the powers of courts to impose restriction orders. The Prime Minister is content for the Home Secretary to answer the draft arranged Question attached to your letter, and is happy with the draft Reply. She hopes that this will clear up any misunderstandings about the powers of courts to make restriction orders.

W. F. S. RICKETT

Colin Walters, Esq.,  
Home Office.

ole

2 February 1983

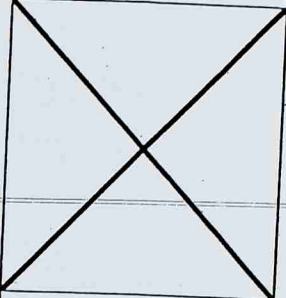
Thank you for your letter of 31 January about the consultation paper on the Law of Trespass. This is just to record that the Prime Minister has noted the proposed arrangements for the publication of the consultation paper.

Tim Flesher

Colin Walters Esq  
Home Office

*ls*

# A The National Archives

DEPARTMENT/SERIES	PREM 19	Date and sign
PIECE/ITEM ..... (one piece/item number)	1623	
Extract details:	Letter from Walters to Rickett dated 1 February 1953	
CLOSED UNDER FOI EXEMPTION .....		
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958		
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PROPOSALS FOR ARRANGED PARLIAMENTARY QUESTION FOR WRITTEN ANSWER

DRAFT QUESTION: To ask the Secretary of State for the Home Department if the judgment delivered by the European Court of Human Rights on 5 November 1981 in the case of "X" v the United Kingdom, or the passage of the Mental Health (Amendment) Act 1982, prevents or inhibits courts from exercising their power under section 65 of the Mental Health Act 1959 to make restriction orders in respect of mentally disordered offenders.

DRAFT REPLY: No. The power to make a restriction order (in a case requiring the protection of the public from serious harm) is not diminished by the European Court's judgment on appeal rights or by the changes to be made from 30 September by the Mental Health (Amendment) Act 1982. More than 130 restriction orders were made during 1982.

*mr*



7  
June 22/1/83

## Fagan release criticism raises legal objections

By Anthony Bevins, Political Correspondent

The Prime Minister's Commons comments on the release of Mr Michael Fagan have caused distress within senior legal circles. It has been stated that if Mrs Thatcher had been better advised, she would not have made any comment which could have been interpreted as a criticism of the trial judge, Judge James Miskin.

Instead, Mrs Thatcher recognized the "deep feelings" that had been expressed by one of her own backbenchers, and then added: "I understand that the judge who presided in this case made a hospital order without also making a restriction order, which it was open to him to make.

"The hospital order put the decision on to the medical tribunal. Had the judge made a restriction order as well, the matter could have gone to the Home Secretary. At present we must obey the existing law, which was drawn up in 1959." Downing Street sources said yesterday that Mrs Thatcher's remarks had been intended as a "neutral" description of the facts.

But senior legal sources stated yesterday that it would have been better if the Prime Minister had responded that such matters were best left to the courts. It was suggested that

Continued on back page, col 4

## Thatcher remarks on Fagan queried

Continued from page 1

the pillar of justice was all-too-easily and all-too-often rocked by the comments of politicians inside and outside Parliament.

It was also remarked that the Prime Minister had remarkably failed to make any reference to an amendment to the Mental Health Act, 1959, which was enacted by the present government on October 28, just three weeks after Mr Fagan had been dealt with at the Central Criminal Court.

The Mental Health Amendment Act, 1982, significantly

alters Section 65 of the 1959 Act, under which a judge is empowered to make the restriction order referred to by the Prime Minister.

More importantly, that amendment was made to the law because of a judgment by the European Court on November 5, 1981, in which it was stated that it was a breach of the European Convention of Human Rights that a mental health review tribunal should not have the right to release a patient without reference to the Home Secretary. It was ruled that in the case of a restriction

order, it was not enough that a tribunal should be confined to an advisory role.

Because of that judgment, the law was amended last year. Downing Street sources pointed out last night that this amendment would not take effect until September 30 this year.

The point was made yesterday, however, that Judge Miskin could not very well have signed a restriction order, in the light of the European Court ruling and the Government's acceptance of it through amending legislation.

Leading article, page 9

Juan

## SEPARATION OF POWERS

It is unbecoming in the Prime Minister to be so ready with instant criticism of controversial judicial decisions. The temptation to substitute one's own sense of justice for the sense of justice of a judge, who has heard the evidence and seen the witnesses, is a temptation to which leader writers are prone. They may still expect their prime ministers to be made of sterner stuff.

The free-for-all of Prime Minister's Questions is the occasion for these observations. Just before Christmas Mrs Thatcher agreed with her questioner that a sentence that had been passed in a rape case at the Leeds crown court was so lenient as to be "wholly incomprehensible". The Speaker pulled her up for breach of the procedural rule that a judge cannot be criticized except on a substantive motion before the House. The next day the Speaker corrected himself. That rule applies only to reflections on a judge's character or motives. No such restriction is placed on a member who simply wishes to contend that a judge is wrong. The Speaker seldom slips. Perhaps on that occasion he was startled to hear a Prime Minister roundly roast a judge. His acumen momentarily deserted him, but not his true

instinct. Something had occurred which should not have occurred.

On Thursday of this week the subject of Mr Michael Fagan's discharge from hospital was raised - he it was who last year made monkeys of the palace police and sorely embarrassed the Queen. This time Mrs Thatcher was more circumspect. In print the exchange might be read to imply no criticism at all. That is not how those who heard it heard it, though there is doubt whether her displeasure was directed at the tribunal which discharged Mr Fagan or the judge who sent him to hospital under one type of order rather than another. Either way, it is hard to see what there is to criticize.

For his palace capers only one charge was brought against Mr Fagan, stealing half a bottle of wine, and of that a jury acquitted him. Next week he stood trial on a totally unconnected charge of assault. The alleged victim, his stepson, did not show up and the judge ordered his acquittal, describing the incident as trivial. Mr Fagan then pleaded guilty to taking and driving away a car, a crime that does not call for a custodial sentence on first offence. The judge, having been apprised of his evidently disturbed mental state, ordered him

to be sent to a secure hospital with the words, "My order is neither punishment nor sentence. He will be sent there as a patient and not as a criminal. I hope he will be cured and when he is cured he will be discharged". He has now been discharged. Whether he is cured the mental health tribunal is better able to say than the House of Commons.

To be deprived of his liberty in England a man must be convicted of a crime that properly attracts a custodial sentence, or his mind must be so deranged that he would be a danger at large. A danger, not a nuisance. There is no procedure for shutting away "undesirables". And long may that be so.

But apart altogether from the merits of these cases, it would not be a happy development if the Prime Minister were to be available at Question Time for comment on any judicial decision that has hit the headlines. The Prime Minister's influence is very powerful, especially this Prime Minister when she is riding high. An impression that the judges work in the shadow of her displeasure or the light of her pleasure is one that is better avoided. The constitutional doctrine of the separation of powers applies in this area at least.

to be expensive. My hon. Friend mentioned the water industry. There is an agreement in that industry to solve disputes through arbitration, which is binding upon both sides. I understand that the employers and unions are negotiating through ACAS. I hope that the negotiations will be successful and that the threat to strike will be withdrawn.

**Mr. Foot:** The position in the water industry, with possible strike action, is serious. Will the Prime Minister, as a Government, do everything possible to ensure that the discussions at ACAS are allowed to succeed? Will she, as a Government, ensure that no steps are taken that would injure the possibility of successful negotiations? The unions have wanted that from the beginning, and they want it now. They want fair treatment from the Government.

**The Prime Minister:** The right hon. Gentleman knows that there is a threat to strike. I understand that that is in breach of the agreement, which is to resolve disputes through arbitration. I join with him in hoping that the discussions through ACAS will be successful.

**Mr. Foot:** I would not invite the right hon. Lady to say anything that would make a settlement more difficult—I would not wish to do so. I am sure that she will understand that there have been ballots throughout the industry. There is strong support among its workers, who feel that the proper negotiating machinery has been interfered with and that the Government have intervened. Will she encourage the discussions at ACAS to succeed through genuine negotiation? I am sure that a settlement could be reached on that basis.

**The Prime Minister:** I have already wished the negotiations well, and I repeat that.

**Mrs. Faith:** Without in any way criticising the tribunal that sat in Liverpool yesterday, does my right hon. Friend agree that it is a matter of anxiety that Michael Fagan was released from hospital yesterday without any surveillance? Would she further agree that the Mental Health Act 1959 should be amended so that in future it should be possible for mental health tribunals to impose a supervision order on people leaving hospital, if that is thought to be necessary?

**The Prime Minister:** I recognise the deep feelings that my hon. Friend has expressed. I understand that the judge who presided in this case made a hospital order without also making a restriction order, which it was open to him to make. The hospital order put the decision on to the medical tribunal. Had the judge made a restriction order as well the matter could have gone to the Home Secretary. At present we must obey the existing law, which was drawn up in 1959.

**Mr. David Steel:** Has the Prime minister seen the report of the Central Statistical Office, published yesterday, which showed that manufacturing output in November was the lowest since the mid-1960s? Is that not a remarkable achievement after four years of her economic policy?

**The Prime Minister:** The right hon. Gentleman is correct in what he says about manufacturing production. That is, of course, only part of production. The GDP over the same period is considerably up. The right hon. Gentleman referred to the middle 1960s. The index of manufacturing production is at its lowest since 1967. On the same basis, GDP is up 26 per cent. on the 1967 figure.

**Viscount Cranborne:** Does my right hon. Friend accept that, in seeing this afternoon the survivors of the Logar massacre in which 105 unarmed civilian Afghan people were massacred by Russians, she has earned the gratitude of the Afghan people and struck a blow for the self-determination of that country?

**The Prime Minister:** I agree with my hon. Friend. These people are brave and courageous resistance fighters. We must do everything that we can to support them.

**Q2. Mr. Alton:** asked the Prime Minister if she will list her official engagements for 20 January.

**The Prime Minister:** I refer the hon. Gentleman to the reply that I gave some moments ago.

**Mr. Alton:** Has the Prime Minister had time to consider the case of the 7½-year-old child in my constituency who has become addicted to glue-sniffing? Does the right hon. Lady agree that, in view of the massive increase in solvent abuse, there is a desperate need for new legislation to prevent the sale of such solvents to young people, and to establish centres to help children who become addicted to glue-sniffing?

**The Prime Minister:** I know of that case and I am aware of how deeply we all feel about it, and how worried we all are that there is an outbreak—if that is the right word—of glue-sniffing in certain areas. The hon. Gentleman will know that it is not easy to stop such action by legislation. I doubt whether legislation would have much effect upon it. He will also be aware that in Liverpool and many other local authority areas voluntary bodies are working with the authorities to tackle solvent misuse and alert youngsters to the dangers so that they may be responsible for their own health. He will also have seen an announcement by the Under-Secretary of State for Health and Social Services to the effect that he is consulting the authorities, retailers and voluntary and statutory bodies to see what they can do to help.

**Mr. Best:** In view of the interest being shown in Scottish seats by some Opposition Members does my right hon. Friend agree that that could constitute a good case for devolution, if not outright independence, for Scotland.

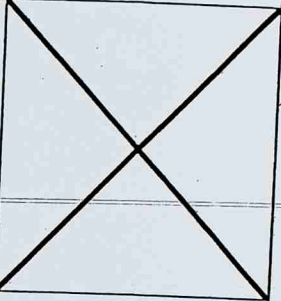
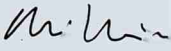
**The Prime Minister:** I congratulate my hon. Friend on the ingenuity of his question. I am sure that whatever happens he will be returned for his seat in Wales.

**Mr. Arthur Lewis:** During the Prime Minister's busy day, could she take the opportunity to ask for the relevant papers from the European Assembly, which has apparently passed a resolution condemning her and the British Government for saying that we should buy British whenever possible? The British Government representative made an abject apology and said that it was not the policy of the British Government that we should buy British, because that is against Common Market rules. Are we to be told by this bureaucratic "Jenkins" assembly that we cannot ask people to buy British?

**The Prime Minister:** I feel a good deal of sympathy with what the hon. Gentleman says. We are free to choose what we buy. I hope that British goods will soon be better than those of any of our competitors. I believe that we should be free to buy British.

**Q3. Mr. Stanbrook:** asked the Prime Minister if she will list her official engagements for Thursday 20 January.

# A The National Archives

DEPARTMENT/SERIES	Date and sign
..... PREM 19 .....	
PIECE/ITEM ..... (one piece/item number)	
..... 1623 .....	
Extract details: Letter and attachment from Walters to Rickett dated 31 January 1983	
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From: THE PRIVATE SECRETARY



NORTHERN IRELAND OFFICE  
GREAT GEORGE STREET,  
LONDON SW1P 3AJ

Colin Walters Esq  
Home Office  
Queen Anne's Gate  
London SW1

*D*  
*17/1*  
14 January 1983

*Dear Colin*

LAW OF TRESPASS

Thank you for copying to this office your letter of 23 December to David Watts?

As far as Northern Ireland is concerned the reference in paragraph 7 is satisfactory.

We quite understand the need to consider seriously and to canvass the case for new criminal laws in the field of trespass, and accordingly should not object to the publication of the draft consultative paper. At the same time we must share the obvious doubts about anything which might involve a great deal more police, prosecution, court and penal time in dealing at public expense with complaints about activities which in the past have for the most part been quite satisfactorily resolved privately or at most by civil action. We may hope that the proposed consultation will throw up a more limited way of dealing with those few instances of trespass which may justify public action.

I am copying this letter to the recipients of yours.

*Yours ever*

*Dave Hill*

D A HILL

Search: Buckingham Palace Aug '84

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HOUSE OF LORDS,  
SW1A 0PW

Our Ref: 124/454/01

10th January, 1983.

Dear Giles,

Law of Trespass

Thank you for your letter of 23rd December in which you sought the Lord Chancellor's approval to the consultation paper which you enclosed.

In that letter you told me that Home Office Ministers had already approved the draft, and I have since seen a copy of Willie Rickett's letter to you giving the Prime Minister's approval. Unfortunately it seems that the paper was shown to Ministers before it had been circulated at official level to see if officials had any comments, and our lawyers have a considerable number of amendments to suggest. I enclose a copy of the consultation paper so amended. You will see that a large number of the amendments are small, and I think self-explanatory; but some of them are more important, and one or two call for some explanation.

First, paragraph 11 seems to be unnecessary. The offence with which it deals is mentioned in general terms in paragraph 9, and in specific terms in paragraph 2 of Part I of the Annex.

In paragraph 25 the suggestion that a child trespassing to recover a ball from a neighbour's garden would be committing an offence under the new proposals seems to ignore the fact that a child of that tender age is *doli incapax*.

The last three sentences of paragraph 32 seem to be unnecessary. The suggestion that special protection could be "unduly extended" by subordinate legislation seems to ignore the fact that Parliament has a right to control such legislation. As to the second sentence, trespassers very likely would not know which buildings were protected by the criminal law, but we wonder how many trespassers on the premises of diplomatic missions realize that they are committing a criminal offence under section 9 of the Criminal Law Act 1977.

Paragraph 42, which deals with penalties and mode of trial, makes no mention of the effect the creation of such an offence might have on the workload of the courts. The workload of the magistrates' courts is primarily a matter for your Department, but since there is a suggestion that the offences should be triable summarily or on indictment, our Criminal Courts Branch have suggested that paragraph 42 be re-drafted to take this possibility into account, and the suggested re-draft appears on page 21 of the paper.

/cont'd.....

Colin Walters, Esq.,  
Private Secretary to the Secretary of State for the Home Department,  
Home Office,  
Queen Anne's Gate,  
LONDON S.W.1.

/2.....

The Lord Chancellor has seen the draft consultation paper with the amendments suggested by our lawyers, including the suggested re-draft of paragraph 42, and has approved it in that form. I am not of course saying that he would insist on every minor amendment, and if there are any changes which your officials would like to discuss with ours I suggest they get in touch with Michael Collon (219 6099); he will however be in Brussels until Thursday, 13th January.

I am sending copies of this letter to Willie Rickett (Prime Minister's Office), Jim Nursaw (Law Officers' Department), Muir Russell (Scottish Office) and Derek Hill (Northern Ireland Office), with copies of the consultation paper as approved by the Lord Chancellor.

*Yours sincerely,*

*D. E. Staff*

D.E. Staff

/Enclosures.



TRESPASS ON RESIDENTIAL PREMISES: A CONSULTATION PAPER

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## PART I - INTRODUCTION

1. There are a number of issues regarding the law of ~~trespass~~ in England and in respect of unauthorised entry into residential premises Wales/ on which the Government would find it helpful to have comments, both from organisations with special interest in the matter and from members of the public at large. This process of consultation forms part of a review of the law which the Home Secretary, in consultation with the Lord Chancellor and the Attorney General, set in train in July 1982 following the intrusions into Buckingham Palace by Michael Fagan in June and July.

2. The public concern which was expressed, in the light of these incidents, about the scope of the law of ~~trespass~~ was directed mainly at the apparent lack of criminal sanctions to deal with trespassers on residential premises.

3. The review has therefore concentrated principally on the question whether any changes in the present law are required to provide greater protection for people in their own houses, and not only for those especially vulnerable to uninvited intrusion but also for the public at large. It has not been concerned with the very wide range of circumstances in which there might be unauthorised entry or trespass on, for example, farm land, private estates, local authority land or land or premises used for industrial or commercial purposes.

4. The Government believes that any extension of the criminal law in this area would represent an important development which ought not to be undertaken without the fullest possible consideration. This consultation paper therefore identifies the issues which the Government thinks are involved in any proposal to change the law and sets out the arguments which relate to each. In doing so, it necessarily identifies a number of practical difficulties. This is because it is important to examine rigorously all proposals for extending the criminal law to make sure that they do not go wider than is intended, and that they are workable.

5. The paper is prefaced with an account of the present state of the law, and an analysis of the criteria which we think ought to be borne in mind in considering the case for any new criminal offence.
  
6. The Government will welcome comments on the matters discussed in this paper. These comments should be sent to the following by [allowing 3 months for consultation]:

The Assistant Secretary  
C4 Division  
Home Office  
Queen Anne's Gate  
LONDON  
SW1H 9AT  
(Tel no: 01 213 3544)

Extra copies of this consultation paper may be obtained from the same address.

7. The law of Scotland differs from that of England and Wales. The Secretary of State for Scotland will be carrying out a parallel but separate review of the scope for legislation in the field covered by this consultation paper. The law of Northern Ireland is also under separate review.

PART II - THE EXISTING LAW

Background

to land

8. In England and Wales, trespass<sup>u</sup> has traditionally fallen within the province of the civil rather than the criminal law. The main exceptions are when the trespass is undertaken with intent to commit any criminal offence, or is associated with other criminal or violent conduct. The mere fact of ~~unlawfully~~ entering private property without authority, but ~~without any accompanying criminal conduct or intent, which for the purpose of this paper is termed "simple trespass", nor has it ever been.~~ is not by itself a criminal offence ~~matter the words do not do it with by criminal acts.~~ There are a number of reasons for this, most of which will be touched on in the discussion of possible options later in this paper. Broadly it has been felt up to now that simple trespass does not always, or even often, entail actions so hostile to the interests of an occupier or the general public that criminal sanctions are appropriate. Moreover, such trespass does not necessarily demonstrate a clearly discernible infringement of rights, still less conscious wrong-doing;

thus it can frequently involve a dispute between two individuals over their respective rights to the property in question; or it can involve no more than innocent, non-malicious or trivial acts by people unaware that they are trespassers. <sup>or it can involve the eviction of occupiers whose right to occupy has ended but who have nowhere else to go</sup> An important consideration here is the role of the police. Their task has traditionally been seen as the impartial maintenance of the Queen's Peace. Care has therefore always been taken to avoid creating situations in which they might appear to be "taking sides" in what is, in essence, a private dispute, particularly when this might adversely effect their relationship with the public. These considerations clearly do not apply in situations which involve criminal acts or the use or threat of violence. The implications for the police if the law on trespass were to be extended are dealt with in Part VII of this paper.

9. The law on conspiracy to trespass and offences of entering and remaining on property was reviewed by the Law Commission in 1976. ~~(see Commission Report 1976)~~

The 1/2

In Part II of their Report (No.76, paras. 2.1 to 2.99) <sup>unauthorised</sup> the Law Commission identified the problem of squatting - that is the ~~unauthorised~~ occupation residential ~~premises~~ <sup>premises</sup> ~~over~~ of premises by individuals or groups of persons ~~for use as a temporary~~ in certain circumstances, ~~namely~~ - as a matter which <sup>important</sup> justified the use of the criminal law, and their recommendations were given effect in the Criminal Law Act 1977. Thus, ~~the principal~~ <sup>general</sup> exceptions to the <sup>general</sup> rule that the criminal law does not involve itself in disputes over possession of property ~~in the circumstances~~ <sup>were</sup> created by the 1977 Act. ~~The~~ <sup>were</sup> exceptions <sup>were</sup> made ~~in the 1977 Act~~ because of the degree of hardship which would arise if immediate action could not be taken to restore to a displaced occupier the use of his living accommodation. The general principle reflected in this legislation, therefore, is the need to protect the most pressing and urgent interests of people who are severely affected by the actions of others. An exception was also made for trespass on diplomatic premises in pursuance of the United Kingdom's international obligations to protect diplomatic property, and as a necessary consequential of the abolition of the offence of conspiracy to trespass in the Criminal Law Act of 1977. [See para. 10].

The detailed provisions

10. Apart from the Act of 1977, there is a substantial body of law governing acts of a violent or otherwise criminal nature on any type of property, including residential premises. Thus trespass in a building with intent to steal, inflict grievous bodily harm, commit rape or do unlawful damage, constitutes (under section 9 of the Theft Act 1968) burglary, which is punishable with 14 years' imprisonment. Under section 8 of the Criminal Law Act 1977 it is a criminal offence to enter property, on which a person opposed to that entry is present, with any weapon of offence. It is also an offence, under section 6 of the 1977 Act, to use or threaten violence to enter any premises, provided that there was someone present on those premises opposed to the entry and the person responsible for the threats or violence knows that that is the case. In addition it is an offence under the Vagrancy Act 1824 to be found on enclosed premises with intent to commit an offence.

[ 11. These offences are supplemented by that contained in the 1977 Act directed at certain forms of squatting. Section 7 of the 1977 Act made it an offence for a trespasser to fail to leave premises on being requested to do so by a displaced residential occupier or a protected intending occupier.]

12. In addition to those provisions which deal specifically with offences or mischiefs committed on premises or property, there are a number of general provisions in statute and common law which could be used in suitable circumstances in order to deal with trespassers or their activities on residential premises. Thus the offence of criminal damage under the Criminal Damage Act 1971 relates to the destruction or damage of property belonging to another without lawful excuse - provided that the damage is caused intentionally or recklessly. In certain circumstances, moreover, a charge of unlawful assembly might lie where a number of trespassers are involved; and there might be circumstances, for example involving abusive words and conduct, where trespassers on residential premises could be dealt with on the complaint of the occupier for conduct likely to cause a breach of the peace, carrying liability to be bound over to keep the peace and be of good behaviour. Lastly, the general law relating to sexual assaults and other offences against the person, and to theft, applies as much on residential premises as it does elsewhere.

13. A more detailed summary of the provisions of the criminal law most relevant to the protection of residential premises, together with their related penalties, is contained for ease of reference in <sup>the</sup> Annex to this paper.

14. It is doubtless possible to criticise the way in which these existing offences have been framed, or in which they operate in practice. (For example it has been claimed that the criminal damage offence is not particularly helpful,

/given

given the need to identify the individual responsible for the damage). It would be helpful to have comments directed at the detailed structure or operation of these existing offences. This paper, however, is addressed to the particular criticism that what is left ~~uncovered by the present~~ still outside the criminal law is the act of intrusion which, though not violent in execution or otherwise criminal in intent, may be disturbing in other ways.

15. In such circumstances certain lawful means of redress exist. An aggrieved occupier of property has rights of self-help at common law. For example, he may use a reasonable degree of force in order to prevent a trespasser from entering, or in order to eject him. The police, moreover, may lawfully assist the rightful occupier of property to eject trespassers, though they have no duty to do so (and when doing so are not protected by the special powers and privileges of constables).

16. An occupier, <sup>various remedies</sup> additionally, has ~~means of redress~~ <sup>seek an order for the trespasser's eviction</sup> ~~in the civil courts.~~ He may ~~seek an order for the trespasser's eviction~~ <sup>re-entering</sup> and claim an injunction <sup>and may</sup> to restrain him from ~~re-entering~~ <sup>on the property,</sup> ~~with~~ <sup>without</sup> a claim ~~for damages.~~ ~~It would be wrong to regard the ordinary civil remedies as~~ ~~the only ones available to the occupier in the event of a trespass.~~ ~~It is not the purpose of this paper to question the value or efficacy of these civil remedies. They are, no doubt, good so far as they go. But it seems likely that the ordinary citizen who finds an intruder in the home would rather invoke the protection of the criminal law and the assistance of the police than involve himself in a physical struggle or in litigation.~~

PART III - THE CRITERIA FOR NEW CRIMINAL OFFENCES

17. The rest of this paper discusses the case for making simple trespass, either in all or only in some circumstances, a criminal offence. There are no expressly stated criteria for determining whether or not criminal sanctions are appropriate to deal with any particular kind of act. In general, however, successive Governments, and Parliament in considering proposed legislation, have kept in mind some guiding principles.

18. One is that the criminal law should be used to prohibit or to contain only that behaviour which is seen as meriting society's explicit disapproval to the extent of criminal sanctions to deter people from it and to punish those who are not deterred. This implies that the behaviour in question goes beyond what it is proper to deal with on the basis of compensation as between one individual and another and <sup>that</sup> it concerns the public interest in general.

19. A second [general] principle is that in general criminal sanctions should be reserved for dealing with undesirable behaviour for which other, less drastic, measures of control would be ineffective, impracticable or insufficient. Observance of this principle helps to maintain public respect for the criminal law, and also to ensure that the burden of work carried by the police, the courts and the criminal justice system in general is not unnecessarily increased.

20. Finally, there are some practical considerations to be borne in mind. It is important that a new offence should be enforceable. Respect for and compliance with the criminal law as a whole depend on its being enforced. This, as well as natural justice, requires that the law should be clear in its scope and effect.

21. The case for a new criminal offence in the field of trespass should be tested against these considerations.



PART IV - THE NEED FOR CRIMINAL SANCTIONS: ASSOCIATED ISSUES

22. Part II of this paper has shown that the criminal law already ~~protects~~ protects a large number of the circumstances in which the occupiers of residential premises /from various categories of unlawful intrusion. ~~no offence in the context of one form of trespass or another.~~ The existing law covers certain forms of squatting, violent entry, burglary, breaches of the peace, criminal damage and offences against the person by people who have entered on the premises; but ~~criminal sanctions do not apply in the vast majority of cases of~~ simple trespass itself is still outside the criminal law.

Unwelcome Intruders

23. Alarm and annoyance can plainly be caused by uninvited intrusion into residential premises. Consider, for example, the case of a man trespassing on residential premises and entering the bedroom of a woman or child - whatever his motive may be - or a "Peeping Tom", who ~~puts a ladder against a bedroom window~~ puts a ladder against a bedroom window ~~or "gatecrashers" at social occasions who behave objectionably and who refuse to leave on being asked to do so.~~ - or "gatecrashers" at social occasions who behave objectionably and who refuse to leave on being asked to do so.

24. Many other examples may be envisaged of patently offensive and unreasonable behaviour which might not be caught by the ~~criminal~~ criminal law. Do these warrant the use of criminal sanctions? It could be argued that some of these are so unusual that they do not call for the creation of a general offence of simple trespass. Are other measures for dealing with them inadequate? If certain forms of intrusion cause extreme distress, can they in law be satisfactorily distinguished from others? Should there be special sanctions for the protection of certain individuals or institutions especially vulnerable to these forms of abuse?

/ "Innocent"

"Innocent" Trespass

25. There are other forms of intrusion which might be covered by a new offence of simple trespass but which are in themselves entirely innocent or trivial and not liable to cause distress or annoyance, at least on anything approaching the same scale. Consider a friend or neighbour entering a house or garden to retrieve something left there, in the reasonable but mistaken belief that this would be acceptable to the occupier ~~xxxxxx~~ <sup>[ - or a child wanting to recover a ball or toy from a garden or house etc which he may have accidentally thrown it.]</sup> ~~xxxxxx~~ through a garden ~~xxxxxx~~ A short cut/ may be taken, knowingly or otherwise, in circumstances in which no harm could possibly be done to anyone.

Should such transgressions be prosecuted? If a general offence is to be created, is it sufficient, in matters involving the reputation and liberty of individuals, to leave the decision entirely to the discretion of the police? Should the right to bring a private prosecution be excluded? Should there be additional safeguards to protect the "innocent" trespasser who is simply unaware that he is trespassing? If so, what form should these take?

Another question is whether the scope  
 26. ~~xxxxxx~~ of any criminal offence of simple trespass ~~xxxxxx~~ should be restricted to a particular time period - for example night time (on the lines of the old offence of burglary\*) or the hours of darkness? Is this a possibility worth considering - bearing in mind that this would not necessarily do away with a need for the safeguards canvassed above ~~and elaborated in Part VI?~~ If so, how specifically should the period of activation of the law be defined? Would such a period meet the criterion that any offence should be clear and precise in its scope and effect? Part VI below summarises various possibilities.

Disputes over residential rights

27. There is another category of people in respect of whom a new criminal offence of trespass might give rise to considerable problems - namely those

\_\_\_\_\_/who  
 \*This offence applied to the "night" - defined in section 46 of the Larceny Act 1916 as "the interval between nine o'clock in the evening and six o'clock on the morning of the next succeeding day".

at least a right who claim some right or title to the property in question or ~~or right~~ not to be evicted except by order of the court. ~~residence equal to, or superior to, that of the owner or occupier.~~ One may envisage a variety of circumstances in which disputes could arise over a person's lawful right to be present on particular premises, and in which one of the parties might seek to prosecute for any new criminal offence of trespass. These could involve merely domestic disputes between, say, a family and a long-resident relative whose presence in the house was no longer welcome, or attempts by people who considered they had a legal claim to title seeking to enforce this by entering a premises uninvited. Here again, is it desirable that the criminal law should apply in such situations? If not, how could they be excluded from any general offence of simple trespass? If so, would any new offence need to refer explicitly to these sorts of cases? Or would it be sufficient simply to leave it for the courts to decide whether a person in a given set of circumstances was a "trespasser"? Would this create unacceptable difficulties for the courts and the police - notwithstanding that the Criminal Law Act 1977 already makes use of the undefined term "trespasser"? These issues are given further consideration in Part VII ~~of the paper.~~

28. <sup>/</sup>To sum up, a straightforward unqualified offence of simple trespass on residential property would, ~~the scope~~ cover a wide range of circumstances which may not all need to be dealt with in this way, or which could give rise in some cases to peculiarly difficult problems of enforcement. To avoid these difficulties and to conform with the criteria set out in Part III of the paper, it might be necessary to provide for some of the various statutory safeguards summarised in Part VI. But before coming to these it is necessary to examine the scope of "residential premises" for the purposes of any change in the law regarding unauthorised intrusion.

/PART V

## PART V - NATURE OF PREMISES TO BE COVERED BY ANY NEW CRIMINAL OFFENCE

Residential premises in general

29. It is necessary to consider whether any new criminal offence of simple trespass should apply to residential premises of all descriptions. This expression covers a very wide range and includes houses, blocks of flats, residential apartments in buildings used for other purposes, hostels and halls of residence (including, for example, nurses' homes and students' rooms in universities). How should these premises be defined in order to provide maximum coverage? Would it be sufficient (taking the definitions in section 12 of the Criminal Law Act 1977 as convenient examples) to refer to any building or part of a building under separate occupation which is habitually used as a residence? Would it be necessary to bring within the ambit of the new offence parts of premises which do not form part of the living space but which are common to the residents of the premises as a whole - for example entrance halls, landings or corridors? On the one hand it would make sense to cover areas such as a corridor in a nurses' home, as it would be difficult (though not impossible) for any trespasser to justify being there by accident and it would seem absurd that the law could not be brought into operation until someone had completed the ultimate act of trespass by (for example) entering someone's room. On the other hand, trespass into the entrance hall of a block of flats is not necessarily as serious. Moreover the nature of particular premises, <sup>e.g. hotels or conference centres,</sup> could make it likely that someone could stray accidentally into private apartments. There are obvious difficulties in distinguishing in law between these various situations. Would it be acceptable, within a very general definition of "residential premises", to rely on the discretion of the police and the courts in particular cases, while simultaneously providing safeguards for people who trespass in ignorance of the true nature of the premises they have entered?

30. There is the further issue of whether the new offence should require <sup>a lawful occupier</sup> ~~occupier~~ in residence to have been ~~occupier~~ at the material time. The principal justification for an offence of simple trespass is the unacceptable annoyance or distress that trespass

/can

can cause to people on the premises. For example, for someone to enter someone else's holiday home in their absence (assuming no infringement of existing criminal provisions) ~~is, and should be, a civil wrong entitling the owner to redress~~ ~~may amount to a criminal offence~~ but is it really a matter for the criminal law? Would it be right, therefore, to provide, as in the offence of violent entry in section 6 of the Criminal Law Act 1977, that a necessary condition of the offence should be that there ~~should be someone present on the premises~~ <sup>a lawful occupier in residence</sup> at the time of the trespass?

#### Specific types of residential premises

31. An alternative to a criminal offence which covered all forms of residential premises is to restrict it to specific types of premises which are thought to require special protection. There is already a precedent for this approach in section 9 of the Criminal Law Act 1977, which broadly makes it an offence to trespass on the premises of diplomatic missions (subject to the accused being able to prove that he believed that the premises did not come within the category covered by this section). The advantage of such an offence is that it picks out those premises which are particularly vulnerable because of the circumstances in which they are used or the individuals who live in them. The importance and special circumstances of these premises would have to be such as to justify making the mere fact of trespass on them a criminal offence. This in itself would avoid many of the difficulties discussed in Part IV and in this part of the paper. It would be necessary merely to provide a defence for an accused person similar to that included in section 9(3) of the 1977 Act. Examples of the types of premises which might be covered include certain Royal residences or certain official Government residences deemed to be especially vulnerable. There might need to be a power to extend, by Order in Council subject to Parliamentary approval, the range of premises covered.

32. The principal objection to this approach is ~~likely to be a matter of policy~~ <sup>/that it might</sup> ~~expectability, because it could~~ appear invidious to provide special protection for certain premises or individuals which is denied to the public at large. The

/Government

Government indeed has received no request from those directly concerned for any particular premises to be specially protected. ~~There must also be fears of such a provision being unduly extended by subordinate legislation to premises which do not justify this special protection to the same extent as the others. In addition there would be the problem of making known to possible trespassers that a particular building was protected by the criminal law. The objections of policy to this proposal are therefore substantial, but it would be helpful to the Government to know to what extent they are felt to be compelling.~~ Comments are invited on these proposals, and on the points raised.

Land associated with residential premises

33. Another issue is whether the definition of residential premises or of specific types of premises should include the surrounding land. There is, of course a strong case in principle for doing so. It could be argued that people are entitled to the same degree of protection in, say, their own gardens as they are in their own houses, and there are specific cases (for example that of the Peeping Tom) where it may be only the land itself which is being trespassed upon. But even given this, where does one draw the line? There would be obvious difficulties if a definition of "residential premises" went so wide that it covered not only, for example, the back garden of a semi-detached dwelling, but also the large estate of a country house. The greater the geographical area covered the greater the likelihood of the criminal law being brought into play in situations which manifestly do not justify it. Even if this could be guarded against by specific defences in the new legislation (see Part VI ~~XXXXX~~), it is in any case open to doubt whether a provision aimed at residential premises should also cover large areas of land simply because they surround a particular building. There are obvious difficulties in the case of land adjacent to premises which are only partly used for residential purposes. Here again, section 12 of the Criminal Law Act 1977 might be helpful. Section 12(1)(a), in defining "premises", refers to "..... any land ancillary to a building, the site comprising any building or buildings together with land ancillary thereto ....." . In the context of an offence of simple trespass on

/residential

residential premises, would such a formula, suitably adapted, be sufficient to restrict its scope broadly to the land immediately adjacent to the residential part of a building? Or would there be any support for the view that any new offence should not apply to land at all?

34. One special difficulty which would arise from including adjacent land in the definition of premises covered by a new offence is that it would increase the risk of applying the criminal law to disputes between neighbours over access to, and the use of, land in circumstances which, if litigation is needed at all, are best left to the civil law. One possible example (out of many) is where someone needs to go on to a neighbour's garden in order to gain access, with gardening equipment, to another piece of his land. If the occupier objects to his doing so but he persists in his intention, he becomes a trespasser on residential premises, and if a new offence of simple trespass were created he would be liable to prosecution. Does this represent the sort of social abuse with which the criminal law ought to be concerned? Even if the complainant (as suggested in paragraph 25) has to prove a reasonable cause for annoyance etc. this does not remove the possibility that such cases, quite inappropriately, would involve the police and come before the criminal courts. It is difficult, however, if any new offence is to apply to land, to see how such a risk could be avoided. This is a point on which it would be particularly helpful to have comments and suggestions.

35. This Part of the paper illustrates one of the central problems of creating a new offence - namely that different answers may be right as between different types of premises. Thus it might be thought desirable to exclude from the scope of an offence the entrance hall of a block of flats, those parts of a building used as offices but which happened to have in it a caretaker's flat, or the outlying areas of a large estate. But an entirely different view might be taken in the case of non-residential parts of premises in which any trespass is thought to constitute an

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unacceptable intrusion or in which the various uses cannot realistically be distinguished. The approach outlined in paragraph 33 ~~above~~ offers one way round this difficulty, but this by definition would be of a specific rather than a general application. Are there other means of resolving this central problem?

/PART VI



## PART VI. SAFEGUARDS

36. At various points in the paper there have been references to the need for safeguards to be built into any new general offence of simple trespass to protect people who might otherwise be caught inappropriately by criminal sanctions and to close any obvious loopholes in the protection afforded by a new offence. This Part of the discussion paper summarises these various proposals - some of which might be necessary to ensure that any new offence conformed with the general criteria outlined in Part III.

i) As suggested in paragraph 25, it seems necessary to provide some protection for people who trespass unintentionally - for example by straying accidentally into unenclosed private land or by overlooking a notice which indicated that a particular section of a house was private. This suggests that it should be a defence against any proceedings under a new offence for the defendant to be able to prove on the balance of the probabilities that he believed the premises in question were not premises to which the statutory provisions apply (i.e. on the lines of section 9(3) of the Criminal Law Act 1977). Would such a provision be sufficient ~~XXX~~ protection? Or would it be preferable to put the onus on the prosecution to prove that the person concerned had trespassed knowingly?

ii) Paragraph 23 suggests that an abuse could thereafter be caused by someone who had entered premises other than as a trespasser. Is it accepted therefore that it would be necessary for any new offence to penalise not only entry as a trespasser on residential premises but also when, having entered such premises other than as a trespasser, someone fails to leave at the request of an occupier or someone else who is lawfully present - i.e. someone who stays on as a trespasser?

iii) Paragraph 25 also identifies a number of situations in which various trivial and innocent forms of trespass, which might not even be objectionable to an occupier, might be caught by any new offence. To cover such situations is there a need for an additional defence whereby an accused might prove that he had reasonable cause for believing either that he could lawfully enter the premises in question or

/that

that the occupier would have consented, if asked, to his entry?

v) Paragraph 30 canvasses the possibility of restricting the activation of the offence of entry as a trespasser (as opposed to failing to leave at the request of an occupier) to those circumstances where some ~~one is present on the premises~~ <sup>lawful occupier is in residence.</sup> at the time of trespass. Is it thought that there is a sufficient case for such a restriction?

/PART VII

iv) Paragraph 26 raises the possibility of confining the scope of any new criminal offence to intrusion by right. Is this desirable?

PART VII - ENFORCEMENT AND POLICE INVOLVEMENT

Police Involvement

37. If any offence of trespass on residential premises were to be created there would be no obvious body other than the police to carry out enforcement. The existing civil remedies rest in the hands of the individual concerned. On one view, if a criminal offence of trespass on residential premises were to be created, it might be possible for enforcement to be left to the individual by way of private prosecution. But in practice a criminal offence of trespass would probably need to carry with it associated enforcement powers, e.g. arrest, and for the grant of such powers to be restricted to constables. And if the individual was unable to take effective action himself through a lack of enforcement powers, in the natural order of events he would call on the police for them to exercise their powers. In short although there would be no duty on the police to enforce the law in this area the expectation is likely to be that they would.

38. What would be the practical effects of police enforcement? Does the activity itself in each case justify police enforcement? And what would be the resource implications for the police?

39. The present role of the police in this area is set out in paragraph 8. The creation of a criminal offence of trespass on residential premises and its enforcement by the police would often entail the police<sup>officer</sup> on the spot having to make an almost immediate decision as to whether a person was a trespasser. His decision whether, for example, to arrest a party would have to depend on his assessment of whether that person had a lawful right to be where he was - a matter on which no conclusive evidence might be available.

As the paper has already indicated (paragraph 16) this difficulty would be particularly acute in relation to domestic and landlord/tenant disputes occurring on residential premises. At present when the police attend such a dispute the

/purpose

purpose of their presence is merely to prevent ~~the occurrence of~~ a breach of the peace and secure <sup>as</sup> the departure of one of the parties ~~is~~ a means to that end; this can usually be achieved by persuasion and there need only be a very broad assessment of the relative rights of the parties.

40. At present most calls for police assistance to eject trespassers appear domestic and landlord/tenant disputes and <sup>or</sup> to arise from disputes on commercial premises (e.g. in shops/restaurants); the "sit in" kind of trespass is more of a rarity. ~~None of these kinds of trespasses are particularly serious or dangerous to the public or to the property of the occupiers of the premises. The police already have powers to deal with, for example, breach of the peace and entry with intent to commit certain criminal offences. But would the creation of a criminal offence of trespass on residential premises make trespassers, who are not committing any other offence, less willing than at present to leave voluntarily? Is it right that the owners or occupiers of residential premises should be able to look to the police to take criminal proceedings against everybody who trespasses on their premises regardless of circumstances? The police must, and must be seen to, apply the law in an even-handed way. Would their involvement in criminal sanctions in domestic disputes and disputes over title and access threaten their impartiality?~~

41. It is difficult to make any realistic estimate of the resource implications for the police of any change in the law in this field. Much would depend on the priority individual chief officers were prepared to give to such activity. But even if there were no greater amount of police time devoted to attending such incidents than at present, the time taken to prepare criminal proceedings could create a significant additional burden. Could this be justified by the nature and scale of the abuses with which a new offence would be designed to deal?

/Penalties

Penalties and mode of trial

42. The offences of entering and remaining on property in Part II of the Criminal Law Act 1977 (see paragraphs 10 and 11 ~~XXXXX~~) are triable summarily and subject to penalties within the range of maximum fines of £1,000 and terms of imprisonment not exceeding six months. If a new offence of trespass were created - whether on residential premises generally or on specific types of premises - would similar arrangements be suitable, taking into account the gravity of the offence and the issues on which magistrates' courts would be likely to be asked to adjudicate?

"Given the number of cases likely to be generated, and the fact that a large proportion of them would probably be minor, would it be right to burden the criminal courts, which already have to contend with a constant increase in more serious cases, with this extra work? The offences of entering and remaining on property in Part II of the Criminal Law Act 1977 (see paragraphs 10 and 11) are triable summarily and subject to penalties within the range of maximum fines of £1,000 and terms of imprisonment not exceeding six months. If a new offence of trespass were created - whether on residential premises generally or on specific types of premises - would similar arrangements be suitable? Many trespass cases, particularly of a domestic or landlord and tenant kind, while minor from the point of view of the public interest, may involve contentious evidence and difficult questions of law. Would these be suitable for the magistrates' courts, or would it be necessary to make such offences triable either summarily or on indictment, with a consequent increase in expenditure and in the workload of the Crown Court?"

PART VIII -- CONCLUSION

43. This paper has considered the implications of extending the criminal law to cover simple trespass on residential premises.

44. The first option of the two broad options identified would create an offence of entering, at any time or during prescribed hours, residential premises (suitably defined) as a trespasser or, having entered such premises lawfully, failing to leave at the request of the occupier or his representative. It seems likely that such an offence would have to contain at least some of the safeguards discussed in Part VI. ~~xxxx~~. The definition of residential premises, moreover, might have to include suitable provision for the adjacent land.

45. The main issues raised by this option are whether, even circumscribed by these various safeguards, the offence would still stray unacceptably widely into areas which are unsuitable for the criminal law; whether, because of its inevitable complexity, it would create difficulties of interpretation for the courts and subsequent uncertainty in its application; and finally whether, for the reasons discussed in Part VII, the offence would cause undue difficulties of enforcement.

46. These issues are directly relevant to the general criteria for new criminal offences outlined in Part III of this paper. Thus while there will be many who think that some of the behaviour described in Part IV is deserving of criminal sanctions, there may be different opinions ~~xxx~~ ~~whether the xxx could be said of all forms of simple trespass. A~~ about which kind of behaviour should be so stigmatised.

/s/ ~~similar~~  
h

In whatever manner the area is defined there are risks of  
~~similar difficulty may also arise over whether a general offence is~~  
~~necessary in practice in relation to all the situations described in this~~  
~~paper. The proposals also demonstrated that a general offence could have~~  
~~unconnected side-effects and could present~~ difficulties of enforcement. The  
crucial question is, therefore, whether society's disapproval of some forms  
of simple trespass and the likely effectiveness of criminal sanctions are  
sufficiently great to outweigh these other considerations.

47. The second option is, in effect, to extend s.9 of the Criminal  
Law Act 1977, which makes it an offence to trespass on a diplomatic  
mission, to other important and vulnerable premises. This has the  
merit of simplicity and raises fewer technical and enforcement  
difficulties. The main problem, as indicated above, is  
whether it is acceptable to select particular premises for this degree of  
and to make no provision for the ordinary citizen in his home.  
special protection. The Government would welcome some indication of public  
feeling on this issue.

48. In the Government's view, the issues raised in this paper cannot be  
resolved without the benefit of informed public debate, both on the need  
for any change in the existing law and on the practical implications of  
any such change. It has been the aim of this paper to provide the basis  
for such a debate.

## SUMMARY OF RELEVANT PROVISIONS OF THE CRIMINAL LAW

I Criminal Law Act 19771. Violence for securing entry

The use or threatened use of violence against persons or property for the purpose of securing entry into any premises, without lawful authority, is an offence, provided that there is someone present on the premises who is opposed to that entry and the person trying to enter knows this to be the case. It is a defence to a charge for a person to prove that he or the person on whose behalf he was acting was a displaced residential occupier of those premises. The maximum penalty on summary conviction is six months' imprisonment or a £1,000 fine or both. (Section 6)

Violence against unoccupied property may constitute an offence of criminal damage - see below.

2. Adverse occupation of residential premises

It is an offence for someone who has entered premises as a trespasser to fail to leave on being requested to do so by or on behalf of a displaced residential occupier or a protected intending occupier (both terms are defined). The maximum penalty on summary conviction is six months' imprisonment or a £1,000 fine or both. (Section 7).

3. Trespass with a weapon

Anyone who has entered premises as a trespasser and has with him a weapon of offence (that is an article for use for causing injury) commits an offence punishable on summary conviction with a maximum of three months' imprisonment or a £1,000 fine or both. (Section 8).

4. Trespass on premises of a foreign mission

It is an offence to trespass in a diplomatic mission, consular premises, the private residence of a diplomat or similar premises. The maximum penalty on summary conviction is six months' imprisonment or a £1,000 fine or both. (Section 9)

II Vagrancy Act 1824Being found on enclosed premises

It is an offence to be found in any dwelling house, warehouse, coachhouse, stable or outbuilding or in any enclosed yard or garden for an unlawful purpose. In this context unlawful purpose has been held to mean the



commission of a criminal offence. The maximum penalty on summary conviction is three months' imprisonment or a £200 fine. On a second conviction the offender can be committed to the Crown Court for sentence and is liable to a maximum penalty of one year's imprisonment. (Sections 4, 5 and 10)

### III Criminal Damage Act 1971

#### 1. Simple Damage

Intentional or reckless destruction of or damage to someone else's property is punishable on summary conviction by up to six months' imprisonment or a £1,000 fine or both or on conviction on indictment with a maximum of ten years' imprisonment.

(Section 1(1))

#### 2. Aggravated Damage

Intentional or reckless destruction of or damage to any property with intent to endanger someone else's life or where an obvious risk of danger to life is created is punishable on conviction on indictment with a maximum of life imprisonment.

(Section 1(2))

#### 3. Arson

Simple or aggravated damage caused by fire is an offence of arson punishable on conviction on indictment with a maximum of life imprisonment.

(Section 1(3))

#### 4. Threats to destroy or damage

To threaten to destroy or damage someone else's property (or one's own property if he knows that to do so would be likely to endanger someone else's life) is punishable on summary conviction with up to six months' imprisonment or a £1,000 fine or both or on conviction on indictment with up to ten years' imprisonment.

(Section 2)

#### 5. Possession with intent

The possession of anything intended for use to destroy or damage someone else's property (or one's own property if its destruction or damage would thereby endanger someone else's life) is punishable on summary conviction with up to six months' imprisonment or a £1000 fine or both or on conviction on indictment with up to ten years' imprisonment.

(Section 3)

### IV Theft Act 1968

#### 1. Theft

Theft (dishonestly appropriating property belonging to someone else with the intention of permanently depriving that person of the property) is

/punishable

punishable on conviction on indictment with a maximum of ten years' imprisonment or on summary conviction with a maximum of six months' imprisonment or a £1,000 fine or both.

(Section 1)

## 2. Robbery

A person who steals and in order to do so uses force or puts someone in fear of being subjected to force is guilty of robbery. This is punishable with a maximum of life imprisonment on conviction on indictment.

(Section 8)

## 3. Burglary

Burglary, that is:

(a) entering any building or part of a building as a trespasser with intent to steal anything, to inflict grievous bodily harm on anyone, to rape any woman or to do unlawful damage either to the building or to anything within the building; or

(b) having entered any building or part of a building as a trespasser, then stealing or attempting to steal anything therein or inflicting or attempting to inflict grievous bodily harm on anyone therein:

is punishable on conviction on indictment with a maximum of fourteen years' imprisonment.

(Section 9)

## 4. Aggravated burglary

Burglary with a firearm, imitation firearm, weapon of offence or explosive carries a maximum penalty of life imprisonment.

(Section 10)

## 5. Going equipped for stealing

It is an offence to have in one's possession, outside of one's own place of abode, any article for use in the course of or in connection with burglary.

The maximum penalty on conviction on indictment is three years' imprisonment.

(Section 25)

## V Offences Against the Person Act 1861

Acts of violence against another person are chargeable under any one of a number of statutory provisions depending on the nature and degree of severity of the assault. These include: common assault punishable under section 47 of the 1861 Act with up to six months' imprisonment or a £1,000 fine or both

/on

on summary conviction or up to one year's imprisonment on conviction on indictment; assault punishable under section 42 with up to two months' imprisonment or a £200 fine on summary conviction; aggravated assault upon a male child under 14 or upon a woman punishable under section 43 with up to six months' imprisonment or a fine of £500; assault occasioning actual bodily harm punishable under section 47 with up to six months' imprisonment or a £1000 fine or both on summary conviction or up to five years' imprisonment on conviction on indictment; unlawful and malicious wounding or the infliction of grievous bodily harm is punishable under section 20 with up to six months' imprisonment or a £1000 fine or both on summary conviction or up to five years' imprisonment on conviction on indictment; and wounding or the causing of grievous bodily harm with intent is punishable under section 18 <sup>on conviction on indictment</sup> with a maximum of life imprisonment.

#### VI Sexual Offences Act 1956

Assaults of a sexual nature are punishable under the provisions of the Sexual Offences Act 1956. Offences include: rape (section 1) punishable with a maximum of life imprisonment; procuring unlawful sexual intercourse by threats or intimidation or by false pretences (sections 2 and 3) punishable with up to two years' imprisonment; indecent assault on a woman (section 14) punishable on conviction on indictment with up to five years' imprisonment if the victim is under 13, otherwise up to two years' imprisonment or on summary conviction with a maximum of six months' imprisonment or a £1000 fine or both; and indecent assault on a man (section 15) punishable on conviction on indictment with up to ten years' imprisonment or on summary conviction with up to six months' imprisonment or a £1000 fine or both.

#### VII Offences against the public peace

At common law there exist several offences dealing with situations in which a number of people gather together in circumstances likely to cause or actually causing a breach of the peace. These are the offences of unlawful assembly, rout, riot and affray which carry an unlimited penalty. The particular charge to be brought will depend on the circumstances of the individual case, in particular whether actual violence has taken place. It would appear from decided cases on these offences that they apply to private premises as well as to public places.

/VIII

### VIII Binding Over

Magistrates have power under common law and under Statute (Justices of the Peace Act 1361 and section 115 of the Magistrates' Courts Act 1980) to bind a person over to keep the peace and/or to be of good behaviour. Binding over may be on complaint by another person and it may follow arrest in circumstances in which a breach of the peace has been committed or is apprehended. Binding over is not a punishment but is to prevent a likelihood of future misbehaviour. Refusal to be bound over can result in an immediate committal to custody. The court will order the person to be bound over to enter into a recognisance. Breach of the conditions of the order is punishable with forfeiture of the sum stipulated to be paid by the recognisance.

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10 DOWNING STREET

From the Private Secretary

31 December 1982

THE LAW OF TRESPASS

Thank you for your letter to Tim Flesher of 23 December. The Prime Minister is content with the draft consultation paper attached to your letter. She agrees that the Government would be seriously criticised if it was not seen to be considering seriously the various proposals which have been put forward since July for changes in the law of trespass. I note that you will let us know when the paper is to be published.

I am copying this letter to David Staff (Lord Chancellor's Office), Jim Nursaw (Law Officers' Department), Muir Russell (Scottish Office) and Derek Hill (Northern Ireland Office).

W. F. S. RICKETT

Colin Walters, Esq. ,  
Home Office

Prime Minister: Z

To note



HOME OFFICE  
QUEEN ANNE'S GATE LONDON SW1H 9AT

23 DEC 29/12

Dear Sir

mt

THE LAW OF TRESPASS

You may recall that, following the intrusions by Michael Fagan into Buckingham Palace last July, the Home Secretary announced that he was reviewing the state of the law on trespass. There will shortly be developments on this front of which you may like to be aware.

The Home Secretary concluded, after an initial review of the subject by officials, that both of the possible options for extending the law in this field presented considerable difficulties. These options are an extension of the present criminal law to prohibit trespass in residential premises generally and the creation of an offence aimed at trespass on specific premises - in particular, Royal residences. The first option presents serious problems of definition and enforcement; and the second is open to the substantial objection that there might be public criticism of the provision of additional protection for the Royal family only. Following consultation with the Lord Chancellor, the Attorney General and the Secretary of State for Scotland, it was concluded that it would be helpful to issue a consultation paper which  canvassed the options and their attendant difficulties and which sought reactions from as wide a field as possible. The Home Secretary subsequently announced, in reply to a written P.Q., that he would be issuing such a document (Official Report 11th November Col.218).

The Home Secretary has now agreed a draft of this consultation document which it is proposed to publish as soon as possible after Parliament has returned from the Christmas recess i.e. in the latter half of January. The document (a copy of which I enclose) does not commit the Government to any particular conclusion and is presented very much as a contribution to public debate. Clearly, however, it deals with a sensitive area and may reawaken some of the issues which were discussed at the time of the July incidents. In the Home Secretary's view, however, the Government will be subject to very severe criticism if it was not seen to be considering seriously the various proposals which have been put forward since then for changes in the law.

Copies of the document have also been sent to the Lord Chancellor, the Attorney General and the Secretaries of State for Scotland and Northern Ireland. I shall, of course, let you know when we have a firm date for publication.

temporarily retained

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OF THE PUBLIC RECORDS ACT

Yours sincerely  
C.J. Walters

C.J. WALTERS

T. Flesher Esq.

## TRESPASS ON RESIDENTIAL PREMISES: A CONSULTATION PAPER

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## PART I - INTRODUCTION

1. There are a number of issues regarding the law of trespass in England and Wales on which the Government would find it helpful to have comments, both from organisations with special interest in the matter and from members of the public at large. This process of consultation forms part of a review of the law which the Home Secretary, in consultation with the Lord Chancellor and the Attorney General, set in train in July 1982 following the intrusions into Buckingham Palace by Michael Fagan in June and July.

2. The public concern which was expressed, in the light of these incidents, about the scope of the law of trespass was directed mainly at the apparent lack of criminal sanctions to deal with trespassers on residential premises.

3. The review has therefore concentrated principally on the question whether any changes in the present law are required to provide greater protection for people in their own houses, and not only for those especially vulnerable to uninvited intrusion but also for the public at large. It has not been concerned with the very wide range of circumstances in which there might be unauthorised entry or trespass on, for example, farm land, private estates, local authority land or land or premises used for industrial or commercial purposes.

4. The Government believes that any extension of the criminal law in this area would represent an important development which ought not to be undertaken without the fullest possible consideration. This consultation paper therefore identifies the issues which the Government thinks are involved in any proposal to change the law and sets out the arguments which relate to each. In doing so, it necessarily identifies a number of practical difficulties. This is because it is important to examine rigorously all proposals for extending the criminal law to make sure that they do not go wider than is intended, and that they are workable.

5. The paper is prefaced with an account of the present state of the law, and an analysis of the criteria which we think ought to be borne in mind in considering the case for any new criminal offence.

6. The Government will welcome comments on the matters discussed in this paper. These comments should be sent to the following by [allowing 3 months for consultation]:

The Assistant Secretary  
C4 Division  
Home Office  
Queen Anne's Gate  
LONDON  
SW1H 9AT  
(Tel no: 01 213 3544)

Extra copies of this consultation paper may be obtained from the same address.

7. The law on trespass in Scotland differs from that in England and Wales. The Secretary of State for Scotland will be carrying out a parallel but separate review of the scope for legislation in the field covered by this consultation paper. The law in Northern Ireland is also under separate review.

## PART II - THE EXISTING LAW

Background

8. In England and Wales, trespass has traditionally fallen within the province of the civil rather than the criminal law. The main exceptions are when the trespass is undertaken with intent to commit any criminal offence, or is associated with other criminal or violent conduct. The mere fact of unlawfully entering private property without any accompanying criminal conduct or intent, which for the purpose of this paper is termed "simple trespass", has not hitherto been considered a matter that needs to be dealt with by criminal sanctions. There are a number of reasons for this, most of which will be touched on in the discussion of possible options later in this paper. Broadly it has been felt up to now that simple trespass does not always, or even often, entail actions so hostile to the interests of an occupier or the general public that criminal sanctions are appropriate. Moreover, such trespass does not necessarily demonstrate a clearly discernible infringement of rights, still less conscious wrong-doing;

thus it can frequently involve a dispute between two individuals over their respective rights to the property in question; or it can involve no more than innocent, non-malicious or trivial acts by people unaware that they are trespassers. An important consideration here is the role of the police. Their task has traditionally been seen as the impartial maintenance of the Queen's Peace. Care has therefore always been taken to avoid creating situations in which they might appear to be "taking sides" in what is, in essence, a private dispute, particularly when this might adversely effect their relationship with the public. These considerations clearly do not apply in situations which involve criminal acts or the use or threat of violence. The implications for the police if the law on trespass were to be extended are dealt with in Part VII of this paper.

9. The law on conspiracy to trespass and offences of entering and remaining on property was reviewed by the Law Commission in 1976 (Law Commission Report No 76).

The Law Commission identified the problem of squatting - that is the unlawful taking over of premises by individuals or groups of persons for use as a temporary home - as a matter which justified the use of the criminal law, and their recommendations were given effect in the Criminal Law Act 1977. Thus, the principal exceptions to the rule that the criminal law does not involve itself in disputes over possession of property lie in the offences created by the 1977 Act. An exception was made in that case because of the degree of hardship which would arise if immediate action could not be taken to restore to a displaced occupier the use of his living accommodation. The general principle reflected in this legislation, therefore, is the need to protect the most pressing and urgent interests of people who are severely affected by the actions of others. An exception was also made for trespass on diplomatic premises in pursuance of the United Kingdom's international obligations to protect diplomatic property, and as a necessary consequential of the abolition of the offence of conspiracy to trespass in the Criminal Law Act of 1977.

The detailed provisions

10. There is a substantial body of law governing acts of a violent or otherwise criminal nature on any type of property, including residential premises. Thus trespass in a building with intent to steal, inflict grievous bodily harm, commit rape or do unlawful damage, constitutes (under section 9 of the Theft Act 1968) burglary, which is punishable with 14 years imprisonment. Under section 8 of the Criminal Law Act 1977 it is a criminal offence to enter property, on which a person opposed to that entry is present, with any weapon of offence. It is also an offence, under section 6 of the 1977 Act, to use or threaten violence to enter any premises, provided that there was someone present on those premises opposed to the entry and the person responsible for the threats or violence knows that that is the case. In addition it is an offence under the Vagrancy Act 1824 to be found on enclosed premises with intent to commit an offence.

11. These offences are supplemented by that contained in the 1977 Act directed at certain forms of squatting. Section 7 of the 1977 Act made it an offence for a trespasser to fail to leave premises on being requested to do so by a displaced residential occupier or a protected intending occupier.

12. In addition to those provisions which deal specifically with offences or mischiefs committed on premises or property, there are a number of general provisions in statute and common law which could be used in suitable circumstances in order to deal with trespassers or their activities on residential premises. Thus the offence of criminal damage under the Criminal Damage Act 1971 relates to the destruction or damage of property belonging to another without lawful excuse - provided that the damage is caused intentionally or recklessly. In certain circumstances, moreover, a charge of unlawful assembly might lie where a number of trespassers are involved; and there might be circumstances, for example involving abusive words and conduct, where trespassers on residential premises could be dealt with on the complaint of the occupier for conduct likely to cause a breach of the peace, carrying liability to be bound over to keep the peace and be of good behaviour. Lastly, the general law relating to sexual assaults and other offences against the person, and to theft, applies as much on residential premises as it does elsewhere.

13. A more detailed summary of the provisions of the criminal law most relevant to the protection of residential premises, together with their related penalties, is contained for ease of reference in Annex A of this paper.

14. It is doubtless possible to criticise the way in which these existing offences have been framed, or in which they operate in practice. (For example it has been claimed that the criminal damage offence is not particularly helpful,

/given

given the need to identify the individual responsible for the damage). It would be helpful to have comments directed at the detailed structure or operation of these existing offences. This paper, however, is addressed to the particular criticism that what is left uncovered by the present law is the act of intrusion which, though not violent in execution or otherwise criminal in intent, may be disturbing in other ways.

15. In such circumstances certain lawful means of redress exist. An aggrieved occupier of property has rights of self-help at common law. For example, he may use a reasonable degree of force in order to prevent a trespasser from entering, or in order to eject him. The police, moreover, may lawfully assist the rightful occupier of property to eject trespassers, though they have no duty to do so (and when doing so are not protected by the special powers and privileges of constables).

16. An occupier, additionally, has more than one cause of action by way of remedy in the civil courts. He may sue the trespasser and claim an injunction to restrain him from again trespassing on the property, with or without a claim for damages. It would be wrong to regard these civil remedies as irrelevant to a case of simple trespass. There is clearly, however, a limit to the usefulness of the right of self-help, and the right of redress in the civil courts is not normally one which is attractive to the ordinary member of the public, for obvious reasons.

/PART III

PART III - THE CRITERIA FOR NEW CRIMINAL OFFENCES

17. The rest of this paper discusses the case for making simple trespass, either in all or only in some circumstances, a criminal offence. There are no expressly stated criteria for determining whether or not criminal sanctions are appropriate to deal with any particular kind of act. In general, however, successive Governments, and Parliament in considering proposed legislation, have kept in mind some guiding principles.

18. One is that the criminal law should be used to prohibit or to contain only that behaviour which is seen as meriting society's explicit disapproval to the extent of criminal sanctions to deter people from it and to punish those who are not deterred. This implies that the behaviour in question goes beyond what it is proper to deal with on the basis of compensation as between one individual and another and it concerns the public interest in general.

19. A second general principle is that in general criminal sanctions should be reserved for dealing with undesirable behaviour for which other, less drastic, measures of control would be ineffective, impracticable or insufficient. Observance of this principle helps to maintain public respect for the criminal law, and also to ensure that the burden of work carried by the police, the courts and the criminal justice system in general is not unnecessarily increased.

20. Finally, there are some practical considerations to be borne in mind. It is important that a new offence should be enforceable. Respect for and compliance with the criminal law as a whole depend on its being enforced. This, as well as natural justice, requires that the law should be clear in its scope and effect.

21. The case for a new criminal offence in the field of trespass should be tested against these considerations.

PART IV - THE NEED FOR CRIMINAL SANCTIONS: ASSOCIATED ISSUES

22. Part II of this paper has shown that the criminal law already covers a large number of the circumstances in which the occupiers of residential premises can suffer harm in the arrest of one form of trespass or another. The existing law covers certain forms of squatting, violent entry, burglary, breaches of the peace, criminal damage and offences against the person by people who have entered on the premises; but criminal sanctions do not apply in the vast majority of cases of simple trespass.

Unwelcome Intruders

23. Alarm and annoyance can plainly be caused by uninvited intrusion into residential premises. Consider, for example, the case of a man trespassing on residential premises and entering the bedroom of a woman or child - whatever his motive may be - or a "Peeping Tom", who may not have actually entered the premises but is on the land immediately adjacent - or gatecrashers at social occasions who behave objectionably and who refuse to leave on being asked to do so.

24. Many other examples may be envisaged of patently offensive and unreasonable behaviour which might not be caught by the existing law. Do these warrant the use of criminal sanctions? It could be argued that some of these are so unusual that they do not call for the creation of a general offence of simple trespass. Are other measures for dealing with them inadequate? If certain forms of intrusion cause extreme distress, can they in law be satisfactorily distinguished from others? Should there be special sanctions for the protection of certain individuals or institutions especially vulnerable to these forms of abuse?

/ "Innocent"



"Innocent" Trespass

25. There are other forms of intrusion which might be covered by a new offence of simple trespass but which are in themselves entirely innocent or trivial and not liable to cause distress or annoyance, at least on anything approaching the same scale. Consider a friend or neighbour entering a house or garden to retrieve something left there, in the reasonable but mistaken belief that this would be acceptable to the occupier - or a child wanting to recover a ball or toy from a garden or house into which he may have accidentally thrown it. A short cut may be taken, knowingly or otherwise, in circumstances in which no harm could possibly be done to anyone. Should such transgressions be prosecuted? If a general offence is to be created, is it sufficient, in matters involving the reputation and liberty of individuals, to leave the decision entirely to the discretion of the police? Should the right to bring a private prosecution be excluded? Should there be additional safeguards to protect the "innocent" trespasser who is simply unaware that he is trespassing? If so, what form should these take? Part VI below summarises various possibilities.

26. One possibility which might avoid some or most of these cases of "innocent" trespass would be to restrict the operation of any criminal offence of simple trespass to a particular time period - for example night time (on the lines of the old offence of burglary) \* or the hours of darkness? Is this a possibility worth considering - bearing in mind that this would not necessarily do away with a need for the safeguards canvassed above and elaborated in Part VI? If so, how specifically should the period of activation of the law be defined? Would such a period meet the criterion that any offence should be clear and precise in its scope and effect?

Disputes over residential rights

27. There is another category of people in respect of whom a new criminal offence of trespass might give rise to considerable problems - namely those

/who

\*This offence applied to the "night" - defined in section 46 of the Larceny Act 1916 as "the interval between nine o'clock in the evening and six o'clock on the morning of the next succeeding day".

who claim some right or title to the property in question or a right of residence equal to, or superior to, that of the owner or occupier. One may envisage a variety of circumstances in which disputes could arise over a person's lawful right to be present on particular premises, and in which one of the parties might seek to prosecute for any new criminal offence of trespass. These could involve merely domestic disputes between, say, a family and a long-resident relative whose presence in the house was no longer welcome, or attempts by people who considered they had a legal claim to title seeking to enforce this by entering a premises uninvited. Here again, is it desirable that the criminal law should apply in such situations? If not, how could they be excluded from any general offence of simple trespass? If so, would any new offence need to refer explicitly to these sorts of cases? Or would it be sufficient simply to leave it for the courts to decide whether a person in a given set of circumstances was a "trespasser"? Would this create unacceptable difficulties for the courts and the police - notwithstanding that the Criminal Law Act 1977 already makes use of the undefined term "trespasser"? These issues are given further consideration in Part VII of the paper.

28. A straightforward unqualified offence of simple trespass on residential property would, therefore, cover a wide range of circumstances which may not all need to be dealt with in this way, or which could give rise in some cases to peculiarly difficult problems of enforcement. To avoid these difficulties and to conform with the criteria set out in Part III of the paper, it might be necessary to provide for some of the various statutory safeguards summarised in Part VI.

/PART V

PART V - NATURE OF PREMISES TO BE COVERED BY ANY NEW CRIMINAL OFFENCE

Residential premises in general

29. It is necessary to consider whether any new criminal offence of simple trespass should apply to residential premises of all descriptions. This expression covers a very wide range and includes houses, blocks of flats, residential apartments in buildings used for other purposes, hostels and halls of residence (including, for example, nurses' homes and students' rooms in universities). How should these premises be defined in order to provide maximum coverage? Would it be sufficient (taking the definitions in section 12 of the Criminal Law Act 1977 as convenient examples) to refer to any building or part of a building under separate occupation which is habitually used as a residence? Would it be necessary to bring within the ambit of the new offence parts of premises which do not form part of the living space but which are common to the residents of the premises as a whole - for example, entrance halls, landings or corridors? On the one hand it would make sense to cover areas such as a corridor in a nurses' home, as it would be difficult (though not impossible) for any trespasser to justify being there by accident and it would seem absurd that the law could not be brought into operation until someone had completed the ultimate act of trespass by (for example) entering someone's room. On the other hand, trespass into the entrance hall of a block of flats is not necessarily as serious. Moreover the nature of a particular premises could make it likely that someone could stray accidentally into private apartments. There are obvious difficulties in distinguishing in law between these various situations. Would it be acceptable, within a very general definition of "residential premises", to rely on the discretion of the police and the courts in particular cases, while simultaneously providing safeguards for people who trespass in ignorance of the true nature of the premises they have entered?

30. There is the further issue of whether the new offence should require someone to have been on the premises at the material time. The principal justification for an offence of simple trespass is the unacceptable annoyance or distress that trespass

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can cause to people on the premises. For example, for someone to enter someone else's holiday home in their absence (assuming no infringement of existing criminal provisions) may amount to bad manners but is it really a matter for the criminal law? Would it be right, therefore, to provide, as in the offence of violent entry in section 6 of the Criminal Law Act 1977, that a necessary condition of the offence should be that there should be someone present on the premises at the time of the trespass?

Specific types of residential premises

31. An alternative to a criminal offence which covered all forms of residential premises is to restrict it to specific types of premises which are thought to require special protection. There is already a precedent for this approach in section 9 of the Criminal Law Act 1977, which broadly makes it an offence to trespass on the premises of diplomatic missions (subject to the accused being able to prove that he believed that the premises did not come within the category covered by this section). The advantage of such an offence is that it picks out those premises which are particularly vulnerable because of the circumstances in which they are used or the individuals who live in them. The importance and special circumstances of these premises would have to be such as to justify making the mere fact of trespass on them a criminal offence. This in itself would avoid many of the difficulties discussed in Part IV and in this part of the paper. It would be necessary merely to provide a defence for an accused person similar to that included in section 9(3) of the 1977 Act. Examples of the types of premises which might be covered include certain Royal residences or certain official Government residences deemed to be especially vulnerable. There might need to be a power to extend, by Order in Council subject to Parliamentary approval, the range of premises covered.

32. The principal objection to this approach is likely to be as much one of policy as practicability, because it could appear invidious to provide special protection for certain premises or individuals which is denied to the public at large. The

/Government

Government indeed has received no request from those directly concerned for any particular premises to be specially protected. There must also be fears of such a provision being unduly extended by subordinate legislation to premises which do not justify this special protection to the same extent as the others. In addition there would be the problem of making known to possible trespassers that a particular building was protected by the criminal law. The objections of policy to this proposal are therefore substantial, but it would be helpful to the Government to know to what extent they are felt to be compelling.

Land associated with residential premises

33. Another issue is whether the definition of residential premises or of specific types of premises should include the surrounding land. There is, of course a strong case in principle for doing so. It could be argued that people are entitled to the same degree of protection in, say, their own gardens as they are in their own houses, and there are specific cases (for example that of the Peeping Tom) where it may be only the land itself which is being trespassed upon. But even given this, where does one draw the line? There would be obvious difficulties if a definition of "residential premises" went so wide that it covered not only, for example, the back garden of a semi-detached dwelling, but also the large estate of a country house. The greater the geographical area covered, the greater the likelihood of the criminal law being brought into play in situations which manifestly do not justify it. Even if this could be guarded against by specific defences in the new legislation (see Part VI below), it is in any case open to doubt whether a provision aimed at residential premises should also cover large areas of land simply because they surround a particular building. There are obvious difficulties in the case of land adjacent to premises which are only partly used for residential purposes. Here again, section 12 of the Criminal Law Act 1977 might be helpful. Section 12(1)(a), in defining "premises", refers to "..... any land ancillary to a building, the site comprising any building or buildings together with land ancillary thereto ....." . In the context of an offence of simple trespass on

/residential

residential premises, would such a formula, suitably adapted, be sufficient to restrict its scope broadly to the land immediately adjacent to the residential part of a building? Or would there be any support for the view that any new offence should not apply to land at all?

34. One special difficulty which would arise from including adjacent land in the definition of premises covered by a new offence is that it would increase the risk of applying the criminal law to disputes between neighbours over access to, and the use of, land in circumstances which, if litigation is needed at all, are best left to the civil law. One possible example (out of many) is where someone needs to go on to a neighbour's garden in order to gain access, with gardening equipment, to another piece of his land. If the occupier objects to his doing so but he persists in his intention, he becomes a trespasser on residential premises, and if a new offence of simple trespass were created he would be liable to prosecution. Does this represent the sort of social abuse with which the criminal law ought to be concerned? Even if the complainant (as suggested in paragraph 25) has to prove a reasonable cause for annoyance etc. this does not remove the possibility that such cases, quite inappropriately, would involve the police and come before the criminal courts. It is difficult, however, if any new offence is to apply to land, to see how such a risk could be avoided. This is a point on which it would be particularly helpful to have comments and suggestions.

35. This Part of the paper illustrates one of the central problems of creating a new offence - namely that different answers may be right as between different types of premises. Thus it might be thought desirable to exclude from the scope of an offence the entrance hall of a block of flats, those parts of a building used as offices but which happened to have in it a caretaker's flat, or the outlying areas of a large estate. But an entirely different view might be taken in the case of non-residential parts of premises in which any trespass is thought to constitute an

/unacceptable

E.R.

unacceptable intrusion or in which the various uses cannot realistically be distinguished. The approach outlined in paragraph 33 above offers one way round this difficulty, but this by definition would be of a specific rather than a general application. Are there other means of resolving this central problem?

/PART VI

## PART IV - SAFEGUARDS

36. At various points in the paper there have been references to the need for safeguards to be built into any new general offence of simple trespass to protect people who might otherwise be caught inappropriately by criminal sanctions and to close any obvious loopholes in the protection afforded by a new offence. This Part of the discussion paper summarises these various proposals - some of which might be necessary to ensure that any new offence conformed with the general criteria outlined in Part III.

i) As suggested in paragraph 25, it seems necessary to provide some protection for people who trespass unintentionally - for example by straying accidentally into unenclosed private land or by overlooking a notice which indicated that a particular section of a house was private. This suggests that it should be a defence against any proceedings under a new offence for the defendant to be able to prove on the balance of the probabilities that he believed the premises in question were not premises to which the statutory provisions apply (i.e. on the lines of section 9(3) of the Criminal Law Act 1977). Would such a provision be sufficient for protection? Or would it be preferable to put the onus on the prosecution to prove that the person concerned had trespassed knowingly?

ii) Paragraph 23 suggests that an abuse could thereafter be caused by someone who had entered premises other than as a trespasser. Is it accepted therefore that it would be necessary for any new offence to penalise not only entry as a trespasser on residential premises but also when, having entered such premises other than as a trespasser, someone fails to leave at the request of an occupier or someone else who is lawfully present - i.e. someone who stays on as a trespasser?

iii) Paragraph 25 also identifies a number of situations in which various trivial and innocent forms of trespass, which might not even be objectionable to an occupier, might be caught by any new offence. To cover such situations is there a need for an additional defence whereby an accused might prove that he had reasonable cause for believing either that he could lawfully enter the premises in question or

/that



E.R.

that the occupier would have consented, if asked, to his entry?  
iv) Paragraph 30 canvasses the possibility of restricting the activation of the offence of entry as a trespasser (as opposed to failing to leave at the request of an occupier) to those circumstances where someone is present on the premises at the time of trespass. Is it thought that there is a sufficient case for such a restriction?

/PART VII

PART VII -- ENFORCEMENT AND POLICE INVOLVEMENT

Police Involvement

37. If any offence of trespass on residential premises were to be created there would be no obvious body other than the police to carry out enforcement. The existing civil remedies rest in the hands of the individual concerned. On one view, if a criminal offence of trespass on residential premises were to be created, it might be possible for enforcement to be left to the individual by way of private prosecution. But in practice a criminal offence of trespass would probably need to carry with it associated enforcement powers, e.g. arrest, and for the grant of such powers to be restricted to constables. And if the individual was unable to take effective action himself through a lack of enforcement powers, in the natural order of events he would call on the police for them to exercise their powers. In short although there would be no duty on the police to enforce the law in this area the expectation is likely to be that they would.

38. What would be the practical effects of police enforcement? Does the activity itself in each case justify police enforcement? And what would be the resource implications for the police?

39. The present role of the police in this area is set out in paragraph 8. The creation of a criminal offence of trespass on residential premises and its enforcement by the police would often entail the police officer on the spot having to make an almost immediate decision as to whether a person was a trespasser. His decision whether, for example, to arrest a party would have to depend on his assessment of whether that person had a lawful right to be where he was - a matter on which no conclusive evidence might be available.

As the paper has already indicated (paragraph 16) this difficulty would be particularly acute in relation to domestic and landlord/tenant disputes occurring on residential premises. At present when the police attend such a dispute the

/purpose

purpose of their presence is merely to prevent an occurrence of a breach of the peace and securing the departure of one of the parties is a means to that end; this can usually be achieved by persuasion and there need only be a very broad assessment of the relative rights of the parties.

40. At present most calls for police assistance to eject trespassers appear to arise from disputes on commercial premises (e.g. in shops/restaurants), domestic and landlord/tenant disputes; and to a lesser extent trespass in the offices of particular organisations or industrial premises or private land in furtherance of political, industrial or sectional protests. The police already have powers to deal with, for example, breach of the peace and entry with intent to commit certain criminal offences. But would the creation of a criminal offence of trespass on residential premises make trespassers, who are not committing any other offence, less willing than at present to leave voluntarily? Is it right that the owners or occupiers of residential premises should be able to look to the police to take criminal proceedings against everybody who trespasses on their premises regardless of circumstances? The police must, and must be seen to, apply the law in an even-handed way. Would their involvement in criminal sanctions in domestic disputes and disputes over title and access threaten their impartiality?

41. It is difficult to make any realistic estimate of the resource implications for the police of any change in the law in this field. Much would depend on the priority individual chief officers were prepared to give to such activity. But even if there were no greater amount of police time devoted to attending such incidents than at present, the time taken to prepare criminal proceedings could create a significant additional burden. Could this be justified by the nature and scale of the abuses with which a new offence would be designed to deal?

/Penalties

Penalties and mode of trial

42. The offences of entering and remaining on property in Part II of the Criminal Law Act 1977 (see paragraphs 10 and 11 above) are triable summarily and subject to penalties within the range of maximum fines of £1,000 and terms of imprisonment not exceeding six months. If a new offence of trespass were created - whether on residential premises generally or on specific types of premises - would similar arrangements be suitable, taking into account the gravity of the offence and the issues on which magistrates' courts would be likely to be asked to adjudicate?

/PART VIII

## PART VIII - CONCLUSION

43. This paper has considered the implications of extending the criminal law to cover simple trespass on residential premises.

44. The first option of the two broad options identified would create an offence of entering at any time or during prescribed hours residential premises (suitably defined) as a trespasser or, having entered such premises lawfully, failing to leave at the request of the occupier or his representative. It seems likely that such an offence would have to contain at least some of the safeguards discussed in Part VI above. The definition of residential premises, moreover, might have to include suitable provision for the adjacent land.

45. The main issues raised by this option are whether, even circumscribed by these various safeguards, the offence would still stray unacceptably widely into areas which are unsuitable for the criminal law; whether, because of its inevitable complexity, it would create difficulties of interpretation for the courts and subsequent uncertainty in its application; and finally whether, for the reasons discussed in Part VII, the offence would cause undue difficulties of enforcement.

46. These issues are directly relevant to the general criteria for new criminal offences outlined in Part III of this paper. Thus while there will be many who think that some of the behaviour described in Part IV is deserving of criminal sanctions, there may be different opinions on whether the same could be said of all forms of simple trespass. A

/similar

similar difficulty may also arise over whether a new criminal offence is necessary in practice in relation to all the situations described in this paper. The paper has also demonstrated that a general offence could have unexpected side effects and could present difficulties of enforcement. The crucial question is, therefore, whether society's disapproval of some forms of simple trespass and the likely effectiveness of criminal sanctions are sufficiently great to outweigh these other considerations.

47. The second option - namely to restrict an offence of simple trespass to certain specified premises - is simpler and raises fewer technical and enforcement difficulties. The main difficulty, as indicated above, is whether it is acceptable to select particular premises for this degree of special protection. The Government would welcome some indication of public feeling on this issue.

48. In the Government's view, the issues raised in this paper cannot be resolved without the benefit of informed public debate, both on the need for any change in the existing law and on the practical implications of any such change. It has been the aim of this paper to provide the basis for such a debate.

## SUMMARY OF RELEVANT PROVISIONS OF THE CRIMINAL LAW

I Criminal Law Act 19771. Violence for securing entry

The use or threatened use of violence against persons or property for the purpose of securing entry into any premises, without lawful authority, is an offence, provided that there is someone present on the premises who is opposed to that entry and the person trying to enter knows this to be the case. It is a defence to a charge for a person to prove that he or the person on whose behalf he was acting was a displaced residential occupier of those premises. The maximum penalty on summary conviction is six months' imprisonment or a £1,000 fine or both. (Section 6)

Violence against unoccupied property may constitute an offence of criminal damage - see below.

2. Adverse occupation of residential premises

It is an offence for someone who has entered premises as a trespasser to fail to leave on being requested to do so by or on behalf of a displaced residential occupier or a protected intending occupier (both terms are defined). The maximum penalty on summary conviction is six months imprisonment or a £1,000 fine or both. (Section 7).

3. Trespass with a weapon

Anyone who has entered premises as a trespasser and has with him a weapon of offence (that is an article for use for causing injury) commits an offence punishable on summary conviction with a maximum of three months' imprisonment or a £1,000 fine or both. (Section 8).

4. Trespass on premises of a foreign mission

It is an offence to trespass in a diplomatic mission, consular premises, the private residence of a diplomat or similar premises. The maximum penalty on summary conviction is six months' imprisonment or a £1,000 fine or both. (Section 9)

II Vagrancy Act 1824Being found on enclosed premises

It is an offence to be found in any dwelling house, warehouse, coachhouse, stable or outbuilding or in any enclosed yard or garden for an unlawful purpose. In this context unlawful purpose has been held to mean the

commission of a criminal offence. The maximum penalty on summary conviction is three months' imprisonment or a £200 fine. On a second conviction the offender can be committed to the Crown Court for sentence and is liable to a maximum penalty of one year's imprisonment. (Sections 4, 5 and 10)



### III Criminal Damage Act 1971

#### 1. Simple Damage

Intentional or reckless destruction of or damage to someone else's property is punishable on summary conviction by up to six months' imprisonment or a £1,000 fine or both or on conviction on indictment with a maximum of ten years' imprisonment.

(Section 1(1))

#### 2. Aggravated Damage

Intentional or reckless destruction of or damage to any property with intent to endanger someone else's life or where an obvious risk of danger to life is created is punishable on conviction on indictment with a maximum of life imprisonment.

(Section 1(2))

#### 3. Arson

Simple or aggravated damage caused by fire is an offence of arson punishable on conviction on indictment with a maximum of life imprisonment.

(Section 1(3))

#### 4. Threats to destroy or damage

To threaten to destroy or damage someone else's property (or one's own property if he knows that to do so would be likely to endanger someone else's life) is punishable on summary conviction with up to six months' imprisonment or a £1,000 fine or both or on conviction on indictment with up to ten years' imprisonment.

(Section 2)

#### 5. Possession with intent

The possession of anything intended for use to destroy or damage someone else's property (or one's own property if its destruction or damage would thereby endanger someone else's life) is punishable on summary conviction with up to six months' imprisonment or a £1000 fine or both or on conviction on indictment with up to ten years' imprisonment.

(Section 3)

### IV Theft Act 1968

#### 1. Theft

Theft (dishonestly appropriating property belonging to someone else with the intention of permanently depriving that person of the property) is

/punishable

punishable on conviction on indictment with a maximum of ten years' imprisonment or on summary conviction with a maximum of six months' imprisonment or a £1,000 fine or both.

(Section 1)

## 2. Robbery

A person who steals and in order to do so uses force or puts someone in fear of being subjected to force is guilty of robbery. This is punishable with a maximum of life imprisonment on conviction on indictment.

(Section 8)

## 3. Burglary

Burglary, that is:

(a) entering any building or part of a building as a trespasser with intent to steal anything, to inflict grievous bodily harm on anyone, to rape any woman or to do unlawful damage either to the building or to anything within the building; or

(b) having entered any building or part of a building as a trespasser, then stealing or attempting to steal anything therein or inflicting or attempting to inflict grievous bodily harm on anyone therein:

is punishable on conviction on indictment with a maximum of fourteen years' imprisonment.

(Section 9)

## 4. Aggravated burglary

Burglary with a firearm, imitation firearm, weapon of offence or explosive carries a maximum penalty of life imprisonment.

(Section 10)

## 5. Going equipped for stealing

It is an offence to have in one's possession, outside of one's own place of abode, any article for use in the course of or in connection with burglary. The maximum penalty on conviction on indictment is three years' imprisonment.

(Section 25)

## V Offences Against the Person Act 1861

Acts of violence against another person are chargeable under any one of a number of statutory provisions depending on the nature and degree of severity of the assault. These include: common assault punishable under section 47 of the 1861 Act with up to six months' imprisonment or a £1,000 fine or both

/on

on summary conviction or up to one year's imprisonment on conviction on indictment; assault punishable under section 42 with up to two month's imprisonment or a £200 fine on summary conviction; aggravated assault upon a male child under 14 or upon a woman punishable under section 43 with up to six months' imprisonment or a fine of £500; assault occasioning actual bodily harm punishable under section 47 with up to six months' imprisonment or a £1000 fine or both on summary conviction or up to five years' imprisonment on conviction on indictment; unlawful and malicious wounding or the infliction of grievous bodily harm is punishable under section 20 with up to six months' imprisonment or a £1000 fine or both on summary conviction or up to five years' imprisonment on conviction on indictment; and wounding or the causing of grievous bodily harm with intent is punishable under section 18 <sup>on conviction on indictment</sup> with a maximum of life imprisonment.

#### VI Sexual Offences Act 1956

Assaults of a sexual nature are punishable under the provisions of the Sexual Offences Act 1956. Offences include: rape (section 1) punishable with a maximum of life imprisonment; procuring unlawful sexual intercourse by threats or intimidation or by false pretences (sections 2 and 3) punishable with up to two years' imprisonment; indecent assault on a woman (section 14) punishable on conviction on indictment with up to five years' imprisonment if the victim is under 13, otherwise up to two years' imprisonment or on summary conviction with a maximum of six months' imprisonment or a £1000 fine or both; and indecent assault on a man (section 15) punishable on conviction on indictment with up to ten years' imprisonment or on summary conviction with up to six months' imprisonment or a £1000 fine or both.

#### VII Offences against the public peace

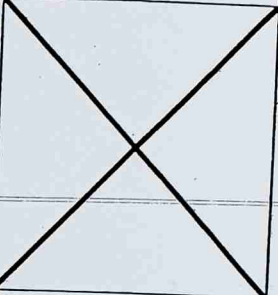
At common law there exist several offences dealing with situations in which a number of people gather together in circumstances likely to cause or actually causing a breach of the peace. These are the offences of unlawful assembly, rout, riot and affray which carry an unlimited penalty. The particular charge to be brought will depend on the circumstances of the individual case, in particular whether actual violence has taken place. It would appear from decided cases on these offences that they apply to private premises as well as to public places.

/VIII

### VIII Binding Over

Magistrates have power under common law and under Statute (Justices of the Peace Act 1361 and section 115 of the Magistrates' Courts Act 1980) to bind a person over to keep the peace and/or to be of good behaviour. Binding over may be on complaint by another person and it may follow arrest in circumstances in which a breach of the peace has been committed or is apprehended. Binding over is not a punishment but is to prevent a likelihood of future misbehaviour. Refusal to be bound over can result in an immediate committal to custody. The court will order the person to be bound over to enter into a recognisance. Breach of the conditions of the order is punishable with forfeiture of the sum stipulated to be paid by the recognisance.

# A The National Archives

DEPARTMENT/SERIES	Date and sign
PIECE/ITEM ..... (one piece/item number)	
Extract details: <i>letter and attachment from Walters to Flecher</i> <i>dated 23 December 1982</i>	
CLOSED UNDER FOI EXEMPTION .....	
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10 DOWNING STREET

From the Principal Private Secretary

18 November 1982

Dear John,

FINAL REPORT BY  
ASSISTANT COMMISSIONER DELLOW

Thank you for your letter of 12 November covering the final report by Assistant Commissioner Dellow.

The Prime Minister has seen your letter and the report, and has noted the way in which the Home Secretary proposes to handle it.

Yours ever,

Robin Butler

John Halliday Esq.,  
Home Office.

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 OF THE PUBLIC RECORDS ACT  
 PRIME MINISTER

*md*

The attached letter from the Home Secretary explains that he will not be publishing or making any statement about the final report by Assistant Commissioner Dellow on Royal Security. The report is sent to you for information, and you may like to look at it over the weekend. There is a summary of its recommendations at Flag A.

It is now for DAC Smith, the Deputy Assistant Commissioner appointed to head the Royal Protection Department following the Home Secretary's statement in July, to carry forward the detailed recommendations with the help of the permanent group chaired by the Home Office.

There is one aspect of the report which would affect the organisation of the protection given to you. A lengthy passage of the report is about Assistant Commissioner Dellow's recommendation that there should be a unified Protection Department covering Royalty, Ministerial, Diplomatic and Special Escort. This would mean that the protection given to you and other Ministers would come under the new department and no longer under Special Branch, although Special Branch officers would be seconded to the Protection Department. It is clear from chapter 6 that this recommendation has been strongly opposed within the Force, particularly by Special Branch itself. The covering letter says that the Home Secretary "believes that there is value in this recommendation as a long term goal" but that he "does not propose to authorise a change until DAC Smith's present work is clearly under control and completed".

I gather that, in fact, this means that the Home Secretary is shelving the recommendation indefinitely. So no change in Special Branch's responsibility for protecting you and other

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politicians is in prospect at present.

Discussion of the possibility of such a change is meant to have been kept very close within the police and we should not assume that our own Special Branch officers know about it.

F.R.B.

17 November 1982

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**SECRET**

HOME OFFICE  
 QUEEN ANNE'S GATE  
 LONDON SW1H 9AT

12 November 1982

Dear Robin,

FINAL REPORT BY ASSISTANT COMMISSIONER DELLOW

Assistant Commissioner Dellow has completed his third and final report on the incident at Buckingham Palace and the Commissioner has sent it to the Home Secretary. I enclose a copy, which the Home Secretary has asked should be given to the Prime Minister.

The Home Secretary referred to the prospect of the report in his statement to the House of 21 July as follows:

"Mr Speaker, Assistant Commissioner Dellow's inquiry will continue in respect of assessments of further physical security measures. In this task, I have asked Mr Dellow to draw on all sources of available expertise, in the public and private sectors. The results of this work will enable the completion of Mr Dellow's inquiry. The work of keeping these matters under review will then be carried forward by DAC Smith."

There was no reference to making any public statement about the contents of the report or even to announcing that it had been received. The Home Secretary does not intend to publish the report in whole or in part, or to make an announcement about it, other than to acknowledge its receipt if asked and indicate that its recommendations are being taken forward as he announced in July, that is by means of the new Royalty Protection Department under DAC Smith within the framework of the permanent group, comprising representatives of the Royal Households, the police, the Household Division and the Property Services Agency, which is chaired by a senior Home Office official.

The report provides a clearer account of the events of 9 July and 7 June than was previously available. The survey of individual residences (Part 5) and the reflections on long term considerations (Part 7) whilst necessarily not comprehensive or complete will be of assistance to those with the continuing responsibilities for these matters. The account in Part 6 of the sequence of events leading to the establishment of the new Royalty Protection Department is, perhaps, unnecessarily detailed. But that is, and can be treated as, past history.

F E R Butler, Esq.

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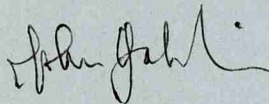
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There are two recommendations in the report which warrant particular comment. Recommendation 9.1 refers to paragraphs arguing for a unified protection department, that is covering Royalty, Ministerial, Diplomatic and Special Escort functions. The Home Secretary believes there is value in this as a long term goal. But, as the Commissioner has been informed, the Home Secretary does not propose to authorise a change until DAC Smith's present work is clearly under control and completed.

Second, the recommendation on the DAC's chain of command (9.4) is ambiguous, proposing that he should ordinarily work to the Assistant Commissioner 'A' with only provision for direct reporting to the Commissioner. The Home Secretary announced in his statement on 21 July that DAC Smith would report direct to the Commissioner, and the Home Secretary has told Sir Kenneth Newman that he is not prepared to accept the suggested change in that arrangement.

*Yours ever,*



J F HALLIDAY

*Temporarily Retained*

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OF THE PUBLIC RECORDS ACT

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MFJ

*Security*

4 November 1982

Thank you for your letter of 3 November about security at the Royal Mews, Buckingham Palace, which the Prime Minister has now seen; she is also aware of the more recent incident involving 'Sun' reporters at Highgrove. The Prime Minister is grateful to be kept informed.

TIM FLESHER

Colin Walters  
Home Office

*[Handwritten signature]*

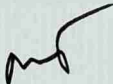
PRIME MINISTER

c. Mr. Butler

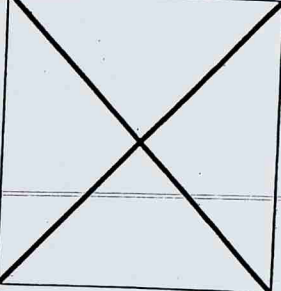
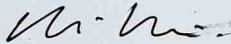
BREACH OF SECURITY AT THE PALACE

Attached is a report by the Home Office on the breach of security in the Royal Mews at the Palace. It was of course not as serious as the Daily Mirror claimed. You may also have heard that two Sun reporters were arrested in the grounds of Highgrove this afternoon. They were subsequently released and their cameras returned to them. Highgrove has of course substantial grounds and it is therefore all the more pleasing that the police were able to arrest the two reporters.

3 November 1982



# A The National Archives

DEPARTMENT/SERIES	PREM 19	Date and sign
PIECE/ITEM ..... (one piece/item number)	1623	
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*Security*

PRIME MINISTER

cc. Mr. Ingham

The Attorney General's Office telephoned this afternoon to let us know that tomorrow morning Counsel, on behalf of the Attorney General, will be applying for leave to move for committal for contempt of court against five newspapers (The Sunday Times, Mail on Sunday, The Sunday People, The Star and The Sun) in connection with their reporting on the circumstances surrounding Michael Fagan's detention after he had been caught inside the Palace.

The point, as I understand it, is that these papers published so much material so damaging to Fagan's reputation as to make it, in the Attorney's view, highly likely that the course of justice will be impeded.

MLG



11 October, 1982



PS/~~THE~~ PRIME MINISTER

Security  
PM has seen

Prime Minister

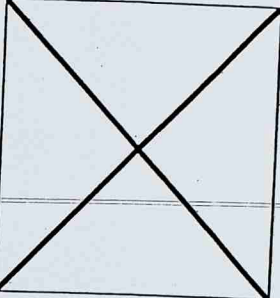
A. J. C. 29  
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1. The Duty Clerk, No.10 Downing Street rang at approximately 0330 this morning.
2. The national newspaper, The Sun, today (29 September) carries photographs depicting the Royal Family, including HRH The Queen. The accompanying article claims that they are from Buckingham Palace and said to be family photographs. The slant of the story is towards highlighting another breach of security at Buckingham palace.
3. The Duty Clerk also said that an (unnamed) German magazine is also reproducing the photographs today and that The Sun is supposed to have purchased them from this source.
4. Although a full report will be awaiting The Prime Minister's return, the Duty Clerk wishes the above to be brought to her attention in the event of any questions being fielded prior to her return to the UK.

B K WELLS

29 September 1982

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## Buckingham Palace (Security)

**The Secretary of State for the Home Department (Mr. William Whitelaw):** With permission, Mr. Speaker, I should like to make a statement.

When I reported to the House on 12 July, I said I would make—as soon as I could—a further statement about the major breach of security at Buckingham Palace on 9 July. I have now received and considered a further report from assistant commissioner Dellow. I thought it right to place in the Library, and make available to right hon. and hon. Members in advance of this statement, a detailed account of the incident, the background to it, the failures that occurred and the subsequent action.

On 19 July I informed the House of the resignation of commander Trestrail, the Queen's police officer, following his confession to having had over a number of years a homosexual relationship with a male prostitute. The confession raises further grave questions concerning the arrangements for the Queen's security. Accordingly, I have invited Lord Bridge to investigate the appointment as Queen's police officer and the activities of commander Trestrail with a view to determining whether security was breached or put at risk; to advise whether in the light of that investigation any change in security arrangements is necessary or desirable; and to report. Lord Bridge is chairman of the security commission, but would conduct this inquiry sitting alone. I am glad to say that he has agreed to undertake the task. I shall, of course, inform the House of his findings. Although I have no evidence of a connection between this matter and the incident on 9 July, I am arranging for Lord Bridge to see all the papers relating to the events on 9 July so that he can make any further inquiries he considers necessary and advise on the adequacy of the police inquiries.

I turn now to the events of 9 July. Mr. Dellow's inquiry has revealed that although there were technical failures, the basic cause of the breakdown of security was a failure by the police to respond efficiently and urgently. Furthermore, the incident revealed slackness and weaknesses in supervision. The commander, A district, has resigned from the force and the chief inspector at the palace has been transferred to other duties. Those were the two officers charged with the supervision of the uniformed officers at the palace.

Mr. Dellow has also outlined the serious errors and omissions which exposed the Queen to danger. As a result, four other police officers are subject to disciplinary inquiries. One of those officers has been suspended and two have been removed from their former duties. I am sure that the House will accept that the officers concerned have a right to a fair hearing. I must remind the House that I have an appellate responsibility in police discipline cases and it is not proper for me to comment further on those individual cases.

I have considered with the Commissioner what further arrangements are needed to ensure efficiency, greater professionalism and effective supervision. I have accepted his proposal that the protection of Her Majesty the Queen, other members of the royal family, and their residences will be the single responsibility of a deputy assistant commissioner reporting directly to the Commissioner. Deputy Assistant Commissioner Colin Smith has been appointed to this new post. He will head a new Department responsible for all aspects of royalty protection. The senior

officers in the new royalty protection department, including DAC Smith, will work from Buckingham Palace. This will ensure the closest supervision at senior level and also effect the most direct links with the household and staff of the Queen and the senior officers of the household division, who have promised their full co-operation.

Operational responsibility for all protection will thus be brought together. DAC Smith's first task will include a remit to make recommendations for revised arrangements for posting and training and to keep them under review. He will pay particular attention to establishing and maintaining a regime of duty which is adequately varied and testing.

Since the incident, the number of uniformed police officers on protection duties has been increased. Some new technical security devices have been installed; some existing devices relocated; and all thoroughly tested.

Assistant Commissioner Dellow's inquiry will continue in respect of assessments of further physical security measures. In this task, I have asked Mr. Dellow to draw on all sources of available expertise, in the public and private sectors. The results of this work will enable the completion of Mr. Dellow's inquiry. The work of keeping these matters under review will then be carried forward by DAC Smith. But all physical measures depend ultimately on the people who operate them being of high quality and properly supervised. The new leadership and arrangements I have outlined are designed to ensure this.

I have asked the chief officers of other forces in England and Wales, who have responsibilities for royal residences, to review the arrangements they have made, and make any further recommendations beyond those measures which have already been implemented. The chief officers concerned will work closely with DAC Smith. My right hon. Friend the Secretary of State for Scotland has done the same within his area of responsibility.

I have decided to institute a new permanent group, comprising representatives of the royal households, the police, the Household Division and the Property Services Agency, chaired by one of my senior officials. This group will meet regularly to examine the effectiveness of the arrangements made. It will not in any way lessen the operational responsibility of DAC Smith and the Commissioner of Police of the Metropolis. The group will report personally to me.

I believe that the bringing together under a DAC of the responsibility for all protection for the Queen and members of her family, the changes in staffing, the improvements in equipment, and the monitoring of the new arrangements I have announced, constitute the best approach to improving palace security. I have also announced the terms of Lord Bridge's inquiry. Although I have no evidence that the incident of 9 July and the resignation of Commander Trestrail were connected, I have arranged for Lord Bridge to see the papers relating to the former event.

The shocking events of 9 July were handled by Her Majesty the Queen with great composure and resolution. But it is intolerable that Her Majesty should have been exposed to this intrusion and put at risk in this way. It is not the wish of Her Majesty, her Ministers or, I am sure, of this House, that she and other members of the royal family should be confined by measures of high security that deny private life and public accessibility, but the

passing the phoney debating point about underspend or capital receipts across the Floor of the House will the Minister agree, as he is concerned about capital spending, to increase the housing investment programme allocation of any local authority that tells him that it wants to spend more so that we can get rid of the 30 per cent unemployment in the building industry, which the Minister has created?

**Mr. Stanley:** There is nothing phoney about hundreds of millions of pounds of genuine cash receipts coming to local authorities, which this Government alone made it possible for them to spend. One gets the impression from the right hon. Gentleman that anything is phoney if it does not reinforce his prejudices. The right hon. Gentleman talked about damage to the construction industry. I see that the Labour Party is now committed to the establishment of a national construction corporation based on the acquisition of one or more contractors, the extension of the activities of local authority direct labour organisations and the establishment of a building materials corporation. In terms of damage to the construction industry, that programme of nationalisation and municipalisation would be the single greatest disaster for it.

#### Council Houses and Flats

21. **Mr. Dubs** asked the Secretary of State for the Environment how many council houses and flats are standing empty; and what proportion of this total is (a) awaiting repair and (b) awaiting purchasers.

**Mr. Stanley:** According to the authorities' own estimates, 97,000 council dwellings were vacant in England on 1 April 1981. The reasons for vacancy are available only for the 24,000 local authority dwellings that have been empty for more than a year. Of these 11,700 were awaiting or undergoing repair or improvement and 4,500 were awaiting sale.

**Mr. Dubs:** Does the Minister agree that the hundreds of thousands of badly housed and homeless families find it extremely offensive that there are so many empty properties around them? They find it particularly offensive, when they live in areas such as Wandsworth, to see the numbers of empty council properties that are awaiting a purchaser. Does the Minister agree that that is a scandal? Will he monitor the situation more carefully and take steps to bring it to an end?

**Mr. Stanley:** Wandsworth council has a number of empty dwellings that are awaiting sale. The hon. Gentleman referred to a scandal. However, in the Labour-controlled city council of Manchester, of the number of dwellings that have been vacant for more than a year, the number awaiting sale was 596. Many people who are seeking houses find offensive the political position of the Labour Party which, in undertaking to repeal shorthold, will deliberately deprive many people of short-term rented accommodation.

**Mr. Peter Bottomley:** Does my hon. Friend agree that it would make a great deal of sense for local ratepayers if every council were required to publish a list, not only of council homes that have been standing empty for more than three months, but of any council homes that have been refused by two sets of people to whom they have been offered, so that other people can take over the homes and, if necessary, do the repairs themselves?

**Mr. Stanley:** I agree that more attention should be given to the number of local authority dwellings that are subject to two refusals. In some cases there are more than two refusals. The number of properties that have been standing empty for a long time feature in local authority HIP returns. If my hon. Friend would like to table a question on that matter, I shall give him details of all the empty properties, if he wishes.

**Mr. John Evans:** Is the Minister aware that in my constituency more than 100 excellent houses are standing empty which belong to the Home Office and were formerly prison officers' houses? Does he regard that as a scandal? Will the Minister suggest to his right hon. Friend, who is sitting next to him, that he should do something about those houses?

**Mr. Stanley:** As my right hon. Friend is next to me, I am sure he has heard what the hon. Gentleman said.

**Mr. Squire:** In view of the plethora of statements that my hon. Friend mentioned as coming from Labour hon. Members can my hon. Friend name one that will in any way reduce the problem outlined by the hon. Member for Battersea, South (Mr. Dubs).

**Mr. Stanley:** My hon. Friend is right. It is the Government who have introduced shorthold and encouraged homesteading and improvement for sale. It is a Conservative Government who have sought to resolve the problem of empty dwellings.

safety of the sovereign must be paramount. There has been an appalling lapse of security and I know that the whole House—and the country—will demand that the lessons of this incident must be learned so that the protection that we give to the Queen and members of her family is the best that can be provided.

**Mr. Roy Hattersley** (Birmingham, Sparkbrook): Is the Home Secretary aware that he has reported today on two distinct but obliquely related matters? On the question of Mr. Trestrail, and particularly his positive vetting, he has promised a report from Lord Bridge, the chairman of the security commission.

The Trestrail case raises complex matters of principle and practice, and I am willing to postpone comment on them until Lord Bridge reports to the Home Secretary, and the Home Secretary, as promised, reports to the House. On the other hand, is the Home Secretary aware that the numerous intrusions into Buckingham Palace can and must be commented on immediately?

Is it not appalling that breaches of security have happened so often and with so little response? After the previous incursions but before the events of 9 July were made notorious in newspapers, did the Home Secretary visit the palace to check on security? Did the Commissioner of the Metropolitan Police visit the Palace to check on security? I am speaking of the period between the knowledge being received in Government and being made public in the newspapers. If they did not make such visits, why did they not make them?

Will the Home Secretary confirm, what is clear from his report, that the several incursions are the result of negligence at every level—failure by the police to respond effectively and urgently, slackness and weakness in supervision, and technical failures in security devices?

I share the Home Secretary's view that we must not jeopardise the prospects of a fair hearing for the officers who face disciplinary charges, but that does not apply to the entire force, and particularly to some very senior members of the Metropolitan force.

I believe that the whole House will agree that questions are necessary in a situation, which is almost beyond belief, in which the Queen, as the Head of State and a person particularly vulnerable to attack, should have been left in persistent danger.

I accept that the Home Secretary will take urgent and immediate action. I also accept that the action which he has reported today seems likely to prove effective. But one aspect of the whole incident continues to give great cause for alarm. Much of the report now in the Vote Office was quoted almost verbatim on television on Friday evening. If the report on royal security is not secure, what is secure, and how much faith can we place in those people who first leaked and who are now required to implement it?

Does the Home Secretary now agree that the bizarre story which he has told the House today is a further example of the inability of the Metropolitan Police successfully to discharge all the duties imposed upon it? It is too large, it attempts too many diverse tasks, it is badly managed, and it has no effective authority to control its actions.

Does not the evidence before the Home Secretary today, at least and at last, convince him of the need for a major revision in the governance and the organisation of

the Metropolitan Police? If he takes no action and if there are further failures and further fiascos, the responsibility will be his and his alone.

**Mr. Whitelaw:** In answer to the right hon. Gentleman's last point, I do not think that I have raised any question throughout about the responsibilities—not operational responsibilities—which I share in the final event. I have my responsibilities and I accept them, and no one can suggest that I have not accepted them over the last weeks.

I visited the palace after the other intrusions. I did not visit the palace for the purpose of examining security. It is important to remember that the operational disposition of police officers is a matter for the police themselves. If one breaches that position, one gets into very serious difficulties.

The senior officers visited the palace to check on security. I do not know whether the commissioner did, but certainly his very senior officers, who are directly responsible to him, did so.

The right hon. Gentleman referred to speculation and to what was said in the report getting to the BBC. Among the many things that I have been deeply upset about over the last fortnight, I was deeply upset about that. I checked very carefully and most of it could be regarded as at best informed speculation and no more. I believe that to be the case, because I have checked very carefully with all concerned.

With regard to the future of the Metropolitan Police, I accept—and so would the Commissioner—that there were grave mistakes on this occasion. It would be wrong not to recognise at the same time some of the remarkable achievements of the Metropolitan Police which have been seen in this House and in this country on many different occasions. One might even refer to the considerable work done by the Metropolitan Police in the tragic events of yesterday. It is wrong to look at one instance and one only.

**Mr. Russell Kerr** (Feltham and Heston): Come off it.

**Mr. Whitelaw:** No, that is only fair to the Metropolitan Police. One cannot condemn every officer in the Metropolitan Police for some particular instances. That would be wrong. I am only saying that mistakes must be judged but that at the same time there are successes. I do not think that anyone would deny that. I shall certainly consider what the right hon. Gentleman said about the organisation of the Metropolitan Police. I shall look very carefully into it and discuss it with the new Commissioner, Sir Kenneth Newman, in October.

**Mr. David Steel** (Roxburgh, Selkirk and Peebles): The decision of the Home Secretary to establish a unified royalty protection department is welcome, but why were the steps that he has now taken not taken after the previous entries into the palace described in his document? Why was there not at that time the tightening up of discipline and the reorganisation that he has now announced? Why did it have to await the appalling incident of 9 July?

Is Lord Bridge to review the positive vetting procedures?

**Mr. Whitelaw:** On the right hon. Gentleman's second point, that is within Lord Bridge's terms of reference and no doubt he will do so.

With regard to the first point, the other intrusions were all properly and successfully repelled. It is important to remember that.

**Mr. John Wheeler** (Paddington): In view of the special responsibilities that Deputy Assistant Commissioner Smith is to assume, could my right hon. Friend tell the House about the experience that that officer has and why he in particular should do the job?

**Mr. Whitelaw:** He was recommended to me by the commissioner. He is 41 years old and joined the Metropolitan Police as a deputy assistant commissioner in May this year, having served as an assistant chief constable in the Thames Valley police and before that in Sussex, so he has had experience outside the Metropolitan Police, which I think is particularly important. He is also young and extremely well-equipped for the task.

**Mr. John Morris** (Aberavon): Does the Home Secretary recall the famous complaint of Mr. Macmillan when he was Prime Minister, that nobody told him anything?

Is it not extraordinary that the Home Office officials took such a long time to tell the Home Secretary of the events of the weekend? Is he satisfied with his control of his Home Office officials and his relationship with the Metropolitan Police? When precisely was he told of the other incursions into Buckingham Palace?

**Mr. Whitelaw:** With regard to the right hon. and learned Gentleman's second point about the affairs of Commander Trestrail, I am perfectly clear that I was told at the proper time in the proper way when I could be given a full report in order for me to come to Parliament at the earliest opportunity on Monday afternoon to make a full statement of all the facts. If I had not done that there would have been accusations of cover-ups of all types. No one can accuse me at any stage of the proceedings of having sought to cover up anything at all. I hope at least that the right hon. and learned Gentleman will give me the credit for that, because I have certainly not done so. With regard to the previous intrusion, I was warned on the telephone in my car as I was travelling north to my constituency in Cumbria. I was finally told at one o'clock when I got to my home on that Friday afternoon.

**Mr. Mark Carlisle** (Runcorn): Since the chief officer of police—in this case the Commissioner—and not the Home Secretary is totally responsible for operational matters within his force, is my right hon. Friend satisfied that there has now been established within the Metropolitan Police a sufficiently clear line of responsibility for the security of Her Majesty the Queen on all occasions?

**Mr. Whitelaw:** That is the purpose of the measures that the Commissioner has proposed to me, and which I have approved and announced to the House today.

**Mr. George Cunningham** (Islington, South and Finsbury): Does the Home Secretary appreciate that a Home Secretary of any other party would have been crucified by the House and by the media for this affair? Is it not important for us all to realise that what happened at the Palace was a spectacularly dramatic illustration of a type of inefficiency that is rampant throughout British institutions—the failure of superiors properly to supervise their subordinates? How many times in the past three years have I nagged the Home Secretary to get the Home Office properly to exercise its functions as the police authority for London? Will the right hon. Gentleman confirm that there is not one civil servant in the Home Office exclusively

engaged on the job of police authority for London? Will he now take that matter more seriously in the future than he has in the past and perhaps have a meeting with London Members of Parliament to discuss how he will do it?

**Mr. Whitelaw:** I accept what the hon. Gentleman has said about the need to exercise the functions of the police authority of the Metropolis. I have taken that to heart. The organisation inside my police department is a matter for myself and my officials, but we shall take into account what the hon. Gentleman has said.

**Mr. Edward Gardner** (South Fylde): I congratulate my right hon. Friend on the measures that he has decided upon to improve the protection of the Queen and the royal family, but does he agree that one of the most extraordinary features of the break-in at Buckingham Palace on 9 July is that, following the murder of Earl Mountbatten, £2 million was made available for the improvement for security of Royal residences? In spite of that, is it not a fact that one alarm beam at Buckingham Palace was found to be at the wrong place and another, which might well have trapped the person who was trying to break in, was out of alignment? Does not my right hon. Friend agree that that was a most extraordinary state of affairs?

**Mr. Whitelaw:** Certainly, the expenditure of £2 million on improving the technological devices for the Royal residences in those years has been a considerable expenditure of taxpayers' money. I think that that is right. The failures on this occasion were serious, but I must return to what Mr. Dellow said and what is contained in paragraph 8 of the document that I circulated. He "emphasised that if police officers had been alert and competent, Fagan would have been apprehended well before he got close to the Private Apartments."

That is the essence of the matter. The technological equipment was there—in some cases it was not used and in other cases it was not observed.

**Mr. George Foulkes** (South Ayrshire): Has the Home Secretary noticed that there is usually quick action and vigilance immediately after such an event but that soon after there is a lapse into the previous poor practices? As a Member of the House was actually murdered, is the right hon. Gentleman satisfied with the security in the Palace of Westminster, since many hon. Members including myself have noticed a lapse in security over the past few weeks?

**Mr. Whitelaw:** I shall certainly discuss that matter with the House authorities but I must make it clear to the hon. Gentleman that the responsibility for security in the Palace of Westminster is a matter for the House authorities and that they must satisfy themselves on the matter.

**Sir William Clark** (Croydon, South): I am sure my right hon. Friend is aware that the more the fiasco at Buckingham Palace unfolds, the more astounded and shocked the British public are as to what went on. While one pays tribute to the bulk of the police force, surely my right hon. Friend will agree that there was sheer and gross incompetence on this occasion. While those involved must have a fair hearing, why is it that more people have not been suspended? Does my right hon. Friend agree that there must be something wrong with the law when, as I understand it, the intruder, Mr. Fagan, cannot be sued?

**Mr. Whitelaw:** My hon. Friend refers to the question whether Mr. Fagan should be prosecuted. I shall consider

at matter. The law of trespass is complicated, but I shall consider that matter with my right hon. Friend the Lord Chancellor and my right hon. Friend the Attorney-General.

With regard to my hon. Friend's first point, of those officers directly responsible for the supervision failure, one has resigned and one has been transferred to other duties.

**Mr. Leo Abse** (Pontypool): Are not the statements of the Home Secretary both on Monday and today a charter for blackmailers and a triumph for the lure of cheque-book journalism? Since Commander Trestrail has had no criminal offence charged against him and, despite the innuendo contained in the statement today, there has apparently been no breach of security on his part, is it not disgraceful that what has occurred is the substitution of public pillory for the penal punishment that this House rightly abolished? As a consequence, since it leaves open again the possibilities of blackmail, is it not more rather than less likely that there will be breaches of security as a result of the irresponsible statements made on both occasions by the Home Secretary?

**Mr. Whitlaw:** I should have thought that many people in the House and in the country would have believed that for an officer in Commander Trestrail's position to have had the association that he had with a male prostitute must have carried risks of blackmail. Surely it would have been criminally negligent not to pay attention to that information about a man in his position as soon as it came to the notice of the authorities.

**Mrs. Jill Knight** (Birmingham, Edgbaston): Following the changes announced by the Home Secretary this afternoon, the most important question of all to ask my right hon. Friend is whether he can assure the House and the country that the Queen, who is inexpressibly dear to and honoured by her subjects, will henceforward always be safe in her own home?

**Mr. Whitlaw:** I would simply refer my hon. Friend to the best assurance that I believe any Government, any Parliament or any country can give, that the protection we give to the Queen and members of her family is the best that can be provided, always remembering that the safety of the sovereign must be paramount.

**Mr. Arthur Davidson** (Accrington): Since three young Germans managed to scale the Palace walls in June 1981 and it was then decided to make those walls more secure, why did it take more than 12 months to build an alarm system and a barbed wire fence? How could it have taken so long once the palace and the Metropolitan Police had been alerted to the dangers?

**Mr. Whitlaw:** I shall look into all those matters. The Property Services Agency does the work. It has been doing a great deal of work at all the other residences. I shall discover why it took so long.

**Sir Bernard Braine** (Essex, South-East): My right hon. Friend will know by now that there is deep disquiet in the country. The Queen's safety concerns not only him but every one of her subjects. While there may be general approval for the announcement today that there will be one executive officer responsible and that that is where the buck will stop, will my right hon. Friend say why, when

he is the police authority for the Metropolis, that officer reports to the Commissioner of the Metropolitan Police and not on this matter directly to him?

Secondly, will Lord Bridge be able to recommend improvements in the palpably ineffective system of personal vetting?

**Mr. Whitlaw:** On the first point, the reason why this officer reports direct to the Commissioner is an important constitutional one, and it is that the Commissioner of the Metropolitan Police, like all chief officers of police throughout the country, is operationally responsible for his force, and the work at Buckingham Palace is one for which the Commissioner is operationally responsible in the constitution. That is most important, and it must be preserved for the future.

In answer to my hon. Friend's second point, Lord Bridge will be able to make such recommendations.

**Several Hon. Members** *rose*—

**Mr. Speaker:** Order. As the House is aware, I normally bring these questions to an end at four o'clock. I shall allow four more questions on either side, which will mean an exceptionally long time.

**Mr. Geoffrey Robinson** (Coventry, North-West): Does the Home Secretary agree that the most extraordinary aspect of the excellent report that has been put in the Vote Office by his Department is the fact that, following Earl Mountbatten's assassination, a complete review of royal protection arrangements was carried out with his agreement by the Metropolitan Police? That review cost £2 million, and it was completed barely 18 months ago. Yet in spite of that review and the £2 million that was spent, there has been an enormous lapse in the security arrangements. Does he not therefore agree that the buck has to stop somewhere for accountability, and that it cannot be left with the hapless Commander Trestrail? It has to stop somewhere else, if it is not to stop with the Home Secretary himself.

**Mr. Whitlaw:** I thank the hon. Gentleman for saying that the report is very full, and I am sure that the House will agree that everything that could have been put in was put in. I have held nothing back from the House. I am therefore grateful to the hon. Gentleman for what he said.

In answer to what he said about the work that has been done, I come back to what Assistant Commissioner Dellow said—that in the end much of the work that is done depends on those people who work it, and the officers who were responsible for working it. That is where the lapse of security came. I believe that this was a matter of supervision. The commander of the district concerned, who was directly responsible, has resigned from the force, and that is right.

**Mr. Anthony Beaumont-Dark** (Birmingham, Selly Oak): Is my right hon. Friend aware that, although examining the vetting procedure is vital and necessary, it must be stretching credulity beyond breaking point to believe that Commander Trestrail's proclivities for male prostitutes were not known by those who carried out the vetting? Does my right hon. Friend agree Lord Bridge should investigate the people who did the vetting and that any appointments made by those people and by Commander Trestrail must be investigated in their turn, to

[*Mr. Anthony Beaumont-Dark*]

make sure that the right people have been appointed, and that they were not subverted by the likes of Commander Trestrail?

**Mr. Whitelaw:** All these matters will be looked into by Lord Bridge, and it would be wrong for me to prejudge the outcome.

**Mr. Christopher Price** (Lewisham, West): As the measures announced by the Home Secretary will clearly involve extra public expenditure, and as Deputy Assistant Commissioner Smith's responsibilities will now extend beyond Buckingham Palace to other royal residences outside London, is it fair and right that the expenditure involved in this exercise should fall solely on the ratepayers of Lewisham and other London boroughs, and not be taken up as a national responsibility, as it clearly should be?

**Mr. Whitelaw:** The hon. Gentleman will remember that the arrangements for police financing mean that the Government give a direct 50 per cent. grant on all expenditure, and on top of that, a proportion of the rate support grant. That has been the way that police financing—

**Mr. Price:** We are responsible for 25 per cent.

**Mr. Whitelaw:** I believe that the method of police financing is correct, and I should like to stick to it.

**Mr. Nicholas Winterton** (Macclesfield): It may sound surprising, coming from me, but may I tell the Government and my right hon. Friend that they majority of Conservative Members have total confidence in my right hon. Friends and the Government in the steps that they have taken to deal with this shocking breach of security at Buckingham Palace, and that we are greatly encouraged by the proposition which my right hon. Friend has put to the House? I wish to ask him only one question. Will he ensure that, where police officers have been incompetent in the operation of their duties, they are dismissed rather than moved to one side, so that all right hon. and hon. Members can be totally confident that the security of Her Majesty is not only paramount in this House but paramount with the police?

**Mr. Whitelaw:** I thank my hon. Friend for what he has said. I take note of his second point, but as I have already said, it would be wrong for me to prejudge the disciplinary inquiries on the police officers concerned.

**Mr. Andrew Faulds** (Warley, East): Since the major resignation so far tendered would not have been required if Lord Justice Diplock's recommendations and comments on homosexuality had been accepted—

**Mr. A. J. Beith** (Berwick-upon-Tweed): Oh yes, it would.

**Mr. Faulds:** That is debatable; my argument is that the resignation would not have been required.

—and as no superior figure directly responsible for the major offence—the intrusion into the Queen's bedchamber—has yet resigned, when can we expect further resignations on this matter?

**Mr. Whitelaw:** I shall not enter into the debatable point. On the second point, I do not think that it would be reasonable for the hon. Gentleman to expect any more resignations.

**Mr. John Stokes** (Halesowen and Stourbridge): Is my right hon. Friend aware that these grave events, which have deeply disturbed the whole nation, would have been the subject, in Her Majesty's Forces, of courts martial? Will there be similar undertakings in the Metropolitan Police, and will there be the necessary drastic reforms afterwards, so that the public can regain the confidence in the police which is so essential?

**Mr. Whitelaw:** Confidence in the police is essential. That is why I said that although these events cast doubts on and undermine that confidence, the many other actions taken by the Metropolitan Police and other forces point in the other direction. The disciplinary procedures will proceed, as is proper in a public service. They are different from the procedures in the Armed Services, but they will proceed, as is proper.

**Mr. Michael English** (Nottingham, West): The Home Secretary missed something out of his statement, and I hope that he will include it. Under the Secretaries of State—not just the right hon. Gentleman but all of them—the people responsible for Her Majesty's personal security are the Officers of the Household. In the light of what the right hon. Gentleman has said, I assume that he intends to introduce legislation to transfer that responsibility to himself and the police. For example, there is a person—I think his responsibility is outside the palace walls—the Master of the Horse, who has not offered his resignation. Can we ensure that, apart from sacking the monkeys, something will also be done about some of the organ grinders who have sinecure posts where they accept responsibility—admittedly unpaid?

**Mr. Whitelaw:** It is very unfair of the hon. Gentleman to attack those servants of the Queen who are not in a position to answer for themselves.

**Mr. English:** Some of them are on that Front Bench. They are Whips. They can answer here.

**Mr. Whitelaw:** By making the arrangements that I have with the new deputy assistant commissioner in charge of all royalty protection, working closely with the senior officers in Buckingham Palace and with the Household staff of the Queen and the senior officers of the Household Division, I believe that I have taken the right action. The operational responsibility will remain with that DAC who is responsible directly to the Commissioner of the Metropolitan Police and not to anyone else.

**Mr. Eldon Griffiths** (Bury St. Edmunds): Bearing in mind the Diplock recommendation that the whole of the Civil Service should ordinarily not be subject to the rule that homosexual tendencies are a barrier to recruitment, and that that should be dealt with henceforth on a case-by-case basis, will my right hon. Friend confirm that henceforth all senior police officers who are put in security positions will be subject to positive vetting?

**Mr. Whitelaw:** That point was raised in Lord Diplock's report and the position is that positive vetting excludes most police officers other than the most senior ranks and members of the Special Branch. That is what Lord Diplock recommended and it remains the position.

**Mr. Hattersley:** The Home Secretary will be aware that most attention this afternoon has been focused on the performance of individual police officers. In the light of that, will he confirm that paragraph 9 of the document that he put in the Vote Office concludes:

"This divided organisation has not encouraged the professionalism and dedication that would have prevented the incident on 9th July."

Does he understand that most of the Opposition's complaints are not about Metropolitan policemen but about the structure and constitution of the Metropolitan Police?

**Mr. Whitelaw:** The right hon. Gentleman has already made that point to me and I have said that I shall consider it.

**Mr. Dennis Skinner** (Bolsover): Why does not the right hon. Gentleman resign?

**Mr. Speaker:** Ten-Minute Bill, Mr. Dennis Canavan.

**Mr. English:** On a point of order, Mr. Speaker. I understand your natural reluctance and I have a natural reluctance to say what I am about to say. The fact that an hon. Member has walked out in a fit of temper does not mean that he is entitled to use the words that he just used of any person of any party who happens to hold your office. I shall repeat them if you wish, but I see no need to. However, the matter must be dealt with through an appropriate channel.

**Mr. Speaker:** In view of that statement, I shall send a message to the hon. Gentleman asking him to be in his place tomorrow. I did not hear the words. I am very fortunate because there is much that I do not hear. However, I shall ask him to be in his place tomorrow because it appears that he owes an apology to the House.

**Mr. John Grant** (Islington, Central): On a point of order, Mr. Speaker. I have always understood that where an hon. Member indicated to you that he had a constituency interest—Mr. Fagan is my constituent—it is customary to call that hon. Member. Will you comment on that?

**Mr. Speaker:** I did not believe that it was a constituency interest. The whole House has the same interest in the matter.

**Mr. Grant:** This is victimisation—

**Hon. Members:** Oh!

**Mr. Michael English** (Nottingham, West): On a point of order, Mr. Speaker.

**Mr. Grant** *rose*—

**Mr. Speaker:** Will the hon. Member for Islington, Central (Mr. Grant) come back to his place? Very well. [HON MEMBERS: "Disgraceful."] The whole House can keep cool for a moment. The hon. Gentleman is obviously in a state of agitation.

**Mr. Skinner:** I think he has resigned.

**Mr. Speaker:** Has he? I am reluctant, in the absence of an hon. Member, to take any further action.

who, in the referendum campaign, advised people to vote "No" because a future Tory Government would produce better alternative policies for devolution in Scotland. They have produced nothing. We have waited three years for alternative proposals from the Tory Government. We have waited in vain that is why I am asking for leave to introduce the Bill.

All who are genuinely interested in a decentralised democracy ought to support me, because the Bill will be the beginning of a process of meaningful devolution of power, which will eventually be to the advantage of all the people of the United Kingdom.

*Question put and agreed to.*

Bill ordered to be brought in by Mr. Dennis Canavan, Mr. Allen Adams, Mr. George Foulkes, Mr. John Home Robertson, Mr. David Lambie, Mr. William MCKelvey, Mr. R. McTaggart, Mr. David Marshall, Mr. John Maxton, Mr. Robert Parry, Mr. John Morris and Mr. Gerard Fitt.

#### SCOTTISH PARLIAMENT

Mr. Dennis Canavan accordingly presented a Bill to set up a Scottish Parliament; and for related purposes: And the same was read the First time; and ordered to be read a Second time upon Wednesday 20 October and to be printed. [Bill 174.]

**Mr. Bill Walker** (Perth and East Perthshire): On a point of order, Mr. Speaker, is it not an abuse of the House to introduce a Bill at this late stage in the Session when there is no hope of it ever being passed?

**Mr. Speaker:** I shall be brief, to save time, as many hon. Members wish to speak on the main business. I should not be surprised if we had another similar motion on Wednesday of next week, if it is in order.



cc: Security - Birmingham  
Palace Couriers  
August 1981

Security



10 DOWNING STREET

From the Private Secretary

Mr. Wright

I mentioned to you on the telephone at the end of last week that the Secretary of State for the Environment had a brief word with the Prime Minister after Cabinet on Thursday on several security matters, one relating to a leak in connection with a PSA contract which involved Sheerness Steel; another about the Secretary of State's security responsibilities in Royal Palaces and Government buildings. You told me that Sir George Moseley had been in touch with Sir Robert Armstrong on the same points, and that Sir Robert would be taking action to deal with the questions which arise.

The purpose of this minute is to record that the Prime Minister would be grateful for a report from Sir Robert Armstrong on these matters. She would be grateful if the report were copied to the Secretary of State for the Environment.

I am sending a copy of this minute to David Edmonds (Department of the Environment).

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Hyca

M. D. SCHOLAR

19 July, 1982.

PRIME MINISTERThe Buckingham Palace Incident

I attach Assistant Commissioner Dellow's first and second interim reports. You are seeing the Home Secretary at 1700 on Monday to discuss the Statement on the incident which he is due to make in the House on Wednesday.

The Home Office tell me privately that they regard Dellow's reports as thin, and I am afraid that they are right. But they have themselves been working with the Commissioner and with the Palace all week on proposals for improving both personal protection and physical security at the Palace and at other Royal residences, and they have virtually agreed between them a package of measures which, I am told, is a good deal meatier than anything contained in the Dellow reports. Mr. Whitelaw, who is seeing the Commissioner on Monday morning, should be able to elaborate on his proposals when he sees you on Monday afternoon.

JWH.

16 July 1982



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~~SECRET~~

HOME OFFICE  
QUEEN ANNE'S GATE LONDON SW1H 9AT

16 July 1982

*See above*

The Home Secretary has today received from the Commissioner a second interim report by Assistant Commissioner Dellow. He has asked me to send you the enclosed copy for the Prime Minister. Mr Dellow gave the Commissioner an initial interim report on Monday, 12 July, which the Commissioner and Mr Dellow used as a basis for their oral report to the Home Secretary that morning. We have now also been provided with copies of the first interim report and a copy of that is also enclosed. The reports need to be read together.



*Love sincerely*  
*Colin Walters*

*temporarily retained*

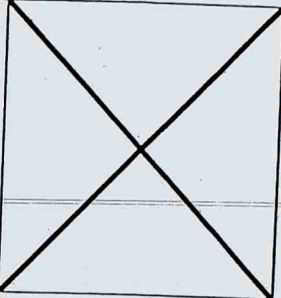
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C J WALTERS

C A Whitmore, Esq.

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# A The National Archives

DEPARTMENT/SERIES	<i>PREM 19</i>	Date and sign
PIECE/ITEM (one piece/item number)	<i>1623</i>	
Extract details: <i>Second interim Report from Bellow dated 16 July 1982</i>		
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PRIME MINISTER

Following your short talk with Mr. Heseltine yesterday after Cabinet you asked <sup>me</sup> him to arrange a meeting with Sir Robert Armstrong to discuss the security points raised by Mr. Heseltine.

---

I have enquired into this. In fact the Department of the Environment (Sir George Moseley) have already raised these points with Sir Robert Armstrong as Permanent Secretary of the MPO and Head of the Civil Service. I understand he is going to arrange a meeting to consider what action to take to deal with ~~the~~ worrying points which have arisen. Would you like the outcome to be reported to you?

MUS Yes pls

16 July, 1982.

*Security*

MR WHITMORE

*RAW*  
*14. vii*

I think I should report to you the Lobby's line of attack over the Palace affairs. It is:

- why do the police always investigate their own failures? Why not set up an independent - eg Privy Counsellor - inquiry? Such an independent inquiry would carry more conviction;
- will Mr Whitelaw when he makes his next statement ensure that it is fuller and more comprehensible?

These points are over and above the well-developed suspicion that, but for the Express, Government would have hushed up the whole thing.



B. INGHAM

14 July 1982

From: THE PRIVATE SECRETARY

*at WR  
Security*



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HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

13  
8 July 1982

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INCIDENT AT BUCKINGHAM PALACE - 9 JULY

The Home Secretary has asked me to pass you the attached copy of the report which has now been received from the Metropolitan Police. No doubt the Prime Minister will wish to see this further account of the background to the case before answering Questions this afternoon.

*Yours sincerely  
C J Walters*  
C J WALTERS

C A Whitmore, Esq.

**SECRET**

Copy No 2

METROPOLITAN POLICE

Reference to papers { C.O. ....  
Dist. ....

SECRET DISTRICT BRANCH STATION 'AD' 13th July 19 82

Registry Folio No. ....

G.O./Police Order.....refers

Re Michael FAGAN - C.R.O. 53440/67  
BURGLARY AT BUCKINGHAM PALACE

- 1 -

To: Deputy Assistant Commissioner 'C' (Operations)

1. This preliminary report is submitted as instructed in order that a precis of what the accused FAGAN has said to police may be known. In order for this to be readily understood it is necessary for a brief resume of the facts of this matter to be related.

2. There are two separate incidents herein reported, the entry to Buckingham Palace on Monday, 7th June, 1982, and the entry on Friday, 9th July, 1982.

3. Dealing with the entry on Monday, 7th June, 1982. At about 11.20 p.m., Miss Sarah Jane CARTER, aged 19 years, a Housemaid employed and resident at Buckingham Palace, reported to the Police Lodge that some minutes earlier she had seen a man's hand and possibly a face on the outside of her bedroom window. At the time of making this complaint she was accompanied by two other off duty Housemaids who had met Miss Carter outside her room and who had heard noises from inside her room and were thus able to corroborate her story to that extent.

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4. Police Sergeant 20'A' BRAITHWAITE attended the scene with the three girls and his preliminary examination caused him to accept their story notwithstanding the fact that the window concerned is on the third floor and there is a sheer drop of some fifty five feet from the window ledge. About three feet to the side of the window is a drain pipe.

5. P.S. Braithwaite caused his senior officer Chief Inspector GREENE to be informed and a search of Buckingham Palace commenced. On this night H.M. The Queen was not in residence. No intruder was discovered.

6. In daylight on 8th June, 1982, senior scenes of crime and senior fingerprint officers attended and some finger impressions were found, consistent with this climbing feat. Also found were traces of pigeon repellent gel from the outside of the building. Also on 8th June, 1982, Miss Cynthia Jane PARSONS, aged 56 years, a Lady Clerk employed in Room 108 at Buckingham Palace reported to police the theft of approximately half a bottle of wine from that room. This alleged offence had occurred during the night of 7/8th June, 1982, and on the same floor as Miss Carter's room through which the intruder had entered. Finger marks were found on this bottle.

7. Detailed enquiries were made by Detective Chief Inspector FOSBURY including interviewing numerous staff and soldiers on guard duty etc. Elimination finger prints were obtained from all relevant persons and these were all checked against the outstanding marks but the marks were not eliminated and were filed at New Scotland Yard.

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8. This matter was followed up by all possible enquiries being made and was recorded in the Confidential Crime Book at Cannon Row Police Station. At this stage the matter remained undetected.

9. On Friday, 9th July, 1982, at about 6.45 a.m., Police Sergeant 50'A' Malcolm TRUDGEON, off duty, riding his motor cycle, saw a man on the railings of Buckingham Palace near the gates to the Ambassadors Entrance.

10. P.S. Trudgeon notified Police Constable 591'A' DAVIS who was nearby on duty and Davis by means of personal radio, notified the Buckingham Palace officers and he then confirmed this report by telephone to the Control Room.

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22. FAGAN was taken firstly to the Police Lodge and subsequently to Cannon Row Police Station at about 8.15 a.m. He gave his name originally as 'Rudolph HESS' but later supplied his true personal details.

23. Since he had a superficial cut on his right thumb, probably from smashing the glass ashtray and hence the bloodstain on The Queen's bed, a doctor was called to treat him. Dr. DURSTON, Divisional Surgeon attended. There was no evidence to suggest to the doctor that FAGAN was under the influence of drink or drug. The doctor later took a blood sample for comparison purposes with the blood on the blanket.

24. FAGAN was interviewed from 12.25 p.m. to 1 p.m., by Deputy Assistant Commissioner David POWIS, O.B.E., Q.P.M., accompanied by Commander Graham STOCKWELL. This interview, although under 'caution' as demanded by the Judges Rules, was a preliminary interview to ascertain FAGAN's mental state and personal and family circumstances. A contemporaneous record

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This was achieved and FAGAN also under questioning, claimed to have committed this act on his own and that he had entered the Palace to see The Queen. This appeared to be for some illogical personal emotional reason which compelled him to speak to The Queen.

25. Under this questioning FAGAN admitted entering the Palace on a previous occasion some three weeks earlier (i.e. the incident of 7th June). It was as a result of this admission that urgent steps were taken to compare his fingerprints with the finger marks left at the Palace on the night of 7/8th June, 1982. They were identical.

26. FAGAN was again interviewed between 8.5 p.m. and 8.38 p.m. by Detective Chief Superintendent Trevor LLOYD-HUGHES, accompanied by Detective Inspector Colin RUTTER and P.C. 842'A' THOMPSON and P.C. 879'A' PLAYER, the latter made a contemporaneous note of the interview which was intended to deal only with the offence of 7th June, 1982. The questions in this interview were confined to the evidence necessary to prove the burglary.

27. The interview may be summarised as an introduction or agreement to discuss the events of 7th June, 1982, an admission by FAGAN that he entered the grounds and gained access to the flat roof the same way each time (he subsequently pointed out to us the position). He admitted making the long climb to the top window and he was cautioned in accordance with Judges Rules. He agreed that he frightened the girl (Miss Carter) when he climbed in and that having entered he walked 'around and around and around'. He agreed that he had drunk some wine, having opened the bottle with a pair of scissors and that he did this in a room full of presents.

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He claimed that he was in the Palace about one hour and that he had spent some time looking at 'art'. He denied stealing anything else and said he knew that The Queen was not in residence at that time as her standard was not flying. At the conclusion of this interview he read over every answer at our request and initialled every answer and signed the bottom of each page.

28. He was again interviewed between 9.22 p.m. and 10.40 p.m., by Detective Chief Superintendent Trevor Lloyd-Hughes, again accompanied by Detective Inspector Colin Rutter and P.C. 842'A' Thompson and P.C. 879'A' Player, again the latter making a contemporaneous note.

29. Again the questions were confined to the evidence necessary to prove an offence (viz. burglary - including theft of the glass ashtray) and also on this occasion for the above reason. Also for other reasons it was decided to purposely avoid speaking of confrontation with H.M. The Queen.

30. FAGAN was 'cautioned'. He claimed that he had decided at about 2.30 a.m. to go to the Palace and had done so because of, "A little voice in my head....." He had drunk some 10 measures of whisky at Elmore Road and had then obtained a lift to Kings Cross and had walked from there.

31. On arrival at the Palace he had climbed directly over the railings and then entered. He admitted deliberately breaking the glass ashtray and keeping one piece of glass in order to slash his own wrists with it in the presence of The Queen but when eventually he saw her, he states he was unable to carry it through.

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32. He apparently wanted to do this because he claims to, "love her and I didn't think she wanted me." He volunteered that he may be a case for Friern Barnet (a well known North London mental hospital), and that he had only had mental problems this year following his separation from his wife and children.

33. He agreed he had taken his shoes and socks off on the flat roof in order to easier climb into the Palace. He indicated his route to the flat roof and then stated that before he had climbed onto the flat roof he had entered the window into a room

. He described coming out of there the same way he had entered and then climbing the drainpipe to the flat roof and entering the Palace via a window (the office of The Master of the Household). He spoke of going into the State Ballroom and of sitting on the right hand 'throne' in there. He agreed he had said, "Good morning," to a cleaner (Miss Hatton). He claimed that after leaving the Ballroom he had looked at the pictures and mentioned that he had 'just followed the pictures' and ended up seeing a picture of 'The Queen's Father'.

He said that he did not intend slashing his wrists before he went to the Palace and that he only came to make this decision when he saw the glass ashtray. He described how he got the slash scars on his wrists which were now some three weeks old and said he had slashed his wrists as a result of his matrimonial problems with his wife Christine and the children. He said his wife had recently been prosecuted for taking a vehicle and that he was presently very unhappy and that this made him do 'daft' things.

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34. He claimed not to care that he might end up in a 'nut house' and said that he had not meant to do anyone any harm or cause anyone any embarrassment or upset and that all he wanted was a bit of peace and quiet. He was adamant that he arrived in The Queen's bedroom by 'following the pictures' and that he wasn't going to do anything like that again. He claimed that he only got in to have a look around and only changed his intention when he saw the ashtray and then thought of slashing his wrists again. He asked for his personal problems not to be discussed outside the Police Service and was obviously disturbed. He agreed to check, read and sign the notes and did so.

35. From all the circumstances, although difficult to accept, it would appear that he really did find The Queen's bedroom by chance 'following the pictures'. From his previous route and antics in the Ballroom it would seem that this was not the cool execution of some contrived plan but the blunderings of a mentally disturbed individual. A matter of serious concern nevertheless.

36. The antecedent history of FAGAN is indicative of a nervous breakdown being presently suffered. He is obviously emotionally disturbed by the matrimonial problems currently evident. He has recently assaulted his 14 year old stepson. He has recently violently smashed furniture in a spasm of rage. He has recently been arrested for running naked ('streaking') along a public tow path and an appearance in Court later that same day for this matter, indecently exposed himself from the dock. His wife has confirmed, in a written statement, his unfortunate mental state and in seeking medical help for him in this respect.

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37. It is understood that he has had previous connection with the notorious ex Doctor SWANN who came to prominence some years ago in the East End of London for excessively supplying drugs, etc.

38. FAGAN appeared at Bow Street Magistrates' Court on Saturday, 10th July, 1982, and is presently remanded, in custody, to Monday, 19th July, 1982, on the following charge:

On 7th June, 1982, Buckingham Palace, S.W.1, you having entered a building, viz: Buckingham Palace as a trespasser, did steal therein a quantity of wine value £3 (half bottle), the property of Department of Environment.

Contrary to: Section 9(1)(b) Theft Act, 1968


He is legally represented by Mr. Maurice NADEEM of Maurice Nadeem & Co., Solicitors, 6, Coptic Street, London, W.C.1 (637 5615).

39. In all the circumstances of this case it would appear that this wretched individual more by luck than judgement has created a most grave and serious security breach. Mercifully no physical harm came to Her Majesty.

40. Submitted.

  
Detective Chief Superintendent  
Trevor Lloyd-Hughes

41. Forwarded by hand to Home Office.

  
Deputy Assistant Commissioner  
(Crime) (Operations)

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METROPOLITAN POLICE

Form 609

Convictions Recorded Against:-

John MORGAN

Charged in Name of:-

Michael FAGAN

C.R.O. No. 53440/67  
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**SECRET**

METROPOLITAN POLICE

Form 609

Convictions Recorded Against:- John MORGAN

Charged in Name of:- Michael FAGAN

C&R. No. 3340767  
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BUCKINGHAM PALACE INCIDENT

Further Briefing

Director of Public Prosecutions

It is common for all Police Forces to consult the Director on difficult cases. I am sure that the Director will be keeping the Attorney General fully informed. As the House knows, the question of bringing charges is a matter for the proper authorities, and not for the Government. I am assured by the Attorney General that the case will be dealt with as quickly as possible.

## Buckingham Palace (Incident)

3.30 pm

**The Secretary of State for the Home Department (Mr. William Whitelaw):** With permission, Mr. Speaker, I should like to make a statement.

I have to report to the House that a man was arrested in Buckingham Palace on Friday morning after entering the bedroom of Her Majesty the Queen. The House will admire the calm way in which Her Majesty responded to what occurred. It will also share my grave concern, and that of the Commissioner of Police of the Metropolis, at this most serious failure in security arrangements. A man appeared in court on Saturday, having been charged in connection with an earlier incident at the Palace. I understand that the facts have been reported to the Director of Public Prosecutions, who is considering the possibility of charges arising out of the latest incident.

In recent years a number of additional security measures have been introduced at Buckingham Palace, but the latest incident shows that the position is still not satisfactory and that more needs to be done. I have, of course, fully discussed the incident with the commissioner, who is operationally responsible for Royal protection matters. On Friday he appointed Assistant Commissioner Dellow to carry out an urgent inquiry into what went wrong and what lessons are to be drawn for the future. Immediate steps were also taken by the commissioner on Friday to strengthening security arrangements at the Palace. Mr. Dellow has today submitted to the commissioner and myself an interim report on this incident; we shall see a further report later this week.

I am determined, as is the commissioner, that the arrangements for safeguarding the security of the Queen should be as comprehensive and effective as possible. The rapid implementation of the measures resulting from his inquiry will require the closest consultation between the Palace authorities and the police, and will be pursued with the utmost urgency.

I shall make a further statement to the House as soon as I can.

**Mr. Roy Hattersley (Birmingham, Sparkbrook):** I am sure that the whole House will agree that what the Home Secretary has reported to us today is, to say the least, a wholly extraordinary state of affairs. On behalf of my hon. Friends, I express our relief that the incident ended without harm to Her Majesty.

Will the Home Secretary clarify part of his statement, in the certain knowledge that the security arrangements at Buckingham Palace give us all cause for serious concern? Will he clarify that part of his statement, which is less than precise, involving the first incident? How closely was the first incident, to which his statement refers, related to the occurrence on Friday? Was the same man, as has been rumoured, involved in both incidents? Most important of all—indeed, it is absolutely crucial—will the Home Secretary say what steps were taken to improve Palace security after the first incident; or was it necessary for the *Daily Express* to enjoy its extraordinary scoop before matters were taken with the seriousness that the situation warranted?

I hope that the Home Secretary will accept from the official Opposition that we welcome the urgent and

immediate inquiry that he has promised. We look forward to the further statement that he has undertaken to make to the House in the hope and belief that it will make it absolutely plain that security at the Palace is being improved in the way that is obviously needed.

**Mr. Whitelaw:** I am grateful to the right hon. Gentleman. Naturally, everyone will welcome what he has said about the relief that no harm came to Her Majesty.

I am advised that for me to discuss further the details of the latest incident, at a time when there is a possibility of criminal charges being preferred, would be wrong, and that I must not respond to the right hon. Gentleman's question.

Improvements to the security arrangements were made immediately on Friday and in no way awaited the publication of the report in the *Daily Express*.

**Mr. Hattersley:** With respect, I press the Home Secretary not on what he calls the latest incident but on what his statement refers to as the previous incident. I have no wish to break the sub judice rule, but I believe that I am entitled to ask, and the House is entitled to be told, whether, after the first incident, attempts were made to improve the security at the Palace.

**Mr. Whitelaw:** They most certainly were.

**Mr. Patrick McNair-Wilson (New Forest):** Will my right hon. Friend agree with me that security is an attitude of mind? Is it true that security duty within the Palace is regarded within the police force as unpopular on account of the boredom, because people believe that electronic devices are carrying out the surveillance, and that the only officers who go in for this duty tend to be either those at the start of their career or those at the end of it who want a quiet life?

**Mr. Whitelaw:** It is very important for us to consider what Mr. Dellow has to say on the question of the policemen deployed and on the technical arrangements. The incident certainly underlines that, although substantial improvements in physical protection arrangements have been made in the past 18 months, it is crucially important to ensure that the arrangements as a whole are comprehensive and, above everything else, that they are made to work effectively.

**Mr. David Steel:** The whole House will wish to join with the Home Secretary in the admiration he has expressed of the way in which Her Majesty dealt with the incident. While the Home Secretary has, naturally, a desire to respect the wishes of the Royal Family not to be surrounded by too close a personal barrier of security, nevertheless, he must surely have in mind that the security of the buildings that the Royal Family occupy is of the highest importance.

**Mr. Whitelaw:** Yes, and it is for that very reason that in my statement I said that

"The rapid implementation of the measures resulting from his inquiry"

that is Mr. Dellow's inquiry—

"will require the closest consultation between the Palace authorities and the police, and will need to be pursued with the utmost urgency."

It is clear that on this occasion there were technical errors, but it is equally clear that there were human errors, too.

**Mr. Kenneth Lewis (Rutland and Stamford):** Is my right hon. Friend satisfied that there is sufficient use of modern protective technology in safeguarding the Palace?

amended section of the Public Order Act 1936. In fact, we have prosecuted in more cases over the past 12 months and have obtained a much higher rate of conviction than previously. We hope that that process will continue.

### Parliamentary Questions

49. **Mr. Edward Lyons** asked the Attorney General what proportion of the parliamentary questions to which he, or the Solicitor-General, have replied in the last six months have related to matters for which the Lord Chancellor is responsible.

**The Attorney-General:** During the period 1 February to 7 July 1982, 165 questions have been, or will shortly be, answered. Of these, 99 are related to matters for which the Lord Chancellor is responsible.

**Mr. Lyons:** Does the Attorney-General agree that it is extremely unsatisfactory, not to say bizarre and offensive to the House, that he, uniquely has to answer to this House for a Department in which he has no responsibility or share in policy formulation? Does he further agree that there should be a Minister in the House from the Lord Chancellor's Department? Alternatively, should not the Attorney-General himself be linked in some way with that Department so that he has responsibility for his answers?

**The Attorney-General:** It would be impossible for me to be linked with that Department. The House has placed upon me a number of decisions of a quasi-judicial nature that I must take without being influenced by anyone else. This is the first time that I have heard the suggestion that the Lord Chancellor's Department should have a Minister of its own, but I shall consider it.

**Mr. Archer:** Whatever the future of the Lord Chancellor's Department and the Law Officers' Department, does the Attorney-General agree that there can be no justification for exempting those two Departments, alone among Government Departments, from the scrutiny of a Select Committee of the House? Would it not be perfectly possible to exclude such matters as the appointment of judges, but still subject legal services, law reform, the legal aid system, the Official Solicitor and the Public Record Office to a perfectly proper Select Committee scrutiny?

**The Attorney-General:** This is a hardy annual. Speaking for my Department, about 90 per cent. of the decisions I have to take could not be the subject of an investigation by the Select Committee. It might be slightly different so far as my noble Friend the Lord Chancellor is concerned, but the matter is constantly raised and talked about.

### Jury System

50. **Mr. Dubs** asked the Attorney-General if he is satisfied with the present workings of the jury system.

**The Attorney-General:** I am concerned about some evidence recently available of the suborning of jurors and that people who are disqualified under present legislation by reason of their previous convictions from serving on juries have, in fact, been sitting as jurors.

**Mr. Dubs:** Is the Attorney-General aware of how welcome was his change of mind not to make major changes in the jury system by means of an amendment to

the Administration of Justice Bill on Report? If he intends to bring about such major changes, will he present them to the House in such a way that they can be debated properly, preferably being preceded by a White Paper?

**The Attorney-General:** The change is in the qualification of jurors rather than the jury system as such. I do not altogether accept what the hon. Gentleman said because the intended amendment would have been moved on Report and the House would, therefore, have had a chance to debate it. However, as I indicated a moment ago, we decided not to proceed with it. It is a matter that I want to have in law as soon as the House agrees, because I am worried about the number of people who serve on juries but who should not do so.

**Mr. Stokes:** Why cannot my right hon. and learned Friend go back to the good old days of the law in England when, in order to become a juror, one had to be a man of substance and maturity?

**The Attorney-General:** The reason is that the House not only moved away from the property qualifications, but, by an amendment that I believe was moved by one of my hon. and learned Friends, reduced the age from 21 to 18. However, all these matters must be kept under review.

**Mr. Arthur Davidson:** Will the Attorney-General confirm that, whether composed of men of substance or not, juries continue to reach fair and sensible verdicts, by and large, and that the problem of the corrupt juror is relatively small, although disturbing? Will the Attorney-General therefore ensure that any remedy he produces will be limited and do nothing to diminish the respect that the public have for the fairness of the jury system?

**The Attorney-General:** The problem is not the jurors themselves, but the extent of the attempts made to suborn them. This is an increasing worry and, I regret to say, an increasing worry that we have not fully appreciated in the past. When a juror is approached it has to be reported to the court. Although jurors in practically every case we know of, have behaved completely honourably, for reasons that the hon. and learned Gentleman, as a barrister, will appreciate, it is safer to swear in another jury, with all the delay and further expense that is involved.

**Sir Charles Fletcher-Cooke:** Is there not a case for looking very carefully at the possibility of reverting to the special jury for long-term frauds and other complicated matters of that sort? Would not that be infinitely preferable to the alternative suggestion of having expert assessors?

**The Attorney-General:** My hon. and learned Friend is correct. The long-term frauds cause great anxiety. I was told last week of a case which is expected to last more than a year. Miss Smith could be a spinster at the time of the swearing-in of the jury and could have to leave the jury, having married and had a baby, before the end of the trial. That is one of the problems we have in keeping a jury together for long periods.

### Private Notice Questions

**Mr. Speaker:** For the past few days it has been the custom of hon. Members to tell the media first that they are applying for permission to ask a Private Notice Question. I might as well make it clear that I deprecate that practice.

**Mr. Whitelaw:** It was thought that there was but, if extra measures are now needed, they will be provided at once.

**Mr. Edward Lyons** (Bradford, West): While there is general relief that the Queen was not harmed by the incident, is not the evil of such an incident that it creates temptation in the minds of others? In those circumstances, should not the Government now consider the security precautions, not only for the Queen but for others, to see whether there are other defects that have grown up within the system over a period?

**Mr. Whitelaw:** The security arrangements of all other Royal residents are also being reviewed at the present time.

**Mr. David Ennals** (Norwich, North): Is the Home Secretary aware that the British public are shocked and staggered that this event could have occurred, and that his reference to security being not satisfactory must be the under statement of the year? How could it possibly have happened that a man who had previously been charged with an offence concerning the security at Buckingham Palace was able again to commit a similar offence? It seems incomprehensible.

**Mr. Whitelaw:** No one is likely to have been more shocked and staggered than I was. We shall have to await Mr. Dellow's report before I can give a further explanation.

**Several hon. Members rose—**

**Mr. Speaker:** Order. The House will be satisfied if we have two further questions from either side.

**Mr. Eldon Griffiths** (Bury St. Edmunds). Although the House will be anxious to see the results of the inquiry, does not my right hon. Friend agree that the remedy is important? Will he assure the House that no technical measure will be excluded from the future safeguarding of the Palace and all other residences of Her Majesty and that that shall include thermal intensification devices? Also, will the review deal not merely with Royal residences but with No. 10 Downing Street?

**Mr. Whitelaw:** The security of all the residences is reviewed constantly. No technical measure that is believed necessary would be excluded.

**Mr. Geoffrey Robinson** (Coventry, North-West): Does the Home Secretary accept that, although he may not

feel it proper to resign, such is the bewilderment throughout the House that whatever remedies are proposed they must in the end mean changes in the management of the personnel security system? May we have an early statement on that?

**Mr. Whitelaw:** I have promised that when I see the results of Mr. Dellow's inquiry I shall make a further statement to the House.

**Sir William Clark** (Croydon, South): Is my right hon. Friend aware that the shock suffered by the nation was that if the man had been a determined terrorist the result could have been catastrophic? Does he agree that all hon. Members welcome his immediate investigation, because the Queen and the Royal Family should have maximum security protection, especially now that terrorism is rife? When the person comes to trial, I hope that the do-gooders will not say that it was not his fault.

**Mr. Whitelaw:** As to my hon. Friend's latter point, that will inevitably be a matter for the courts and what he described as the "do-gooders" themselves. It would have been a catastrophe had this been a terrorist incident. It is vital that we provide the maximum possible security for the Royal Family and for all people in vulnerable positions. That is what we shall do.

**Mr. Robert C. Brown** (Newcastle upon Tyne, West): Will the Home Secretary reflect on President Reagan's stay at the Palace and the risk to which he was subjected? Can the right hon. Gentleman suggest confidently to a visiting Head of State that he should stay at Buckingham Palace?

**Mr. Whitelaw:** President Reagan stayed at Windsor Castle, but security must be the same at all the Royal palaces.

**Mr. Hattersley:** No hon. Member wishes this to become a matter of controversy across the House, but, in view of the bland answer that the Home Secretary gave to my second question, I must press him once again. He told us that security had improved recently. As that improvement resulted in a man entering the Queen's bedroom, how bad was security before the improvement?

**Mr. Whitelaw:** That must be considered by all Governments over a long period. In the past 18 months, substantial physical protection arrangements have been made. They have undoubtedly improved the position because they were important. There was a review, the results of which have been substantially carried out.



## Falkland Islands Review

3.44 pm

**Mr. Tam Dalyell** (West Lothian) *rose*—

**Mr. Speaker:** Order. I received notice from the hon. Member for West Lothian (Mr. Dalyell) of an application under Standing Order No. 9. I sent him a letter. Does he wish to pursue his application?

**Mr. Dalyell:** The subject to which I wish to draw the House's attention under Standing Order No. 9—

**Mr. Speaker:** Order. In that case, I must tell the hon. Gentleman that this is an abuse of our Standing Order No. 9 procedure. The House decided last Thursday on an inquiry into the circumstances of the Falkland Islands, and to pursue the matter now, in my judgment, is not fair. I have no power to stop the hon. Gentleman, but it is not fair.

**Mr. Dalyell:** On a point of order, Mr. Speaker. What is sauce for the gander, or a Back-Bench Member, is also sauce for the Government goose, in the sense that, as the House of Commons made certain decisions on Thursday about the Franks Committee, shall we have for the rest of the summer either Downing Street or the Foreign Office, or both, leaking information about those matters against each other?

If I should not move the Adjournment of the House on such matters, does not the same apply to Downing Street sources, as outlined by Mr. Anthony Bevens in *The Times*, and is it likely that Mr. Adam Raphael of *The Observer* would have written a detailed front page article about the alleged decisions of the overseas policy and defence committee of the Cabinet, involving Lord Carrington? If I am ruled out of order, should not a decision also be reached on Downing Street and the Foreign Office?

**Mr. Speaker:** Order. There is a major difference. I have no control over what happens in Downing Street. That is its concern.

## Statutory Instruments, &c.

**Mr. Speaker:** By leave of the House, I put together the Questions on the motions relating to statutory instruments.

*Ordered.*

That the Housing (Payments for Well Maintained Houses) Order 1982 be referred to a Standing Committee on Statutory Instruments, &c.

That the draft Companies (Accounts and Audit) Regulations 1982 be referred to a Standing Committee on Statutory Instruments, &c.—[*Mr. Goodlad.*]

## WELSH AFFAIRS

*Ordered.*

That the matters of the Annual Report of the Wales Tourist Board for the year ended 31st March 1982 and Regional Policy in Wales, being matters relating exclusively to Wales, be referred to the Welsh Grand Committee for their consideration.—[*Mr. Goodlad.*]

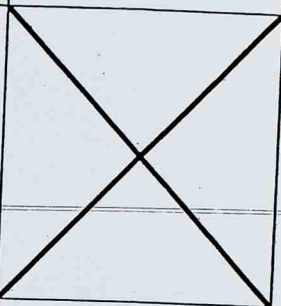
## WAYS AND MEANS

### NATIONAL LOANS FUND

*Resolved.*

That it is expedient to authorise any increase in the sums payable into the National Loans Fund which is attributable to provisions of any Act of the present Session relating to finance.—[*Mr. Goodlad.*]

# A The National Archives

DEPARTMENT/SERIES	PREM 19	Date and sign
PIECE/ITEM ..... (one piece/item number)	1623	
Extract details: minutes from De Novo to the Commissioner dated 9 July 1982		
CLOSED UNDER FOI EXEMPTION .....		
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958		
TEMPORARILY RETAINED	14/2/18 <i>M. L.</i>	
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NUMBER NOT USED		
MISSING (TNA USE ONLY)		
DOCUMENT PUT IN PLACE (TNA USE ONLY)		

From: THE PRIVATE SECRETARY



CONFIDENTIAL

HOME OFFICE  
QUEEN ANNE'S GATE  
LONDON SW1H 9AT

9 July 1982

Prime Minister

ACK  
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*MS.*

*Dear Tim*

I attach a note on the information that we have so far about this morning's incident at Buckingham Palace. The details are, of course, subject to correction [redacted]

The Home Secretary is keeping in close touch with the Commissioner and will, of course, be receiving a full written report.

*Yours sincerely  
C. J. Walters*

C. J. WALTERS

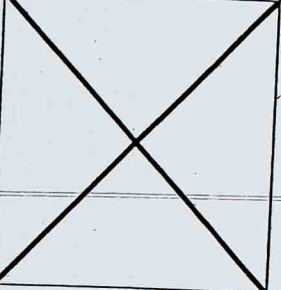

Tim Flesher, Esq.

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RETAINED UNDER SECTION 3 (4)  
OF THE PUBLIC RECORDS ACT

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DEPARTMENT/SERIES ..... <i>PREM 19</i> ..... PIECE/ITEM ..... <i>1623</i> ..... (one piece/item number)	Date and sign
Extract details: <i>Annex to letter from Walters to Flasher dated          9 July 1982</i>	
CLOSED UNDER FOI EXEMPTION .....	
RETAINED UNDER SECTION 3(4) OF THE PUBLIC RECORDS ACT 1958	
TEMPORARILY RETAINED	<i>19/2/18</i> 
MISSING AT TRANSFER	
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DOCUMENT PUT IN PLACE (TNA USE ONLY)	

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From: THE PRIVATE SECRETARY

Prime Minister

2  
Secret



MAD  
21/VIII.

HOME OFFICE

QUEEN ANNE'S GATE LONDON SW1H 9AT

20 August 1981

Dec Mike

ms

MAN IN THE GROUNDS OF BUCKINGHAM PALACE

You asked for briefing about the incident reported on page 8 of today's "Sun" that a young man was found in the grounds of Buckingham Palace.

We have asked the Metropolitan Police about this. The incident occurred on 5 August when the man, Joseph Larson, aged 24, was found in the grounds by a police officer patrolling the gardens at 9.15 p.m. Larson was taken to Cannon Row Police Station. He was bewildered and incoherent and appeared to suffer from a mental disorder, a view which was confirmed by a police surgeon who diagnosed the classic symptoms of schizophrenia.

Larson was interviewed again on the morning of 6 August and was driven round the Palace perimeter but he would not, or could not, indicate his point of entry. He was not charged with any offence, and the police took him to a mental hospital. They have not interviewed him again.

We have asked the Metropolitan Police for a full, written report on the incident and if anything of further interest arises from this I will let you know.

Yours sincerely  
Cohn Walters

C. J. WALTERS

Mike Pattison, Esq.