FROM THE PRIVATE SECRETARY

HOUSE OF LORDS,
SW1A 0PW

Our Ref: 124/454/01

10th January, 1983.

Dear Colin,

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.

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

CONTENTS

PART I - INTRODUCTION

1. There are a number of issues regarding the law of ~~trespass in~~ 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 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.

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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.

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PART II - THE EXISTING LAW

Background

8. In England and Wales, trespass to 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.

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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 in certain circumstances, - as a matter which justified the use of the criminal law, and their important recommendations were given effect in the Criminal Law Act 1977. Thus, the principal general exceptions to the 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. ~~[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.

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[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 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,

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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, additionally, has various remedies in the civil courts. He may seek an order for the trespasser's eviction and claim 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.

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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 [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.

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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?

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"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 chasing to recover a ball or toy from a garden or horse at 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? 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

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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".

at least a right

who claim some right or title to the property in question or ~~a right of~~ 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. To sum up, 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. 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.

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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 e.g. hotels or conference centres, serious. Moreover the nature of 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 a lawful occupier to have been in residence 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) 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, 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 is a lawful occupier in residence 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 that it might appear invidious to provide special protection for certain premises or individuals which is denied to the public at large. The

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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 entitle 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

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residential premises, would such a formula, suitably adapted, be sufficient to restr 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 no 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 o 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 anothe 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 ho 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?

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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

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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 someone is present on the premises lawful occupier is in residence. 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 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

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purpose of their presence is merely to prevent ~~an occurrence of~~ 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 or disputes on commercial premises (e.g. in shops/restaurants); the "sit in" kind of trespass is more of a rarity. ~~Domestic and landlord/tenant disputes, and trespass on the offices of particular organisations or industrial premises or private land in the case of political, industrial or sectional protest~~ 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?

> "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

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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 which kind of behaviour should be so stigmatised.

/similar

/In whatever manner the area is defined there are risks of ~~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 precise scope of a general offence could have~~ unforeseen 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 special protection/. The Government would welcome some indication of public and to make no provision for the ordinary citizen in his home. 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 1977

1. Violence for securing entry

The use or threatened use of vidence 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, 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/with a maximum of life imprisonment.
on conviction on indictment

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.