



In summer 2012, as part of the Poverty is Not a Crime campaign, Housing Rights Watch conducted a survey of national laws that penalise or criminalise the behaviour of people who are homeless. Legal experts prepared country reports that describe the nature of anti-social behaviour laws, as well as other regulations or ordinances that affect homeless people.

England and Wales

1. Introduction

This memorandum summarises the laws that may be used in England and Wales to impose criminal sanctions on the homeless in relation to their everyday activities. We have not included details of legislation that penalises other, more obviously criminal activities (such as drug use, or prostitution), which the homeless *may* engage in. For each type of activity, we set out a summary of the relevant legislation that may result in a homeless person committing an offence, and describe what has to be proved in order for that person to be found guilty of the offence. We also set out the penalties that may be imposed.

Where possible, we have identified evidence and/or examples of when such offences have been committed by the homeless. We have also identified key reports that may assist FEANTSA in collecting more information on the practical use of the legislation we have identified. It may be beneficial for FEANTSA to contact some of its local partners in the UK in order to identify further practical experience in this area.

2. Criminal Offences

A criminal offence is an act committed by an individual that is considered to be against the public interest, for example, violent behaviour or damage to property. Criminal proceedings are brought against the individual by public authorities and punishment for the offence can include a fine and/or imprisonment. This section provides a summary of the criminal procedures in England and Wales, as well as some relevant points about civil, non-criminal procedures.

2.1. *Offences directed affecting to the homeless*

Despite a number of public statements by the government and local authorities that homelessness will be eliminated, there are still a large number of people sleeping on the streets within England and Wales, and the number continues to increase. A Communities and Local

Government report for 2011 found that the number of rough sleepers had risen by 23% in a year.¹

2.1.1. Rough Sleeping

The Vagrancy Act 1824 makes rough sleeping a criminal offence.² Despite being nearly 200 years old and being amended many times, the Act continues to be used to criminalise the daily activities of the homeless.

Sleeping rough is a criminal offence if a person has been directed to a 'free' place of shelter and has failed to take this up. An offence is only committed where:³

the person had been directed to a reasonably accessible place of shelter (which provides accommodation free of charge) and failed to apply for, or was refused, accommodation there;

the person persistently sleeps rough, even though a place of shelter is reasonably accessible; or

by, or in the course of, sleeping rough he caused damage to property, infection with vermin, or other offensive consequence, or is likely to do so⁴ (it is possible that this is used as a way of prosecuting a person for urinating in a property, although we have not found any particular evidence of this).

There is also a new offence relating to erecting a tent or similar structure on and around Parliament Square in London.⁵ The offence prohibits any tent or structure (including sleeping bags and mattresses) that is used for sleeping or staying in a place for a long period, to be erected or kept in Parliament Square and the surrounding area. If a police officer reasonably believes that an individual has or is about to erect such a structure, they can direct them to stop their activity or to not start doing it.

2.1.2. Squatting

Squatting is a form of trespass which involves occupying land or property without the consent of the owner. From the reports we have identified, it appears that homeless people may take the opportunity to squat in certain (usually empty) buildings if this provides the possibility of a warm/dry place to sleep.

Squatting has previously been dealt with as a civil offence, with a property owner obtaining an eviction notice from the Courts. However, the UK is now seeking to criminalise squatting under the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which received Royal Assent on 1 May 2012.

¹ *Communities and Local Government*, "Rough Sleeping England - Autumn 2011", 23 February 2012; <http://www.communities.gov.uk/publications/corporate/statistics/roughsleepingautumn2011>.

² Section 4. So far as the Act extended to Scotland, it was repealed by the Civic Government (Scotland) Act 1982.

³ The Vagrancy Act 1935.

⁴ See also: *The Rights Guide for Rough Sleepers*, Housing Justice, page 26: <http://www.thepavement.org.uk/pdfs/rights-guide.pdf>.

⁵ Police Reform and Social Responsibility Act 2011, sections 142 and 143.

The section of the new Act regarding squatting has not yet come into force.⁶ Until then, the common law principles will continue to apply. Under the current rules, squatters are protected from unlawful eviction when they occupy premises as a “residential occupier”.⁷ Regardless of the rights of the owner of the property, it is an offence to unlawfully deprive the squatter of possession. Further, legislation currently only allows police to enter premises where violence or the threat of violence is used by a squatter.⁸ In such circumstances, it is an offence for a squatter to fail to leave when asked to do so.⁹

When it comes into force, the Legal Aid, Sentencing and Punishment of Offenders Act will make it much more difficult for individuals to squat. It will be an offence if a individual is in a residential building as a trespasser, they know they are a trespasser and they are living or intend to live there for a period.¹⁰ A person will in fact commit the offence whether he entered the building before or after this legislation comes into force.¹¹ If found guilty of this offence, an individual is liable on summary conviction to up to 51 weeks in prison or a maximum fine of up to level 5 on the Standard Scale (£5000).¹² Police will also be able to enter the property and arrest the suspected trespasser.¹³

The Act may be viewed as being highly prejudicial to the homeless as it seems likely that they are the individuals most likely to commit the offence. According to the charity *Squatters Action for Secure Homes (SQUASH)*, 96% of respondents to a Ministry of Justice’s consultation on squatting voiced opposition to its criminalisation.¹⁴ Research by the homeless charity *Crisis*, notes that 39% of single homeless people have squatted, and that under the new legislation, vulnerable homeless people will be forced to either commit this offence, sleep rough, or be forced into other dangerous situations.¹⁵

2.1.3. Begging

Begging can be defined as asking for money or food, especially in the street. While not every homeless person has to beg, there is a close relationship between begging and homelessness, and it is estimated that approximately 80% of people who beg on the streets are also homeless.

Under the Vagrancy Act 1824, begging¹⁶ and persistent begging (that is begging after having being convicted previously for begging)¹⁷ are offences. If the defendant offers

⁶ The progress of the Bill can be tracked at <http://services.parliament.uk/bills/2010-11/legalaidsentencingandpunishmentofoffenders.html>.

⁷ The Protection from Eviction Act 1977, section 1 defines a ‘residential occupier’ as any person occupying the premises as a resident.

⁸ Criminal Justice and Public Order Act 1994, Part V.

⁹ Criminal Law Act 1977, section 7.

¹⁰ Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 144(1).

¹¹ Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 144(7).

¹² Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 144(5)

¹³ Legal Aid, Sentencing and Punishment of Offenders Act 2012, section 144(8).

¹⁴ Can We Afford to Criminalise Squatting? SQUASH, March 2012: <http://www.squashcampaign.org/cost-of-criminalisation/>.

¹⁵ Crisis Report stage and amendment briefing: Offence of squatting in a residential building, October 2011.

¹⁶ Vagrancy Act 1924, section 3.

¹⁷ Vagrancy Act 1924, section 4.

something in return for the money, for example by busking, it is not regarded as begging (charity collection is also not considered to be begging).¹⁸

Other offences that may be committed by those who are begging include:

Obstruction of the highway under the Highways Act 1980¹⁹ - a person who obstructs the free passage along a highway is guilty of an offence (in fact, this offence can also be committed by rough sleepers, but is rarely done so unless the person is being unreasonable in the obstruction of the highway).

Anti-social behaviour under the Public Order Act²⁰ - a person who causes harassment, alarm or distress is guilty of an offence (see section IV.C).

There is a lack of statistics about arrests for begging under the Vagrancy Act. In 2002, fewer than 2,000 people were prosecuted before London Magistrates' Courts for the offence of begging²¹ (the source does not state if these were all under the Vagrancy Act). *The Pavement* made a request under the Freedom of Information Act 2000 to the Metropolitan Police about the number of people prosecuted for begging in London. This found that a total of 745 arrests were made in 2009 for this offence, resulting in 210 cautions and 469 cases of people being charged and either detained or bailed.²² The Freedom of Information Act has also been used by other organisations to show that the Act is being used throughout the country to prosecute begging, despite being nearly 200 years old.²³

The *Joseph Rowntree Foundation* found that the extent to which the Vagrancy Act is used to arrest those begging depends almost entirely on the scale of begging in an area and the priority given to it by police officers.²⁴ Many police officers were reluctant to arrest people for begging, and arrest was viewed as being ineffective due to the high levels of repeat offending. The homeless themselves also considered it to be "the lesser of two evils" when compared to stealing, and spending a night in a police cell was not a deterrent to many of those questioned.

While we do not have detailed statistics on how often ASBOs are imposed for begging, there is evidence in the press that ASBOs are being used in this way. For example Agripina Gheorge, 74, of no fixed abode, was made the subject of an ASBO at Cardiff Magistrates' Court in August 2011. The order banned her from begging in Cardiff and entering the city centre between 08:00 and 20:00 for three years. Police had received complaints on a daily basis from the public and shopkeepers, in particular in relation to begging.²⁵ We do not know the current status of her ASBO. In addition, whilst a custodial sentence for begging can no longer be given, a custodial sentence can be given

¹⁸ *Gray v Chief Constable of Greater Manchester* [1983] Crim LR 45.

¹⁹ Highways Act 1980, Section 137(1).

²⁰ Public Order Act 1986, Section 5.

²¹ Hansard HL vol 662 col 905 (17 June 2004).

²² *The Pavement*, "Over 1,800 convicted under Vagrancy Act", November 2 2010, <http://www.thepavement.org.uk/story.php?story=1109>.

²³ For example, Avon and Somerset: http://www.avonandsomerset.police.uk/information/foi/QandA_Question.aspx?qid=1614 and Northern Ireland: <http://www.psni.police.uk/begging.pdf>.

²⁴ *Joseph Rowntree Foundation*, "The Impact of Enforcement on Street Users in England", 11 July 2007, pp 36-37.

²⁵ *BBC News*, "Cardiff ASBO for Agripina Gheorge, 74, over begging", 30 August 2011: <http://www.bbc.co.uk/news/uk-wales-south-east-wales-14714829>.

for repeated breach of an ASBO that may be imposed in order to prohibit begging (discussed at section III.C).²⁶

Similarly, there is some evidence that dispersal order are being used. In 2009/10, the Royal Borough of Kensington and Chelsea introduced a Group Dispersal Zone to Brompton to tackle a distinct begging issue – mainly Romanian beggars. Over 200 people were moved on and six ASBOs were imposed.²⁷

2.2. *Offences directed affecting to the homeless*

2.2.1. **Drinking**

Under the Criminal Justice Act 1967, a person may be arrested without a warrant in any public place if they are guilty, while drunk, of disorderly behaviour.²⁸ Persons found to be drunk in public places have also been charged with the offences of being “drunk in a highway”,²⁹ and causing harassment, alarm or distress (see section IV.C).

2.3. **Criminal Proceedings**

Criminal proceedings can only be brought by certain public authorities, which for the purpose of this memorandum, include the Crown Prosecution Service (CPS).

There are a number of ways a person can be prosecuted for an offence. If the offence is an “arrestable offence”, meaning the most serious offences where the penalty is at least five years in prison (as well as some less serious offences, including, in this context, being drunk and disorderly), the police can arrest a person without applying to the Court for a warrant.³⁰ If considered appropriate, that person will then be charged with the offence, and will have to appear before the Court.

For less serious offences, the prosecutor must place the evidence in front of a magistrate, and if appropriate, a “summons” may be issued ordering the person to attend Court to answer the allegations. Alternatively, the Court can issue a warrant directing a person to be arrested and to appear before the Court. In practice, this is quite rare, as if the offence is serious enough, the police will arrest a person without a warrant, and if not, they will issue a summons so the person has to attend Court voluntarily. However, where the offence is not serious enough to carry the power of arrest, and issuing a summons is unpractical, i.e. because a person is of no fixed abode, the police will often apply for a warrant for arrest.

²⁶ *R. v Paul Patrick Fagan* [2010] EWCA Crim 2449. The appellant was given 20 months’ imprisonment for breach of an anti-social behaviour order prohibiting begging, where the appellant had previous convictions for breach of the same order.

²⁷ Kensington and Chelsea Community Safety Partnership, Crime and Community Safety Plan 2010-2013: [http://www.rbkc.gov.uk/PDF/CRIME_AND_COMMUNITY_SAFETY_PLAN_MASTER_DOC_19%20\(2\)%20doc.pdf](http://www.rbkc.gov.uk/PDF/CRIME_AND_COMMUNITY_SAFETY_PLAN_MASTER_DOC_19%20(2)%20doc.pdf).

²⁸ Criminal Justice Act 1967, section 91.

²⁹ Licensing Act 1872, section 12.

³⁰ Police and Criminal Evidence Act, section 24.

A defendant may be released from custody until he is next due to appear in Court, subject to such conditions as the Court or the police see fit to secure his return. This is known as bail. Bail is only granted where the Court or police are satisfied that a person will not fail to attend Court without reasonable excuse. Common conditions attached to bail include living at a fixed address, reporting to a local police station, obeying a curfew, avoiding named people or places, or providing a financial guarantee.

All criminal proceedings begin in the Magistrates' Court, and over 95% of criminal cases are heard there. The Magistrates' Court has lesser sentencing powers due to the fact that magistrates are "lay justices", and are not legally qualified - instead, they are assisted by clerks (a barrister or solicitor of five years standing³¹). The other 5% of cases, which are the most serious criminal offences, are sent to the Crown Court.

There are three classifications of offence in England that determine which Court may hear a case:

- 1) Summary only offences - minor in nature (such as common assault), heard in the Magistrates' Court. A maximum penalty can be imposed of six months imprisonment and/or a fine of up to £5,000.
- 2) Either-way offences - more serious offences, heard in the Magistrates' or Crown Court. If the magistrates decide their sentencing powers are sufficient to deal with the offence, the accused may choose to be tried in the Magistrates' Court. If the magistrates consider that their powers of sentencing are insufficient, the Court must send the case to the Crown Court.
- 3) Indictable only offences - serious criminal offences, triable only by jury in the Crown Court.

A person is innocent until proven guilty. The standard of proof in criminal cases is usually "beyond reasonable doubt", i.e. that no other logical explanation can be reached from the facts, except that the defendant committed the crime.

In order to prove a crime, it is necessary to prove both that the act was done, and that the person had the intention to commit it: "*an act does not make a man guilty of a crime unless his mind be also guilty*".³² Therefore, before a person can be convicted of a criminal offence, the CPS must establish:

Actus reus - that the defendant has committed all the elements of an offence (or sometimes an omission) set out in the legislation;³³ and

Mens rea - that the defendant had the intention to commit the criminal act.³⁴

³¹ Courts Act 2003, section 27.

³² *Haughton v Smith* [1973] 3 All E.R. 1109.

³³ *R v Deller* [1952] 36 Cr App Rep 184, CCA.

³⁴ Expressions indicating this mental element include: 'with intent'; 'recklessly'; 'maliciously'; 'wilfully'; 'knowingly'; 'knowing or believing'; 'fraudulently'; and 'dishonestly'.

In certain defined cases, a person may commit a criminal offence even though he did not intend to commit one or more elements of that crime. These are called strict liability offences, the most relevant of which in these circumstances is the common law offence of outraging the public decency.

2.4. Civil Proceedings

While this note focuses on criminal offences, we set out some brief information about civil proceedings, as this is relevant for some of the penalties and sanctions discussed in this memo.

A civil case is usually between private parties for their own purposes, and the Court is asked to resolve the dispute between the parties. Such proceedings usually are not brought by the authorities, although the government and some government agencies can be involved in such proceedings as private parties. Alternatively, it may be necessary to apply to the Court for an Order, for example, magistrates hear applications concerning anti-social behaviour orders (discussed below).

The civil standard of proof is usually a lower standard than under criminal proceedings: “on the balance of probabilities”, often referred to as “more likely than not” or 51% likely. Other key differences between civil and criminal proceedings include, the presence of juries in criminal proceedings, the rules governing proceedings (such as disclosure of documents), and that civil proceedings allow hearsay evidence, which includes witness statements rather than the witness attending in person. Therefore, during civil proceedings, a wider scope of evidence can be used to prove or defend an allegation.

Civil matters are usually dealt with in the County Court or the High Court. Although most magistrates hear criminal cases, they also have some jurisdiction to hear civil matters, particularly in relation to family work.

2.5. Out of Court Disposal

There is a certain amount of discretion when deciding whether to bring a criminal prosecution, and the Code for Crown Prosecutors³⁵ gives guidance to the CPS and police officers on the general principles to be applied when making decisions about whether or not to prosecute a person. The CPS must consider whether it: (i) has enough evidence to have a realistic prospect of obtaining a criminal conviction; and (ii) appears that prosecution of the offence is required in the public interest.³⁶

One of the common reasons that the CPS or Police may choose *not* to bring Court proceedings is because minor criminal offences can be dealt with more appropriately by way of various Out-of-Court methods, including:

simple cautions - a formal warning given to adults who admit they are guilty of first-time minor offences. It is meant to act as a deterrent from re-offending. It also forms part of the offender’s criminal record, and can be taken into account when considering the punishment in any later proceedings;³⁷

conditional cautions – a caution with specific conditions attached that the offender must satisfy, such as attending a course relating to the offending behaviour. Again, it forms part

³⁵ The Code for Crown Prosecutors, sixth edition, February 2010: http://www.cpssection.gov.uk/publications/code_for_crown_prosecutors/.

³⁶ The Code for Crown Prosecutors, section 4.

³⁷ Home Office circular 016/2008, “Simple cautioning of adult offenders”, paragraph 34.

of a person's criminal record and may be cited in any subsequent criminal proceedings. The CPS or Police will offer conditional cautions where it is a proportionate response to the offence and where the conditions meet the aim of rehabilitation, reparation or punishment;³⁸

penalty notices - a fixed fine that can be issued for a specific range of minor disorder offences.³⁹ Penalty notices were introduced as a means of quickly and effectively dealing with low-level offences, such as drunk and disorderly behaviour (penalty notices are discussed in section; and

arrest referrals - used to divert street users (often drug users) from the criminal justice system into support services and/or treatment.⁴⁰

2.6. *Repression linked to offences*

2.6.1. **Criminal sentencing**

Despite the wording of the Vagrancy Act, which says a custodial sentence of up to three months can be imposed, in fact, the Court can only issue a fine upon conviction.⁴¹ This appears to be a complication of the many amendments that have been made to this very old Act, and the wording relating to imprisonment has not been specifically deleted by later amending Acts. The current fine may not exceed level 1 on the Standard Scale (£200).⁴²

An amendment is pending,⁴³ which will combine the various pieces of legislation amending the original Vagrancy Act and that set out the penalties which may be imposed. Whilst the offence will remain the same, this amendment will simplify the current legislation. In particular, the maximum level of a fine payable upon conviction will continue to be level 1 on the Standard Scale (£200).

If an individual fails, without a reasonable excuse, to follow police directions relating to the prohibition on erecting a tent or similar structure on and around Parliament Square, they can be fined up to level 5 on the Standard Scale (£5000).⁴⁴

The Courts can also issue community Orders, rather than fines, to persistent offenders convicted for a fourth time, where the offence would not otherwise have been serious enough to attract a community Order.⁴⁵ This may include community penalties for drug, alcohol and mental health treatment. The purposes of sentencing include punishment, reduction of crime, reform and rehabilitation and the protection of the public. Sentences are therefore known as punitive (punishing the offender), or preventative (to prevent the crime being committed in the future). There are four types of sentence available to the Courts, depending on the seriousness of the crime:⁴⁶

Discharge - An absolute discharge can be awarded for minor first time offences, where the Court considers that the experience of being charged and going to Court has in itself been sufficient punishment. A conditional discharge can also be

³⁸ The Code for Crown Prosecutors, section 7.

³⁹ Criminal Justice and Police Act 2001.

⁴⁰ *Crisis*, "Walk on by...Begging, street drinking and the giving age", 2000 pg 6.

⁴¹ Criminal Justice Act 1982, section 70.

⁴² Criminal Justice Act 1991, section 26(5).

⁴³ Criminal Justice Act 2003, Schedule 32(2), paragraph 146.

⁴⁴ Police Reform and Social Responsibility Act 2011, section 143(8).

⁴⁵ Criminal Justice Act 2003.

⁴⁶ Criminal Justice Act 2003 and the Powers of Criminal Courts (Sentencing) Act 2000.

awarded, where the person must not commit any offence for a specified period of time, up to three years.

Financial penalty - The penalty for many less severe criminal offences is a fine. When setting the level of the fine, the Court should consider compensation for the victim if damage or injury is caused, and the costs of the proceedings. The level should also take into account the financial circumstances of the offender (the offender has to complete a means test to assist the decision).

Indictable, more serious offences can be subject to an unlimited fine. For summary offences, the amount of the fine is set out in statute to reflect the seriousness of the offence, and there is a statutory cap under the Criminal Justice Act. The Act sets out a Standard Scale of the fines that can be used. Other legislation that describes criminal offences then refers to this scale. For example, legislation may state that for a particular crime, a person may be liable to “a fine not exceeding level 3 on the Standard Scale”, or that the fine may not exceed “the statutory maximum” (level 5 on the Standard Scale). The Standard Scale is as follows:⁴⁷

Scale Level	Maximum fine
1	£200
2	£500
3	£1,000
4	£2,500
5	£5,000

Community Orders - These are imposed at the discretion of the Court. Under such Orders, the offender must undertake one or more of the requirements set out in the Criminal Justice Act. The Order can be for a maximum of three years, and there are twelve requirements that can be imposed, including alcohol treatment, doing, or not doing, a certain activity, and a curfew.⁴⁸

Imprisonment - Imprisonment is used for the most serious offences and offenders. Judges and magistrates are given sentencing guidelines to assist with setting the term of imprisonment. In addition, all imprisonable offences have a maximum term laid down in legislation, and there are minimum sentences for some serious repeat offenders.

2.6.2. Post-sentence ASBO

ASBOs can be imposed in addition to a criminal sentence after a person has been found guilty of a criminal offence.⁴⁹ In such cases, the CPS will apply for an ASBO⁵⁰ in addition to the general sentence following conviction.⁵¹ The ASBO is not punitive and cannot be used to increase the sentence that an offender may receive. Instead, it is a preventative Order which must be necessary to protect others from further anti-social acts (as required in the second stage of the test). The Order does not form part of the sentencing process - a separate application for an ASBO has to be made, and the test has to be met despite conviction.⁵²

⁴⁷ Criminal Justice Act 1982, section 37 (as amended by Criminal Justice Act 1991, section 17(1)).

⁴⁸ Criminal Justice Act 2003, sections 199-214.

⁴⁹ Crime and Disorder Act 1998, section 1C(4).

⁵⁰ Crime and Disorder Act 1998, section 1(C)3a & b.

⁵¹ Crime and Disorder Act 1998, section 1C.

⁵² *R v Lee Kirby* [2005] EWCA Crim 1228.

There does not need to be a link between the criminal act and anti-social behaviour, but unless this can be proven, it will be harder to convince the Court to impose an ASBO. Further, if the sentence for the criminal offence is a sufficient deterrent, the Court should not impose an ASBO.

The conditions under which a post-conviction ASBO can be granted, including the applicable standards of proof, are the same as in civil proceedings except for the second stage of the test. The test for a post-conviction ASBO covers more than the “local authority area or local police area”, and can be imposed if it is necessary to protect persons in any place in England and Wales from further anti-social acts.⁵³

Breach of an ASBO, whether imposed during civil or criminal proceedings, can be a criminal offence. When an ASBO has been breached, the council (i.e. the relevant authority) may bring proceedings against the individual,⁵⁴ and if the Order was breached without a reasonable excuse, the defendant will be guilty of an offence and may incur the following penalties:⁵⁵

on summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (£5,000), or both;

on conviction on indictment, imprisonment for a term not exceeding five years or an unlimited fine, or both.

ASBOs and dispersal orders have also been used to tackle rough sleeping. A dispersal order requires people to leave a public place where they believe that a member of the public has been intimidated, harassed, alarmed or distressed as a result of the presence or behaviour of groups of two or more persons, and that the behaviour is a significant and persistent problem in the relevant area.⁵⁶ The Order must be signed by the police officer, and must specify the relevant area (i.e. the area around the cathedral), the grounds on which it is given (i.e. there is evidence that the area is used by gangs and this is causing distress to the public), and the period during which the powers are exercisable (i.e. between 6pm and 6am). The Orders must be publicised, usually by articles in the press or posters in the designated area. It is a criminal offence to refuse to comply with such an Order, and if convicted, the individual may be liable to up to three months in prison and/or a £5000 fine.⁵⁷

2.6.3. **Repression of begging**

As set out above, despite the wording of the Vagrancy Act that allows custodial sentences to be imposed (up to one month for begging, or three months for persistent begging), the Court can in fact only issue a fine upon conviction.⁵⁸ Currently the fine is up to level 3 on the Standard Scale (£1,000). Under pending legislation,⁵⁹ the various legislative provisions which amend the original Vagrancy Act are being combined together and simplified. Again, the offences and penalties will remain the same.

⁵³ Crime and Disorder Act 1998, section 1(C)2.

⁵⁴ Crime and Disorder Act 1998, section 1(10A).

⁵⁵ Crime and Disorder Act 1998, section 1(10).

⁵⁶ Anti-social Behaviour Act 2003, section 30; similar orders can also be imposed under Violent Crime Reduction Act 2006.

⁵⁷ Anti-social Behaviour Act 2003, section 32.

⁵⁸ Criminal Justice Act 1982, section 70.

⁵⁹ Criminal Justice Act 2003, Schedule 32(2), paragraphs 145-146.

The offences of obstruction,⁶⁰ and harassment, alarm or distress are also punishable by a fine up to level 3 (£1,000). In relation to obstruction of the highway, if an individual is convicted of obstruction, but it appears to the Court that the obstruction is continuing and it is within the individual's power to remove it, the Court can make an Order, in addition to or instead of imposing any punishment, for the individual to take steps to remove the obstruction.⁶¹ The order will fix a time limit for this to take place. If a person is found guilty of refusing to comply with the Order, the offender is liable to a fine of up to level 5 on the Standard Scale (£5000).⁶² If they still continue to commit this offence, the individual is guilty of a further offence and can be fined up to 1/20th of the initial fine for every day that the obstruction remains.⁶³ If highway authorities have to exercise any powers to remove the obstruction, they can recover their reasonable costs from the individual.⁶⁴

ASBOs and dispersal orders can also be imposed in response to begging.

PCSOs can require a person committing offences under the Vagrancy Act to wait with them for 30 minutes for the arrival of a police officer. Further, in December 2003, begging and persistent begging were classified as "recordable offences",⁶⁵ meaning that community Orders could be imposed upon conviction, and the details of the offences are recorded on the Police National Computer. In addition, the police may take fingerprints and bodily samples without consent where a person has been arrested for begging, even before charge or conviction.⁶⁶ This recordable nature of offences means that the offence is likely to stay with the person for longer than would otherwise be the case. There could therefore be consequences beyond the simple offence itself, which could arguably mean that the person was more likely to be charged in the future.

2.6.4. **Repression of Rough Sleeping**

As set out above (section V.B), local councils have the power to enact byelaws for the "prevention and suppression of nuisances", and have done so in response to rough sleeping and begging.

The number of people who can try to stop sleeping rough and begging activity was increased in 2002, when Police Community Support Officers (PCSO) were given the power to require a person to stop doing an activity which is an offence under the Vagrancy Act (PCSOs are members of support staff employed, directed and managed by their Police Force, and who support regular police officers).⁶⁷ If a person refuses to stop the activity, the PCSO can require that person to wait with them for 30 minutes

⁶⁰ Highways Act 1980, section 137(1).

⁶¹ Highways Act 1980, section 137ZA.

⁶² Highways Act 1980, section 137ZA(3).

⁶³ Highways Act 1980, section 137ZA(3).

⁶⁴ Highways Act 1980, section 137ZA(4).

⁶⁵ The National Police Records (Recordable Offences) Regulations 2000 SI 2000/1139, regulations 53-54.

⁶⁶ *Your Rights*, "Use of photographs, fingerprints, DNA samples and other samples taken at police stations": <http://www.yourrightsection.org.uk/yourrights/privacy>. Begging and persistent begging are also classified as "trigger offences", meaning police officers have the right to carry out drug tests on persons charged with begging under the Vagrancy Act, if they suspect that class A drugs are being used: Criminal Justice and Court Services Act 2000, Schedule 6, paragraph 4 and Police and Criminal Evidence Act 1984, section 63B

⁶⁷ Police Reform Act 2002, Schedule 4 paragraph 2(3B).

for the arrival of a police officer. If the person required to wait “makes off” during this time, they can be liable on summary conviction to a fine not exceeding level 3 on the Standard Scale (£1,000).⁶⁸ This is therefore a mechanism by which a person can be charged with a criminal offence of “making off” without the original offence under the Vagrancy Act being proved. The threat of this offence could be being used to try to stop these offences, and a possible “decriminalisation”, although we have no evidence of this.

There are other schemes and policies that are used to deal with sleeping rough. Although not strictly a decriminalisation of the offence, these schemes are examples of strategies used by authorities to deal with the homeless, and we set out some examples below:

Rough sleeping hotspot closure – a hotspot is an area popular with rough sleepers. Closure can be used to introduce street users to support services. However, appropriate inter-agency coordination is needed and careful phasing-in to give street users warning of closures and information on available support.⁶⁹

Environmental Designing Out - The purpose of such schemes is to make ‘hotspots’ less habitable for street users. This can include installing lighting and CCTV, and removing vegetation, seating and walls in areas where street drinkers and rough sleepers usually gather.⁷⁰

‘Hot-washing’ – This was a strategy used by Westminster Council where officers are instructed to leave pavements wet after cleaning to discourage rough sleepers from sleeping there at night.⁷¹

2.6.5. Repression of drinking

The penalty for being found to be drunk and disorderly can be a fine of up to level 3 on the Standard Scale (£1000).⁷² Similarly, the penalty for being found “drunk in a highway” is a level 1 fine (£200),⁷³ and causing harassment, alarm or distress is a level 3 fine (£1000).⁷⁴ Alternatively, the police can deal with these offences by using the Out-of-Court method of a penalty notice.

As with anti-social behaviour, many of the schemes used by local authorities to punish criminal offences committed in relation to alcohol use are in fact civil in nature. For example, setting up designated zones and issuing banning orders do not impose criminal sanctions on those affected. Again, this could be seen as a decriminalisation measure, whereby authorities have greater discretion to impose civil sanctions without following the criminal procedures.

Breach of such designated areas and zones can result in the commission of a criminal offence. As with ASBOs, the use of this two-stage process may mean that in effect, street users are committing criminal offences more easily, and being subject to harsher sanctions than could have been imposed for the original offence.

⁶⁸ Police Reform Act 2002, Schedule. 4 paragraph 2(5).

⁶⁹ *Joseph Rowntree Foundation*, at 41.

⁷⁰ *Ibid.*

⁷¹ *The Pavement*, “Poncho continues”, 9 December 2012, <http://www.thepavement.org.uk/story.php?story=1144> and “Controversial strategy continues in City of London”, April 16 2011: <http://www.thepavement.org.uk/story.php?story=1220>.

⁷² Criminal Justice Act 1967, section 91(1).

⁷³ Licensing Act 1872, section 12.

⁷⁴ Public Order Act 1986, section 5.

However, we have not identified particular evidence that these schemes are being used to target the homeless specifically. Rather, they appear to be targeted at youth drinking.

In addition, there are a number of specific Orders and restrictions that can be imposed on those caught drinking in public places, as well as ASBOs and dispersal orders.

2.6.5.1. Designated Public Places Order (DPPO)

A local authority can place a DPPO over a particular public place in their area, where restrictions on public drinking will apply.⁷⁵ They must be satisfied that either nuisance or annoyance to members of the public, or disorder, has been associated with drinking alcohol in that place.

An Alcohol Disorder Zone can also be imposed by a local authority if they are satisfied that there has been nuisance or annoyance to members of the public in or near that area that is associated with drinking alcohol, and that there is likely to be a repeat of that behaviour.⁷⁶

There are specific consultation, publicity and signage requirements that local authorities have to comply with when issuing a DPPO,⁷⁷ and the Home Office has issued guidance on this.⁷⁸ For example, before issuing a DPPO, the local authority must consult with the police, any local community or parish and any owners or occupiers of land within the designated area. They must then publicise in local newspapers and place signs in the area to make the public aware of the DPPO and the restrictions it places on the area.

Once a DPPO has been made in an area, a police officer can, if they reasonably believe that a person is, or has been, drinking alcohol or intends to drink it, require the person concerned not to drink it in that place or to give the alcohol to the police.⁷⁹ They can also ask for unopened containers to be given to them.⁸⁰ The officer can dispose of it in a manner he considers appropriate. This process is also referred to as “de-canning”.

If an individual is found to be breaching the terms of a DPPO and the police attempt to enforce their de-canning powers, failure without a reasonable excuse to comply with their request is an offence and can lead to a fine of up to level 2 on the Standard Scale (£500).⁸¹ Other penalties have also included a penalty notice of £50,⁸² or bail conditions to stop the individual

⁷⁵ Criminal Justice and Police Act 2001, section 13. DPPOs can also be referred to as Alcohol Control Areas (Southwark); Group Dispersal Zones (Westminster); and Controlled Drinking Areas or Controlled Drinking Zones (Hammersmith and Fulham).

⁷⁶ Violent Crime Reduction Act 2006, section 16.

⁷⁷ Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2007.

⁷⁸ Annex A - Dedicated Public Places Orders (DPPO) Guidance Note: <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2007/013-2007/>.

⁷⁹ Criminal Justice and Police Act 2001, section 12.

⁸⁰ Licensing Act 2003, section 155.

⁸¹ Criminal Justice and Police Act 2001, section 12(4).

⁸² Criminal Justice and Police Act 2001, section 1.

from drinking in public. This seems to be dependent on the local authorities or police discretion.⁸³

It is clear that DPPOs are being used by local councils, often with, or interchangeably with, dispersal orders (see paragraph 0). For example, within the council of Westminster, there is a dedicated police team, the Safer Streets Homeless Unit (SSHU), to tackle rough sleepers and associated street activity. They help to address anti-social behaviour of those on the streets and help manage hotspots of homeless individuals. The SSHU do use and intend to keep on using de-canning and the controlled drinking zone measures to reduce street drinking by the homeless.⁸⁴ They do make it clear however, that whilst they use these enforcement measures, they also work alongside homeless agencies to encourage the homeless to receive help and supportive services.⁸⁵

2.6.5.2. Drinking Banning Orders (DBO)

DBOs are civil Orders issued by the Court, similar to ASBOs, that can be used to impose any prohibition on the individual.⁸⁶ The Order must include a restriction on the person entering licensed premises (i.e. pubs), and can include other prohibitions, such as a prohibition on buying of alcohol, drinking alcohol or being in possession of alcohol in public.

The police and local authorities can apply to the Magistrates' Courts for a DBO to be made where the individual has engaged in criminal or disorderly conduct whilst under the influence of alcohol. The Court should see that any DBO would be necessary to protect other persons from further conduct by the person whilst under the influence of alcohol.⁸⁷ A DBO can also be requested for those who are subject to a criminal conviction.⁸⁸ They can last from two months to two years.⁸⁹

Offenders who breach a DBO will be liable to a fine of up to level 4 on the Standard Scale (£2,500).⁹⁰ The Courts can also offer an approved course to those subject to a DBO as a means of addressing their behaviour. This is voluntary, although successful completion of the course may lead to a reduction in the length of the DBO.

Research from homeless charities makes little or no mention of DBOs currently being imposed on the homeless, as instead ASBOs are more widely used.

2.6.5.3. Directions to individuals who represent a risk of disorder

A uniformed policeman can give directions to an individual in a public place to leave that area and to prohibit them returning to it for up to 48 hours.⁹¹ They must be satisfied that the presence of the individual in that

⁸³ Designated Public Places Order: www.southampton.gov.uk/Images/DPPOs_tcm46-216800.pdf.

⁸⁴ Westminster City Council Rough Sleeping Strategy 2010-2013, section 21-23.

⁸⁵ *Ibid.*

⁸⁶ Violent Crime Reduction Act 2006, section 1.

⁸⁷ Violent Crime Reduction Act 2006, section 3.

⁸⁸ Violent Crime Reduction Act 2006, section 6.

⁸⁹ Violent Crime Reduction Act 2006, section 2.

⁹⁰ Violent Crime Reduction Act 2006, section 11(2).

⁹¹ Violent Crime Reduction Act 2006, section 27.

area is likely, in all the circumstances, to cause or contribute to alcohol related crime or disorder. The directions given must be in writing and clearly state to which area it applies.⁹²

It is an offence for a person to fail to comply with such directions, and if found guilty, they are liable to a fine of up to level 4 on the Standard Scale (£2500).⁹³

There is limited evidence of how this measure is imposed on the homeless, although some councils, such as Westminster Council, describe this as a measure used by the police on the homeless population in that area.⁹⁴

2.7. Decriminalization

We have not identified any information about activities and offences that have recently been decriminalised in order to give authorities more discretion and flexibility to punish the activities of the homeless.

However, a number of the penalties or sanctions for the offences described above can be in the form of civil Orders, and it is clear that the government and local authorities are increasingly using Orders and byelaws (explained below) to respond to and try to stop anti-social behaviour, including the activities of the homeless. These are therefore non-criminal, civil penalties that can be imposed, rather than a de-criminalisation of the offences themselves. Such civil Orders give authorities a larger number of tools to respond to such activities, some of which follow the civil procedures, and can be imposed without a person being found guilty of committing a criminal offence. This could be seen as decriminalising the activities. However, the criminal offences still exist.

In addition, further penalties can be imposed when these Orders are breached. This potentially gives the authorities and police a way of imposing criminal sanctions more easily. For example, the act itself may not be a criminal offence, but when it is performed in breach of an Order, that breach is a criminal offence and a criminal sanction can be imposed. This could be seen as *criminalising* activity that would not otherwise be a criminal offence.

3. Administrative Offences

Anti-social behaviour has a particular legal definition under criminal law: behaviour that has caused or is likely to cause “harassment, alarm or distress”.⁹⁵ While offences relating to anti-social behaviour are generally aimed at wider problems, such as minor crime or intimidating behaviour, the definition covers a wide range of behaviour that can include activities that homeless people may engage in, such as: harassment of residents or passers-by;⁹⁶ begging;⁹⁷ rough sleeping;⁹⁸ street drinking;⁹⁹ and urinating in public places.¹⁰⁰

⁹² Violent Crime Reduction Act 2006, section 27(3).

⁹³ Violent Crime Reduction Act 2006, section 27(6).

⁹⁴ Westminster City Council Rough Sleeping Strategy 2010-2013, pg. 22.

⁹⁵ Crime and Disorder Act 1998, section 1(1).

⁹⁶ *Get Hampshire*, “First ASBO used on town beggar”, 26 November 2005: http://www.gethampshire.co.uk/news/s/12919_first_asbo_used_on_town_beggar.

⁹⁷ *Ibid.*

⁹⁸ *Blackpool Gazette*, “Million pound ASBO man back in courts”, 19 March 2011: http://www.blackpoolgazette.co.uk/news/local/million_pound_asbo_man_back_in_courts_1_3198688.

⁹⁹ *alderleyedge.com*, “ASBO issued to homeless drunk”, 26 July 2011: <http://www.alderleyedge.com/news/article/4574/asbo-issued-to-homeless-drunk>.

The sanctions for civil offences are usually financial compensation or an injunction (an Order that requires a party to do, or not do, specific acts). In the context of this memo, there is a particular civil sanction that is used against the homeless: anti-social behaviours orders (ASBOs).

ASBOs were introduced in 1998 in response to public concerns at increasing levels of nuisance. Magistrates were therefore given powers to deal with anti-social behaviour that was previously difficult to prosecute through criminal proceedings. ASBOs are Court-issued civil Orders designed to prevent individuals from engaging in anti-social behaviour.¹⁰¹ The anti-social behaviour can then be punished if the terms of the Order are breached. In addition, breach of the ASBO itself can be a criminal offence.

ASBOs can be imposed for a wide range of activities, and can be used in relation to any sort of behaviour thought to be “anti-social” by the authorities. This can include disturbing the peace, harassment, and being drunk and disorderly. The Orders will contain restrictions such as prohibiting an individual from carrying out specific anti-social acts and/or entering defined areas.

ASBOs are civil Orders, meaning they can be imposed without a person being found guilty of a criminal offence. In addition, an ASBO does not form part of the person’s criminal record and does not always require the involvement of the criminal prosecution authorities. They are made before the Magistrates’ Court,¹⁰² and can be imposed during either civil or criminal proceedings.

The British government is considering major changes to the tools available for tackling anti-social behaviour, and on 22 May 2012, published a White Paper outlining their current proposals.¹⁰³ They plan to replace ASBOs with new types of Orders, with the aim of simplifying the current system. The White Paper states that ASBOs are slow and expensive, and the criminal burden of proof is a barrier to their effective use. A lower civil, standard of proof has been suggested, which is expected to mean that authorities can intervene at an earlier stage. This has been described in the press as being a way of protecting the public. However, it will also mean that penalties or Orders will be easier to impose.

However, the government is also considering making breach of an ASBO a civil offence, rather than criminal. Another proposal is the introduction of an Order where positive requirements are placed on an offender, forcing them to take certain action to address the cause of the anti-social behaviour, rather than simply punishing it. For example, the positive requirements may include education and training to understand the effects of anti-social behaviour, or unpaid work to make up for the offending behaviour.

There are other forms of civil Orders that are relevant to homeless activities, and operate in a similar way to ASBOs, including dispersal orders and drinking banning orders. However, they are much less frequently used; we discuss these Orders under the relevant sections, below. It should be noted that the new Orders that will be available under the government proposals will not only apply to ASBOs, but will also replace these other Orders

The main legislation governing anti-social behaviour is the Public Order Act 1986 (Public Order Act). In particular, a person may be guilty of an offence if he uses threatening, abusive or

¹⁰⁰ *Waltham Forest News*, “Walthamstow: Homeless duo banned from streets”, 27 August 2010: http://www.guardian-series.co.uk/news/wfnews/8358511.walthamstow_homeless_duo_banned_from_streets/.

¹⁰¹ Crime and Disorder Act 1998, section 1.

¹⁰² They can also be applied for in County Courts where there are already ongoing related proceedings between the parties.

¹⁰³ *Home Office*, “Putting Victims First - More Effective Responses To Anti-Social Behaviour”, May 2012: <http://www.homeoffice.gov.uk/media-centre/news/antisocial-behaviour-white-paper>; *BBC News*, “ASBO replacement order to be announced by government; 22 May 2012: <http://www.bbc.co.uk/news/uk-18155579>.

insulting words or behaviour, or disorderly behaviour that is threatening, abusive or insulting, and which causes a person harassment, alarm or distress.

The Public Order Act creates two offences relating to “harassment, alarm or distress” where either: (i) the offender intentionally causes harassment, alarm or distress (a person will not be found guilty if they cause harassment, alarm or distress by mistake);¹⁰⁴ or (ii) the offender does not intend to cause harassment, alarm or distress, but the activity is carried out within the hearing or sight of a person likely to be affected.¹⁰⁵ The second, non-intentional offence is used for less serious activities, such as pestering people waiting in a public place, causing a disturbance in a residential area or public space, or rowdy behaviour. This non-intentional offence is also more likely to be committed by the homeless.

We have not identified specific evidence that the CPS and Police are choosing to bring criminal proceedings against the homeless under the Public Order Act. However, ASBOs are being imposed on the homeless.¹⁰⁶ For example, Jamie Lee Cooke, 26, of no fixed abode, was given a two year ASBO by Milton Keynes Magistrates’ Court in February 2011. The Order prohibited Cooke from entering Central Milton Keynes, except when he had pre-arranged appointments with statutory and non statutory agencies. It also prohibited him from begging for money, food or clothing in the “government” area of Milton Keynes (by the council offices and the Court). He was also told not to cause alarm, harassment and distress to people by becoming verbally abusive and aggressive when being refused entry to premises and being refused charitable handouts.¹⁰⁷ We do not know the current status of the ASBO.

Similarly, Simon Frodsham, of no fixed abode, was subject to an ASBO, which was subsequently overturned. In April 2011, the Court found that the ASBO imposed on him breached his human rights. He was arrested more than 160 times for breaching the terms of his ASBO by walking through a town in Lancashire.¹⁰⁸ We do not know the current status of his ASBO, although more recent reports indicate that a new ASBO was issued after this was overturned.¹⁰⁹

Policy relating to ASBOs seems to be decided through local, rather than national, policy, and the government’s current intentions are to transfer more accountability to local authorities.¹¹⁰

The Pavement stated that a total of 364 ASBOs were issued in Greater London between April 1999 and September 2004, but over 200 of these were issued in the first nine months of 2004. More recent sources, including the recent Home Office consultation on amendments to the ASBO scheme (see paragraph 0), indicates that use of the ASBO has fallen by more than 50% since

¹⁰⁴ Public Order Act 1986, section 4A(1).

¹⁰⁵ Public Order Act 1986, section 5(1).

¹⁰⁶ *Joseph Rowntree Foundation*, *The Impact of Enforcement on Street Users in England*, 11 July 2007, p 38. The *State Watch*’s website contains a list of occasions where ASBOs have been imposed on individuals: <http://www.statewatch.org/asbo/asbowatch-puborder.htm>.

¹⁰⁷ *Milton Keynes Citizen*, “ASBO awarded to save shoppers from overly aggressive beggar”, 9 February 2011: http://www.miltonkeynes.co.uk/news/local/asbo_awarded_to_save_shoppers_from_overly_aggressive_beggar_1_2393494.

¹⁰⁸ *Daily Mail Reporter*, “The £1.4m ASBO: How homeless man was barred from home town... only to have order overturned as it breached his human rights”, 3 April 2011: <http://www.dailymail.co.uk/news/article-1372870/Homeless-man-wins-right-walk-affluent-town-ASBO-overturned--breached-human-rights.html>.

¹⁰⁹ *Blackpool Gazette*, “Million pound ASBO man back in courts”, 19 March 2011.

¹¹⁰ *Home Office*, “More Effective Responses to Anti-Social Behaviour,” February 2011, *Home Office*, “Putting Victims First - More Effective Responses To Anti-Social Behaviour”, May 2012.

2005.¹¹¹ *The Pavement* also reported that by December 2003, 42 per cent of ASBOs had been breached.¹¹²

Since the development of ASBOs, there was evidence that injunctions were not in fact being used to restrict the activities of the homeless. However, some local authorities had indicated that they might seek to employ injunctions in the future, especially with regards to persistent passive begging, if they were struggling to convince magistrates of the harassment, alarm or distress need to impose an ASBO. However, the case law described above (paragraph 0) means that the local authorities should no longer do this.

3.1. Civil Proceedings

“Relevant authorities”¹¹³ can apply to the Magistrates’ Court for an ASBO to be imposed on an individual.¹¹⁴ The definition of “relevant authorities” includes various government bodies, but the majority of ASBOs are requested by local authorities and the police.¹¹⁵

The powers to apply for and grant an ASBO are set out in a two-stage test:¹¹⁶

- 1) the individual caused or is likely to cause harassment, alarm or distress to one or more persons not of the same household; and
- 2) an order is necessary to protect persons in the local authority area or local police area¹¹⁷ from further anti-social acts.

The relevant authority will usually have to prove that an act of anti-social behaviour has occurred in the last six months in order for an ASBO to be imposed.¹¹⁸

The meaning of harassment, alarm or distress (stage one) is subjective, so whether the behaviour is anti-social will depend on the circumstances of the case and the nature of the area and local community. The intention of the person is not relevant, as the Courts focus on the effect of the act when considering whether harassment, alarm or distress has been caused. However, the Courts must disregard any act which is shown (under the civil standard of proof) to be reasonable in the circumstances.¹¹⁹

When considering whether it is necessary to impose an ASBO (stage two), the Court will usually consider the following factors: the frequency and duration of the anti-social behaviour, the impact of the behaviour on others, the likelihood of repetition, and the age and personal circumstances of the defendant, including previous convictions and the defendant’s potential for change.

Although they are civil Orders, the test that must be satisfied for an ASBO to be imposed includes both the civil and criminal standards of proof. The House of Lords (now the Supreme Court) decided that, because ASBOs restrict individuals’ freedom, the criminal standard of proof applied when satisfying the first part of the test i.e. the defendant behaved or is likely to behave

¹¹¹ Home Office, “Putting Victims First - More Effective Responses To Anti-Social Behaviour”, May 2012.

¹¹² *The Pavement*, “The rise of the ASBO”, 19 May 2009: <http://www.thepavement.org.uk/story.php?story=12>

¹¹³ Crime and Disorder Act 1998, section 1(1A).

¹¹⁴ Crime and Disorder Act 1998, section 1(1).

¹¹⁵ Between 1 April 1999 and 31 December 2012, 92.1% of applications were made by the police or a local government authority, *Ministry of Justice*, “Statistical Notice: Anti-Social Behaviour Order (ASBO) Statistics England and Wales”, 13 October 2011.

¹¹⁶ Crime and Disorder Act 1998, section 1.

¹¹⁷ Crime and Disorder Act 1998, section 1(1)b.

¹¹⁸ Magistrates’ Courts Act 1980, section 127(1).

¹¹⁹ Crime and Disorder Act 1998, section 1(5).

in an anti-social manner.¹²⁰ The civil standard of proof is applicable to the second part of the test i.e. that the order is necessary.

3.2. *Offences directly affecting homeless people*

3.3. *Offences indirectly affecting the homeless*

3.3.1. **Urinating**

There is no national law that says it is a crime to urinate on the street or to bath in public places. As a result, urinating and bathing in public have become widespread “tolerated” activities in many areas, and local councils consider that national legislation does not adequately deal with such behaviour.¹²¹ The police have traditionally attempted to find a way of classifying these activities as public order offences,¹²² or if a person has been drinking, the police may arrest them for being drunk and disorderly.¹²³

There is also a common law offence of outraging the public decency, which may be committed by the homeless in such situations. Case law has shown that, to commit the offence, the act should be of a lewd character and has been described as including “*anything which an ordinary decent man or woman would find to be shocking, disgusting and revolting*”.¹²⁴ The act must take place in a public place, and must have been capable of being seen by two or more persons,¹²⁵ even if those people did not see the act.¹²⁶

This is a strict liability offence, meaning there does not need to be an intention to commit the offence. Furthermore, it is not necessary that a defendant knew or believed that the act he committed was likely to be seen, or that it would disgust someone.¹²⁷ The only mental element of the crime is that a person must have intended to perform the act in question. For example, a person cannot be found guilty of the offence if they expose themselves because their clothes were torn in an accident.¹²⁸

If found guilty, the offender could face imprisonment or a fine, determined by the Court. On summary conviction (for less serious acts) they could face up to six months in prison and/or a fine determined by the Court.¹²⁹

¹²⁰ *Clingham (formerly C (a minor) v Royal Borough of Kensington and Chelsea* [2002] UKHL 39.

¹²¹ Cumbria consultation on byelaw:

<http://democracy.southlakeland.gov.uk/documents/s1712/Introduction%20of%20a%20Public%20Byelaw.pdf>.

¹²² For example under the Public Order Act 1986, section 5.

¹²³ Criminal Justice Act 1967, section 91.

¹²⁴ *Knüller v DPP* [1973] AC 435, 457-8.

The Courts have relaxed this general necessity for two or more persons to be present. For instance, the Court has found a person guilty of the offence when only one person witnessed an act, but where the offence was committed in a place open enough so that two other people *might* have been disgusted: *R v Mayling* [1963] 2 QB 717.

¹²⁶ *R v Hamilton* [2008] QB 224 para 21 (CA).

¹²⁷ *Rose v DPP* [2006] EWHC 852 (Admin).

¹²⁸ The Law Commission Consultation Paper No 193; Simplification of criminal law: public nuisance and outraging public decency, para 3.42.

¹²⁹ Magistrates’ Courts Act 1980 s.32(1).

It should also be noted that many local councils have byelaws in place by which it is prohibited to urinate or bath in their areas (see section V.B).

3.3.2. Storing Belongings

We have not identified offences that specifically relate to storage of belongings. However, storage of bedding materials is often noted as part of the offences relating to sleeping rough, and a number of byelaws relating to sleeping rough also refer to storage of belongings.

It should be noted that according to the charity *Shelter*, when a person becomes homeless, the council has to do what is reasonable to prevent loss or damage to that person's property. The council can charge for this service, although charges may be waived in certain circumstances. For example, the City of Westminster Council, states that, "*we will only offer free storage of belongings to the most vulnerable homeless people, with other homeless people to be charged for storage*".¹³⁰ In addition, local councils should consider arranging accommodation for a homeless person with their pet. However, where this is not possible, they may consider arranging alternative care for the animal. Councils are reluctant to pay for this care, as demonstrated by Bath & North East Somerset Council, who state, "*... you will have to pay for storage or kennels, the Housing Options and Homelessness Team can help you make arrangements*".¹³¹

3.4. Miscellaneous ordinances and decrees

3.4.1. Penalty Notices

A police officer who has reason to believe that a person has committed one of certain offences may give him a penalty notice.¹³² A penalty notice is a notice offering the opportunity, by paying a financial penalty, to avoid any criminal liability for the offence. No admission of guilt is required. Once a penalty notice has been issued, the person may either, within 21 days pay the amount shown on the notice or request a Court hearing. In addition, if the fine is not paid in time, the offence and criminal proceedings can be imposed.

Traditionally, such fixed penalty notices have only been used for parking tickets, speeding fines or traffic related offences. However, in 2004, this scheme was greatly expanded to include a wide range of more minor offences, including: being drunk in a highway, other public place or licensed premises,¹³³ drunk and disorderly behaviour,¹³⁴ behaviour likely to cause harassment, alarm or distress,¹³⁵ and

¹³⁰ City of Westminster, Housing:
<http://www.westminster.gov.uk/services/councilgovernmentanddemocracy/councils/open-council/budget2011/housing/>.

¹³¹ Bath and North East Somerset Council, Housing Assessment:
<http://www.bathnes.gov.uk/Housing/findingahome/homeless/Pages/homelessnessassessmentandreview.aspx>.

¹³² Criminal Justice and Police Act 2001, section 1.

¹³³ Under Licensing Act 1872, section 12.

¹³⁴ Under Criminal Justice Act 1967, section 91. Note that where a penalty notice is issued for being drunk and disorderly, it is recorded on the Police National Computer.

¹³⁵ Under Public Order Act 1986, section 5.

consumption of alcohol in designated public place.¹³⁶ The penalty is between £50 and £80 for over 16s,¹³⁷ or between £30 and £40 for those aged between 10 and 15 years old. For example, being found to be drunk and disorderly can result in an £80 fine, being found “drunk in a highway” is a £40 fine, and causing harassment, alarm or distress is a £80 fine.

The scheme was introduced as part of the government’s strategy to provide police with a quick financial punishment to deal with misbehaviour, and a practical deterrent to future re-offending. Issuing a penalty notice takes an officer approximately 30 minutes compared with 2 ½ hours to prepare a prosecution.¹³⁸

In 2009-10, 43,338 people received penalty notices for the offence of causing “harassment, alarm and distress”, and 43,570 for disorderly behaviour while drunk. We have no specific evidence that these notices are being imposed on the homeless, but the list of offences covered includes those that are known to be committed by such people. In addition, it may be that the authorities prefer to impose such penalties on the homeless, as there is less administrative burden for someone of no fixed abode. However, we have found to particular evidence of this.

It should be noted that there is a campaign by the *Manifesto Club* (an organisation that campaigns against over regulation in everyday life) against the practice of on-the-spot punishments in public spaces. The organisation claims that “*on-the-spot fines have been running at around 200,000 a year since they were introduced in 2004. Now ‘out of court’ punishments make up nearly half of all offences ...*”.¹³⁹

It is clear that the imposition of such fixed penalty notices will greatly increase the ease by which people can be sanctioned for certain offences. The sanction is also imposed without due legal process, or without the person being given a chance to respond. Further, if the fine is not paid, a criminal prosecution may be pursued, perhaps more easily than for the initial offence.

3.4.2. Bye-laws

Local councils have the power to enact byelaws for the “prevention and suppression of nuisances”.¹⁴⁰ A byelaw is a regulation affecting the public which is made by a city or local authority ordering something to be done or not to be done, and accompanied by a sanction or penalty for its breach. Local authorities are given wide ranging powers to enact byelaws. However, there must be at least a one month consultation period before the local authority can enact a byelaw, during which time, the proposed byelaw must be published in a local newspaper and be available for inspection by the public.¹⁴¹

Byelaws offer local councils a great deal of flexibility to deal with anti-social behaviour and have the effect of increasing the sanctions available. While there are certain checks and balances that have to be followed before a byelaw can be imposed, they offer the potential of a large increase in the possible offences that might be committed by the homeless. This is not really a decriminalisation of activities, as byelaws can in fact increase the number of offences. However, the penalties and

¹³⁶ Criminal Justice and Police Act 2001, section 12.

¹³⁷ Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2009, (SI 2009/83).

¹³⁸ Home Office, “Penalty notices for disorder”: <http://www.homeoffice.gov.uk/police/penalty-notices/>.

¹³⁹ The Manifesto Club, “Pavement Injustice - Campaign Against On-the-Spot Fines”, 10 April 2012: <http://www.manifestoclub.com/pavementinjustice>.

¹⁴⁰ Local Government Act 1972, section 235(1).

¹⁴¹ Local Government Act 1972, section 236.

procedures can often be much easier than following the criminal procedure, and could be seen as offering greater discretion and flexibility to authorities.

Byelaws are quite commonly used to prohibit activities undertaken by the homeless. For instance, many local councils have byelaws in place to prohibit urination in public areas, and to do so will lead to the sanctions set out in the byelaw (such as summary conviction or the imposition of a fixed penalty notice (see section V.A, the amount of which is specified in the byelaw, or if no amount is specified, £75¹⁴²). For example, in Kettering, it is an offence to urinate or defecate in a street or public area, and a person found doing so will be liable on summary conviction to a fine not exceeding £50.¹⁴³

Byelaws have also been enacted to respond to rough sleeping and begging. For example, in 2011, Westminster Council attempted to impose a byelaw prohibiting “lying down or sleeping” in public places around Victoria¹⁴⁴ but abandoned their plans after strong opposition from homeless charities and the public.¹⁴⁵ The proposed Westminster byelaw would have included leaving bedding in the area, and would have been punishable on summary conviction by a fine of up to level 2 on the Standard Scale (£500; fixed penalty notices were not suggested in this case).¹⁴⁶

It is worth noting that byelaws cannot be made if another law already deals with that activity.¹⁴⁷ Therefore, while byelaws to tackle urination are possible as there is no national law restricting urination in public places, byelaws should not be used where there is already a law prohibiting that activity.

However, as seen from the Westminster Council example above, local authorities are also using byelaws to restrict activities that are already prohibited under the Vagrancy Act. A possible reason for using a byelaw in this way is that the breach of a byelaw can lead to a fixed penalty notice being issued by a council officer, rather than the need to arrest, charge and convict a person in the Magistrates’ Court. This would be an example of decriminalisation, as the use of the more administrative sanctions under the byelaws would avoid the criminal process and allow authorities more discretion to punish the activity. We have tried to contact the relevant legal assistant at Westminster Council who developed the proposed byelaw to understand why and how they were proposing to use it. However, we have so far been unable to do so.

3.5. *Repression linked to offences*

If found guilty of intentional harassment, alarm or distress, a person could be liable for up to 6 months in prison or to a maximum fine of level 5 on the Standard Scale (£5000).¹⁴⁸ Where the

¹⁴² Local Government Act 1972, section 237A, 237B.

¹⁴³ 7 January 1983: <http://www.kettering.gov.uk/downloads/file/1839/bylaw-urination> , see also [Cumbria: http://democracy.southlakeland.gov.uk/documents/s1712/Introduction%20of%20a%20Public%20Byelaw.pdf](http://democracy.southlakeland.gov.uk/documents/s1712/Introduction%20of%20a%20Public%20Byelaw.pdf).

¹⁴⁴ City of Westminster, “Soup runs and rough sleeping could be banned at Westminster Cathedral Piazza”, 28 February 2011: <http://www.westminster.gov.uk/press-releases/2011-02/soup-runs-and-rough-sleeping-could-be-banned-at-we/>, *The Pavement*, “Westminster soup run byelaw “likely””, June 9 2011: <http://www.thepavement.org.uk/story.php?story=1276>.

¹⁴⁵ City of Westminster, “Westminster pledges to reach solution over soup runs”, 12 May 2011: <http://www.westminster.gov.uk/press-releases/2011-05/westminster-pledges-to-reach-solution-over-soup-ru/>.

¹⁴⁶ City of Westminster, Draft Byelaws for Good Rule and Good Government (No.3): http://www3.westminster.gov.uk/docstores/publications_store/Draft%20Rough%20Sleeping%20and%20Soup%20Run%20Byelaw.pdf.

¹⁴⁷ Local Government Act 1972, section 235(3).

¹⁴⁸ Public Order Act 1986, section 4A(5).

act was not intentional, the offender could be liable for a maximum fine up to level 3 on the Standard Scale (£1000).¹⁴⁹

As breach of the peace is not a criminal offence, there are no penalties. However, when told, the individual should restore the peace in order to prevent an offence being committed. If an individual persists with their actions, the police may detain them (and remove them from a certain place) until that person is no longer likely to breach the peace.

As discussed above, behaviour that causes “harassment, alarm or distress” to the public can result in the imposition of an ASBO or a dispersal order.

Previously, local authorities could apply for civil injunctions to restrict anti-social behaviour¹⁵⁰ including begging, street drinking, or other street culture activities.¹⁵¹ A person who failed to comply with an injunction faced criminal or civil penalties, and in some cases, arrest and a possible prison sentence. However, in October 2008, the Court of Appeal found that where an ASBO would be available, the Court should not, save in exceptional circumstances, grant an injunction.¹⁵² Instead, the local authority should seek an ASBO. However, it should be noted that the Court of Appeal confirmed that the Court had jurisdiction to grant injunctions, but that it would be wrong for the Court to do so where an ASBO was available.

There is a lack of statistics about whether the homeless are being prosecuted for committing offences under the Vagrancy Act in relation to sleeping rough. In 1990, 1,250 people were prosecuted and convicted under the Act;¹⁵³ however, this is not broken down into the specific offences. In addition, a number of charities have petitioned the government that this old and out of date law should be repealed, stating that to use a law that is nearly 200 years old cannot be the most beneficial way to tackle the problem of rough sleeping in the modern era.¹⁵⁴

The *Joseph Rowntree Foundation* (an organisation which uses research and innovative development projects in the hope of providing value to policy makers, practitioners and service users) found that in many areas, the police do not use their powers of arrest for rough sleeping, often because arresting a person for undertaking an activity for which he has no choice was not seen to be beneficial, but also because they feared a public backlash or potential legal difficulties.¹⁵⁵

Anecdotal evidence recently gathered in London suggests that the police are generally tolerant of rough sleepers and do not use their powers of arrest if people are not gathering in groups or causing any other kind of ‘nuisance’ in the area. However, in Leeds, police have been using their powers under the Vagrancy Act: in the first instance, rough sleepers are given a warning, together with information about local housing and resources. They are then arrested if they continue to sleep rough.¹⁵⁶ From August to December 2010, 28 people received warnings for sleeping rough, of which 13 were arrested after being found sleeping rough for a second time.¹⁵⁷

¹⁴⁹ Public Order Act 1986, section 5(6).

¹⁵⁰ Local Government Act 1972, section 222, and Supreme Court Act 1981, section 37(1).

¹⁵¹ *Joseph Rowntree Foundation*, “The impact of enforcement on street users in England”, 11 July 2007.

¹⁵² *Birmingham City Council v Shafi* [2008] EWCA Civ 1186.

¹⁵³ Hansard HC vol 193 col 863 (25 June 1991).

¹⁵⁴ Including, Shelter, Crisis and Homeless Link, *The Pavement*, “The Act”, 8 July 2010: <http://www.thepavement.org.uk/story.php?story=1054>.

¹⁵⁵ *Joseph Rowntree Foundation*, *The Impact of Enforcement on Street Users in England*, 11 July 2007, p

38.

¹⁵⁶ *Ibid.*

¹⁵⁷ *The Pavement*, “Arrests in Leeds”, February 11 2011:

<http://www.thepavement.org.uk/story.php?story=1189>.

While we do not have detailed statistics on how often ASBOs are imposed for begging, there is evidence in the press that ASBOs are being used in this way.¹⁵⁸ For example, Susan Adams, 43, who lived in a tent by Kings Langley Railway Station, appeared at St Albans Magistrates' Court in September 2011. She admitted breaching her ASBO, which banned her from entering Kings Langley Railway Station without a valid ticket. She was neither fined nor imprisoned.¹⁵⁹ We do not know the current status of her ASBO.

There is some evidence that dispersal orders are used to break up large groups of street users. However, there have been concerns that while they could in theory have the benefit of breaking up large groups, they are simply moved to new areas.¹⁶⁰ In 2011, *The Pavement* (a UK charity committed to publishing independent advice to the homeless) conducted a survey of local councils in London, and found that of the 33 London Boroughs, 24 used or had used dispersal orders in the previous three years to tackle anti-social behaviour. However the reasons for the Orders and the methods used varied dramatically. For example, while *The Pavement* received anecdotal evidence of rough sleepers being moved on because of dispersal orders, in fact none of the Orders specifically targeted rough sleepers.¹⁶¹

3.5.1. ASBO Sanction

ASBOs and dispersal orders have also been used to tackle rough sleeping. A dispersal order requires people to leave a public place where they believe that a member of the public has been intimidated, harassed, alarmed or distressed as a result of the presence or behaviour of groups of two or more persons, and that the behaviour is a significant and persistent problem in the relevant area.¹⁶² The Order must be signed by the police officer, and must specify the relevant area (i.e. the area around the cathedral), the grounds on which it is given (i.e. there is evidence that the area is used by gangs and this is causing distress to the public), and the period during which the powers are exercisable (i.e. between 6pm and 6am). The Orders must be publicised, usually by articles in the press or posters in the designated area. It is a criminal offence to refuse to comply with such an Order, and if convicted, the individual may be liable to up to three months in prison and/or a £5000 fine.¹⁶³

These are both arrestable offences if the person is warned by a police officer to stop the behaviour, but continues with the offensive conduct immediately or shortly after the warning. It is a defence to show that, whilst the actions may have been harassing, alarming or distressing, those actions were reasonable in the circumstances.¹⁶⁴ In addition, in relation to the non-intentional offence, it is a defence to show that the accused had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress.¹⁶⁵

There is also an offence known as a "breach of the peace". A breach of the peace occurs whenever "unlawful" harm is done or is likely to be done to a person, or in his

¹⁵⁸ *The Pavement*, "Waterloo dispersal", 29 May 2009:

<http://www.thepavement.org.uk/story.php?story=640>

¹⁵⁹ *Watford Observer*, "Homeless Susan Adams from Kings Langley has admitted breaching her ASBO and trespassing", 20 September 2011:

http://www.watfordobserver.co.uk/news/9261442.Homeless_woman_guilty_of_Asbo_breach/.

¹⁶⁰ *Joseph Rowntree Foundation*, "The impact of enforcement on street users in England", 11 July 2007.

¹⁶¹ *The Pavement*, "Mapping DZs", 7 October 2011: <http://www.thepavement.org.uk/story.php?story=1343>

¹⁶² Anti-social Behaviour Act 2003, section 30; similar orders can also be imposed under Violent Crime Reduction Act 2006.

¹⁶³ Anti-social Behaviour Act 2003, section 32.

¹⁶⁴ Public Order Act 1986, sections 4(3)(b) and 5(3)(c).

¹⁶⁵ Public Order Act 1986, section 5(3)(a).

presence to his property, or where a person is in fear of being harmed. Verbal abuse does not constitute a breach of the peace, and there must be a connection with violence by the defendant.¹⁶⁶ This is not a criminal offence, but case law has defined situations where a person may be detained for committing an act that breaches the peace, and the Public Order Act contain a power to deal with or prevent a breach of the peace.¹⁶⁷

The police have wide powers of arrest if they suspect a breach of the peace has or may occur. Therefore, even if the offence has not been committed, there is wide scope for the police to use the threat of this offence to stop certain activities taking place. For example, the police can arrest a person without warrant if a breach is being committed in their presence, they reasonably believe that a breach will be committed in the immediate future, or a breach has been committed and there is a threat it will be committed again. The power extends, in certain circumstances, to arresting a person whose behaviour is not unlawful but threatens to provoke a breach of the peace by someone else.¹⁶⁸

Further, as breach of the peace is not a criminal offence, a person's detention is not subject to the provisions of the Police and Criminal Evidence Act 1984 or the Bail Act 1976, which set out the conditions where the police to detain a person for up to 24 hours without charge.¹⁶⁹ As such, the Police may hold people unlawfully for breach of the peace and can hold them for an extended period of time.¹⁷⁰

ASBOs are now common place, and we have dealt with them in the section above as they are frequently imposed following criminal proceedings. However, they are civil orders which can be granted during civil proceedings.

The scope of behaviour ASBOs can be used to address is flexible enough to deal with non-criminal anti-social activities, as well as criminal behaviour. For example, ASBOs may be imposed for minor offences that may not warrant criminal prosecution, or where a pattern of anti-social behaviour has been shown to exist, but where each individual offence is not a criminal offence. ASBOs allow authorities to deal with this type of behaviour that is outside the criminal system. Nevertheless, in certain circumstances, the sanctions for breach of an ASBO include up to five years imprisonment - in this case, the ASBO could be viewed as having *criminalised* the act which was not previously a criminal offence.

In respect of activities that are already criminal offences, the authorities have the option of applying for ASBOs through the civil procedure as a "stand above ASBO", instead of a criminal prosecution (as well as in addition to the sanctions imposed following criminal conviction). For instance, we are aware of examples where ASBOs have been imposed for begging (see paragraph 0), which is covered by criminal offences under the Vagrancy Act. This could be an example of a *decriminalisation* measure, as the civil sanction of the ASBO is imposed rather than the criminal proceedings being following. However, again it should be remembered that the individual may commit a criminal offence if the ASBO is breached.

¹⁶⁶ *R. (on the application of Hawkes) v DPP* [2005] EWHC 3046 (Admin).

¹⁶⁷ Public Order Act 1986, section 40(4). See also *R v Howell* [1982] Q.B. 416.

¹⁶⁸ *Nicol v DPP* (1996) 160 JP 155, DC.

¹⁶⁹ Police and Criminal Evidence Act 1984, section 41(1).

¹⁷⁰ For example, as soon as there is no longer a real danger that, if released, a person will commit a breach of the peace, that person should be released from custody: *Williamson v Chief Constable of the West Midlands* [2003] EWCA Civ 337.

It is worth noting that some local authorities also use Acceptable Behaviour Contracts (ABC), which are voluntary agreements between a person who has been involved in anti-social behaviour and a relevant authority. Most importantly, the police and council do not have to apply to a Court; ABCs are therefore a quick, flexible response to anti-social behaviour. It appears as though ABCs can be used as warnings in the form of an agreement i.e. if you continue your behaviour we will take Court action. They are used to try to reach the same outcome as an ASBO (to stop the anti-social behaviour), while avoiding the expense and uncertainties of going to Court. No penalties are incurred if an individual breaches an ABC, but they run the risk that the relevant authority will apply for an ASBO, and a breach can be used as evidence if the authority decides to do so.

3.5.2. Miscellaneous repression

Police officers in England and Wales have wide reaching powers to stop and search members of the public where they believe they have good reason to do so.¹⁷¹ The police are not meant to stop someone simply based on a stereotype, and should be able to provide reasonable grounds, based on facts to substantiate the need for a search. Justification for a stop and search is not required if there has been (or there may be) serious violence in the nearby area.¹⁷² They can also stop and search any person if they think they are carrying a weapon, drugs or stolen property, if there has been serious violence or disorder in the vicinity, or if they are looking for someone who fits that description.

Police officers or PCSOs may perform a stop and search if in uniform and if the place that they conduct the stop and search is a public place.¹⁷³ A stop and search does not amount to an arrest and the police are not obliged to record an incident if they simply stop and question a person; they only have to record it when they perform a search.¹⁷⁴

A number of homeless people we have spoken to said that they have been asked questions by the police and been asked to disperse simply because of their appearance or the fact they are homeless. The fact that the police does not have to record their stops (without searches), could make it easier for them to harass a group of people without having to record the interaction.

The UK government provides an array of state benefits to help those who are on a low income. However, many of the state benefits are not applicable to the homeless. For example, a homeless person cannot claim housing benefits, as one of the requirements to claim such benefits is that you live in the home that you pay rent or council tax for.¹⁷⁵ Similarly, to claim “jobseeker’s allowance” (a benefit paid to people who are

¹⁷¹ Police and Criminal Evidence Act 1984. The Metropolitan Police Service also have a comprehensive Frequently Asked Questions document: http://www.met.police.uk/stopandsearch/what_is.htm.

¹⁷² Criminal Justice (Public Order) Act 1994, section 60.

¹⁷³ Police and Criminal Evidence Act 1984, section 1.

¹⁷⁴ *Ibid*, section 3.

¹⁷⁵ London Borough of Islington, Housing Benefits: <http://www.islington.gov.uk/services/council-tax/counciltaxandhousingbenefits/Pages/default.aspx>.

unemployed and looking for work) a person must have a contact telephone number, something which we assume most homeless people will not have.¹⁷⁶

As set out in paragraph 0, the police or Court can impose certain conditions on an individual in order to secure his appear at Court at a later date. It is commonly thought that the Court and the police are less likely to release a homeless person on bail, because it is much harder to impose conditions on a homeless person. If a homeless person is less likely to obtain bail, he would have to spend an extended time in prison, when other members of society would not.

4. **Appeals procedure**
5. **National Case Law**
6. **International Case Law**
7. **Additional Information**

¹⁷⁶ *Direct.gov*, Jobseeker's allowance:

http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_200090.html.

ANNEX I

The table below sets out a summary of other offences that may be committed by the homeless.

Offence	Activity	Penalty	Legislation and Case Law
Nuisance (common law)	An act or omission which obstructs or causes inconvenience or damage to the public. There is a requirement that a sufficiently large section of the public is affected, not just an individual. The person who committed the offence must have known, or ought to have known, what the consequence of his actions, or omission, would have been. Examples of public nuisance include exposure in public, harassment of females and disorderly behaviour involving drugs,	Sentences are determined at the Courts discretion, depending on the facts of the case (in recent case law, offenders were awarded sentences of between 2-3 years).	<i>R v Rimington and Goldstein</i> [2006] 1 AC 459 (HL); <i>PYA Quarries</i> [1957] 2 QB 169; <i>R. David Wood</i> [2012] EWCA Crim 156 <i>R. v. Birch (Ben)</i> [2012] EWCA Crim 1000.
Causing a person to fear violence or provoking violence	(i) using threatening, abusive or insulting words or behaviour towards another person, or (ii) distributing or displaying to another person any writing, sign or other visible representation which is threatening, abusive or insulting. The individual committing the offence must intend for the innocent person to believe that immediate unlawful violence will be used against them or another person. Alternatively, it is an offence to provoke the immediate use of unlawful violence or cause another to believe it is likely that such violence will be used against them.	On summary conviction: up to 6 months in prison or to a maximum fine of level 5 on the Standard Scale (£5000).	Public Order Act 1986, section 4
Affray	(i) using or threatening unlawful violence towards another; and (ii) the conduct would cause a person of reasonable firmness present at the scene to fear for his personal safety. The offence should only be considered in the case of serious or indiscriminate violence, such as indiscriminately throwing objects towards a group in circumstances where serious injury is or is likely to be caused. The accused must have intended to use or threaten violence or have been aware that his conduct may be violent or may threaten violence.	On indictment: up to 3 years in prison and/or an unlimited fine. On summary conviction: up to 6 months in prison or a maximum fine of level 5 on the Standard Scale (£5000).	Public Order Act 1986, section 3 <i>Leeson v DPP</i> (2010) unreported
Exposure (the same act may also fall under offence of outraging the	(i) intentional exposure of an individuals' genitals, and (ii) the intention that someone will see them and be caused alarm or distress. The act must be shown to be deliberate and	On indictment: up to two years in prison. On summary	Sexual Offences Act 2003, section 66

public decency)	that the person had intended to cause alarm and distress.	conviction: up to six months in prison and/or a fine determined by the Court.	
Harassment	<p>A course of conduct (on at least two occasions) which amounts to harassment of another, and which he knows or ought to know would amount to it.</p> <p>The course of action must be sufficiently severe to be said that it amounts to criminal activity.</p> <p>The individual must know that their conduct would be seen by a reasonable person as harassment.</p> <p>It is a defence to show that the pursuit of the course of conduct was reasonable.</p>	Up to six months in prison or a fine of up to level 5 on the Standard Scale (£5000).	Protection from Harassment Act 1997, sections 1, 2 and 7