

**Briefing for MPs on New Clause 26 of the Legal Aid, Sentencing and Punishment of Offenders Bill: the Criminalisation of Squatting.**

**Background**

As you will be aware the Ministry of Justice published a consultation titled “Options for dealing with squatters” on the 13<sup>th</sup> of July 2011 . This consultation closed on the 5<sup>th</sup> of October. The MOJ’s response to this consultation was published on the 26<sup>th</sup> October2. The Justice Secretary has now tabled an amendment to the Legal Aid, Sentencing and Punishment of Offenders Bill (‘the Legal Aid Bill’) (clause 26) which effectively criminalises the act of trespass in residential property (see appendix A). This is in spite of the fact that over 90% of the responses to the consultation were opposed to such a move. Many young people were engaged with this campaign, and we find it hugely disappointing that a message is being sent back to them that consultation with the Government is an ineffective and impotent exercise. In addition we would suggest that the introduction of such a significant offence to this late stage of a parliamentary bill is entirely inappropriate. Such a criminalisation required proper consideration of its impacts, and we are seriously concerned that there has not been adequate time for this to take place, particularly considering the overwhelming opposition to such a move within the consultation responses. The purpose of this briefing is to ask you to oppose the amendment on Tuesday 1<sup>st</sup> November when it is debated in the House of Commons, or to support the amendments that have been tabled.

**1. Vulnerable People**

Criminalising squatting in residential buildings criminalises the most vulnerable homeless people in the midst of a housing crisis. This does nothing to help solve their homelessness problems, whilst exacerbating their condition.

Research by Crisis has found that squatting is a common response to homelessness. As many as 40% of homeless people have squatted at some point, relying upon it as a means to find temporary shelter and relief from street sleeping. Most of the homeless people who had squatted (78%) had sought help from their local council. Although they had been recognised as homeless they were not deemed entitled to housing as they did not meet the strict set of criteria to be considered a priority. It is widely recognised that we are in the midst of a housing crisis, with average rents approaching £1,000 a month, and more than 42,000 households officially classed as homeless. Crisis estimate that the 'hidden homeless' number closer to half a million.

**2. Empty Properties**

Squatting acts as an informal disincentive property owners from leaving properties empty long term. There are at present 700,000 empty properties in the UK (Empty Homes Agency). In the

midst of housing crisis, it is fundamentally important that more is done to ensure that empty residential properties are brought back into use as homes. By criminalising squatting in residential properties the government are both removing the informal mechanism which squatting represents, and sending a clear signal to property owners that they will be protected in leaving their properties empty.

### **3. Unnecessary New Criminal Law**

No new criminal law is necessary: owner occupiers and intending occupiers are already well protected by criminal law. As was highlighted by 162 legal experts in a letter to the Guardian: *“We want it to be clear that it is already a criminal offence for a squatter to occupy someone’s home, or a home that a person intends to occupy, under the Criminal Law Act 1977.”* The Metropolitan Police noted in their response to the MoJ consultation that “the law was broadly in the right place and that the existing array of offences allowed them to tackle the worst cases of squatting (e.g. where squatters cause the rightful homeowner to be displaced)”(p.10). In addition to this, there is the question of the lack of a solid evidence base noted in the consultation response; “the Magistrates’ Association is in general reluctant to see new laws being created without proper analysis of why existing powers may not be working satisfactorily” (p.19).

The negative impacts on homeless and vulnerable people, and on the wider problem of empty homes, is not justified by bringing new criminal law which is unnecessary.

### **4. Vulnerable Tenants, Unworkability, and Cost**

These proposals will be in reality unworkable. This is because it demands that the police make decisions on the doorstep about complex points of criminal and property law. For example, it will often be difficult for the police to quickly ascertain whether or not the trespassers are in fact vulnerable tenants who an unscrupulous landlord wishes to evict quickly, easily, and illegally. The protection offered to such people by the civil process, which requires oversight by a judge prior to eviction, is lost. The ambiguous and loose wording of the clause, perhaps an effect of its rushed insertion into the Legal Aid Bill, further compounds the police's dilemma: for example having to judge what constitutes 'residential' with very little guidance. We suggest that 'residential' is more clearly defined, for example a building with residential planning permission. This ambiguity also opens the police to numerous civil suits for illegal eviction.

The police are, like many other areas of the public sector, experiencing vast cutbacks in resources. These proposals will further burden them by dragging them into what is rightly

a civil part of the law. The full impacts on the police have been detailed by the Metropolitan Police;

“Criminalisation of squatting and subsequent enforcement would have an impact on policing, in terms of community relations, local policing objectives and cost. There would be a clear public expectation regarding enforcement. This is likely to be focused in areas which have a high concentration of buildings subject to unlawful entry and occupation, but also where there are squats which attract particular attention. At the same time contentious debate surrounding this subject may attract protest from groups who support squatting and voice concern about housing issues in London. This could attract further attention with changes to housing benefits and pressure on social housing. Significant work would need to be undertaken with the communities affected, local councils and related third sector organisations, to ensure that enforcement would be carried out in a proportionate and appropriate manner ” (p.35).

As a society do we really need to put undue pressure on an already heavily burdened Police service to combat a perceived ‘problem’ that can already be addressed within the framework of the existing law?

## **5. Retrospective Criminalisation**

The present wording of New Clause 26 criminalises those who are currently squatting in a residential building. Article 11, subsection 2 of the Universal Declaration of Human Rights states that: "No one shall be held guilty of any penal offence on account of any act or

omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed." Retroactivity of offences is

extremely rare (usually applied only in cases of war crimes and sexual offences). It is widely seen as undermining the rule of law as it does not leave room for the individual to properly exercise choice and exhibit intent.

**We therefore urge you to vote against New Clause 26 of the Legal Aid, Sentencing and Punishment of Offenders Bill.**

**If you are unable to vote against the whole Clause, we urge you to vote for two amendments, written by Crisis and tabled by John McDonnell MP, which attempt to limit the impact of criminalisation upon the most vulnerable, and which disincentivises property owners from leaving properties empty:**

**(i) That the law only covers residential property left empty for less than 6 months.**

**(ii) That the offence is not applicable in cases where the person is a care leaver or who has in the previous year been registered homeless/at risk.**

**The full wording of these amendments are:**

## **Protection for residential or intended residential property occupiers and landlords**

### **Amendment XX**

“Insert new subclause (2A)

“(2A) The offence is not committed where the building has been empty for 6 months or more and where there are no significant steps being taken to refurbish, let or sell the building at the time of the trespass.””

This amendment would mean that squatting remains a civil matter in all buildings that have been left empty long term and are not being brought back into use, while ensuring that residential buildings that have been recently lived in or are being brought back into use would be covered by the new criminal law. This amendment would incentivise property owners to bring homes back into use and avoiding the risk that disproportionate sentences (up to a year in prison and £5000 fine) will be given to those who squat in derelict properties. If this amendment is passed then it would nevertheless be a crime to squat in, for example, holiday homes, homes in the process of refurbishment, homes on the market or properties temporarily empty while a will is being executed. This covers many of the concerns raised in the consultation. In addition to this there would be significantly less resource implications for the Police.

## **Protection for the most vulnerable**

## **Amendment YY**

As an amendment to New Clause 26

“Insert new subclause (2AA)

“(2AA) The offence is not committed in cases where the person is a care leaver or who has in the previous year:

- a) been a resident of a homelessness hostel
- (b) been a resident of a homelessness night shelter
- (c) been a resident of a women’s refuge
- (d) been found rough sleeping
- (e) received mental health treatment in a residential setting”

This amendment would exempt from committing a criminal offence several groups whose housing in the previous year suggests particular vulnerability or homelessness. It also exempts care leavers. We know that 40% of single homeless people have squatted at some point and there is a real risk of criminalising a vulnerable group who are squatting as it is their only alternative to sleeping rough. This change is crucial to protect the really vulnerable from the possibility of prison sentences.

## **Conclusion**

We would ask you to consider carefully the two options that we have outlined. To summarise;

- The proposed amendment is problematic as in reality it is far too significant a proposal not to have received full parliamentary scrutiny.
- It has the effect of making criminals out of some of the most vulnerable in society.
- In reality it will be unworkable, and will have significant implications for Police resources.
- These issues can be mitigated by inserting a condition of 6 months in order to protect residential occupiers, encourage landlords not to leave property empty, and reduce the impact on the Police.
- The most vulnerable can be protected by their identification within the legislation.

## **Appendices a**

The proposed clause 26;

'(1) A person commits an offence if—

(a) the person is in a residential building as a trespasser having entered it as a trespasser,

(b) the person knows or ought to know that he or she is a trespasser, and

(c) the person is living in the building or intends to live there for any period.

(2) The offence is not committed by a person holding over after the end of a lease or licence (even if the person leaves and re-enters the building).

(3) For the purposes of this section—

(a) “building” includes any structure or part of a structure (including a temporary or moveable structure), and

(b) a building is “residential” if it is designed or adapted, before the time of entry, for use as a place to live.

(4) For the purposes of this section the fact that a person derives title from a trespasser, or has the permission of a trespasser, does not prevent the person from being a trespasser.

(5) A person convicted of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 on the standard scale (or both).

(6) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (5) to 51 weeks is to be read as a reference to 6 months.

(7) For the purposes of subsection (1)(a) it is irrelevant whether the person entered the building as a trespasser before or after the commencement of this section.'