

House of Lords Briefing Paper *with respect to the Legal Aid Bill Clause 130*

December 2011

INTRODUCTION

Squash (Squatters' Action for Secure Homes) is deeply concerned about the impacts of criminalising squatting in residential properties on homeless and vulnerable people, as proposed by Clause 130 of the Legal Aid, Sentencing, and Punishment of Offenders Bill. We believe that Clause 130 is unjust, unnecessary, and unaffordable, and call on the Lords to oppose its inclusion in the Bill.

ABOUT SQUASH

SQUASH (Squatters' Action for Secure Homes) is a campaigning organisation which, since the early 1990s, has worked to protect squatters and other vulnerably housed people. We are undertaking extensive research into the impacts of the proposed criminalisation of squatting. As part of this we are gathering the views and experiences of squatters and others who are at risk of being impacted. We campaign to raise awareness of these impacts and give voice to squatters and others experiencing insecure housing. SQUASH are in a unique position as one of the only organisations researching squatting in the UK from within the diverse world of squatting itself. It has been recognised as such from the beginning, with SQUASH research quoted extensively within the Home Office Research Paper 94/1 in 1994. Our broader aim is to provide resources for the achievement of secure housing for all.

EXECUTIVE SUMMARY

Squash (Squatters' Action for Secure Homes) is concerned about the impacts of criminalising squatting in residential properties on homeless and vulnerable people, and believe that Clause 130 is unnecessary, unworkable, and unaffordable.

1. Background to Clause 130

Clause 130 seeks to criminalise those who enter a residential property as a trespasser with the intention of staying there.

- It was introduced into the Legal Aid, Sentencing and Punishment of Offenders Bill ('Legal Aid Bill') at the third reading in the House of Commons, meaning it has not gone through a Committee stage or serious debate in the Commons.
- The clause was introduced following a consultation, "Options for Dealing with Squatters", in which 96% of respondents opposed criminalisation.

2. Vulnerable people, homelessness and tenants' rights

Squatting is a last resort for many people who find themselves homeless. Research has shown that 40% of homeless people have used squatting to house themselves and avoid street sleeping. Clause 130 will expose vulnerable people to the criminal law, and leave many with no option but to sleep rough. We also believe that Clause 130 is likely to be abused by landlords seeking to evict those with insecure tenancies quickly and cheaply.

3. Empty properties

The new offences will only make a substantive legal difference in the case of buildings which are empty and unused.

The number of empty properties in the UK is widely acknowledged as deeply problematic, and squatting is in part symptomatic of this situation.

The government is currently working on a new Empty Homes Strategy, and we believe that squatting should be treated within that framework, rather than within the current Legal Aid Bill.

4. Unnecessary new criminal law

The inclusion of Clause 130 directly contradicts the coalition's overarching policy agreement not to create "unnecessary new laws". Residential occupiers are already adequately protected from trespass under the Criminal Law Act 1977, and both the Criminal Bar Association and the Law Society oppose the introduction of a new criminal offence for squatting precisely for this reason. The negative impact on vulnerable people of Clause 130 means that this unnecessary new criminal law is not benign.

5. Unworkability and cost

Supporting ex-squatters through housing benefits or homelessness provision would be a burden on the public purse at a time of welfare cuts.

The Metropolitan Police stated in their response to the Ministry of Justice's consultation on squatting that the changes would cause unnecessary expense and drain resources.

Establishing whether or not someone is breaking the law will be extremely complex, given the intricacies of tenancy contracts and of property classifications which designate a property as "residential" or not. It is unjust to remove the settlement of such disputes from the purview of the courts and increases the likelihood of illegal evictions.

6. Retrospective criminalisation

Clause 130 proposes to criminalise existing squatters. SQUASH believe that retrospective criminalisation of squatters would undermine a fundamental tenet of English Law and the more recent Human Rights Act.

BACKGROUND

Clause 130 Of the Legal Aid, Sentencing and Punishment of Offenders Bill ('Legal Aid Bill') effectively criminalises the act of trespass in residential properties. It was introduced to the Legal Aid Bill by the Justice Secretary during the Third Reading of the Bill in the House of Commons. The clause has therefore not been through a Committee Stage or received significant scrutiny by MPs. Squash believes that the introduction of such a significant offence at this late stage is entirely inappropriate, a concern that was echoed by a number of MPs during the Commons debate on the Legal Aid Bill.

Clause 130 was introduced subsequent to a Ministry of Justice (MoJ) consultation, "Options for Dealing with Squatters," which ran from the 13th July 2011 to the 5th October 2011. Despite the consultation being targeted primarily at landlords, Squash facilitated almost 2,000 responses from those who would be affected by the new law. Response to the consultation was overwhelmingly opposed to the criminalisation of squatting, with 96% against such a move, including the Law Commission and the Metropolitan Police (see Appendix for notes on the consultation responses).¹ The MoJ's response was published on the 26th October, with the resultant new clause being passed through the Commons just four working days later, on the 1st November. Squash feels that the discounting of the views of those who were alerted to the consultation through our campaign is a significant point of principle and may be unlawful. These respondents included a diverse range of individuals, from homeless people to people who had had positive experiences of squatting in their local community.

Criminalising a whole section of society, particularly young people, requires 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. 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. The speed with which the legislation has been rushed through has subverted the democratic process, leaving no time

for individuals to communicate with their MPs or for campaign groups to analyse the proposals and make sure they are well-understood.

VULNERABLE PEOPLE, HOMELESSNESS, AND TENANTS' RIGHTS

Criminalising squatting in residential buildings criminalises some of the most vulnerable homeless people in the midst of a housing crisis. This does nothing to help solve their homelessness problems, whilst exposing them to the criminal justice system threatens to diminish their chances and exacerbate their condition.

Homeless people who use empty buildings to house themselves are among the most vulnerable people in society. Research by Crisis, 'The Hidden Truth about Homelessness', has found that squatting is a common response to homelessness, with around 40% of homeless people using squatting at some point. Of homeless squatters, 78% have approached their local authorities for help and been refused, despite being acknowledged as homeless. As human rights group Liberty have stated, Clause 130 "will expose vulnerable homeless people to the criminal law. If passed, clause 130 could leave individuals with no choice but to sleep on the streets".²

It is widely recognised that we are in the midst of a housing crisis, with more than 42,000 households officially classed as homeless, and 2 million families on the council house waiting list. It has been estimated by government ministers that cuts to housing benefit will leave another 40,000 households without shelter, and mortgage repossessions are forecast to number around 45,000 in 2012.³

In addition, Squash believes it is likely that the new laws will be abused by unscrupulous landlords seeking cheap and fast means to evict tenants. Many tenants, particularly some of the most vulnerable and precarious, may not have written contracts. Currently such individuals are protected by the recognition in law of a range of non-written agreements, but this new clause will transfer powers of adjudication from the courts to the police, who will be required to make decisions on

the doorstep. The appropriate source of scrutiny will be removed and the law will be open to abuse, ultimately weakening the protection of tenants.

EMPTY PROPERTY

It is already a criminal offence under the Criminal Law Act 1977, section 7, to occupy a person's home, or a house that someone is due to move into. Hence Clause 130 will only make a substantive difference to properties where no one lives, which are empty and abandoned. There are at present 737,491 empty properties in England and Wales.⁴ 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; squatting is fulfilling this function in only 2% - 4% of these empty properties.⁵ The government is currently working on a new Empty Homes Strategy, and Squash believe that squatting should be treated within this framework. It has already become apparent in Commons debate that the criminalisation of squatting is reducing the options open to the government for dealing with the crisis in empty homes, and we believe that this issue must be treated prior to that of squatting.⁶

Squash estimate that almost 2 million people could be housed in the current number of long-term empty properties; of which 312,000 are ready for occupation, 117,000 need redecoration, and 317,000 need major improvements.⁷ Buildings that require major improvement have often been transformed by squatters to create comfortable and creative living and social spaces with scant resources, as an intermediate solution to homelessness in England and Wales.

The Bradford Residents' Survey on Empty Properties demonstrates the negative externalities of derelict buildings in local neighbourhoods. The survey found that 77% of the respondents had one or more empty properties in their neighbourhood. When asked about the "Impact of an empty home on you personally", of those affected, 81% said that "It is an eyesore in the neighbourhood", 78% said "It causes blight", and 67% said "It becomes a dumping ground for rubbish."⁸ The Empty Properties Survey 2008 figures show that property owners are not overly concerned about the negative externalities (such as blight and fly tipping) which their empty properties might generate in the

local area with over 60% "not concerned" and their contribution to the housing shortage registered as their lowest concern (74% "not concerned").⁹ Squatters can act as a deterrent from leaving properties empty, and when given rights to occupy, they maintain, repair and guard these empty properties from the issues raised above.

UNNECESSARY NEW CRIMINAL LAW

No new criminal law is necessary: occupiers and intending occupiers are already well protected by criminal law. This 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."¹⁰ It was on this basis that both the Criminal Bar Association and The Law Society [Appendix, Note 1] opposed the creation of a new criminal offence for squatting in their consultation responses. The Metropolitan Police [Appendix, Note 2] 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 home-owner to be displaced)".

A House of Commons research paper published in 1994 points out that Orders 24 and 113 have been available to landlords since the 1970s, and were introduced to assist landowners against the resurgence of squatting. Criminal offences for trespass already exist which protect rightful property occupiers, under the Criminal Law Act, 1977, so that if the trespasser fails to leave the premises if asked to by a displaced residential occupier (DRO) or a person who is a protected intending occupier (PIO), they may be physically removed and/or the police may be called to remove them.¹¹

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".¹² Squash agree with this position, and question the government's rush to introduce new criminal legislation around a phenomenon that is not generally well understood and very under-researched.

The coalition agreement commits to “prevent the proliferation of unnecessary criminal offences.”¹³

The introduction of a new criminal offence of squatting is unnecessary since property occupiers and owners are adequately protected under existing legislation and squatters do not, as a general rule, enter occupied premises. Since the introduction and implementation of a new offence will needlessly and unjustifiably negatively impact and criminalize homeless and vulnerable people whilst leaving the wider problem of empty homes untouched, this unnecessary new offence is not benign.

UNWORKABILITY AND COST

The government have not attempted to estimate the costs of these proposals. Squash have estimated the costs of criminalising squatters, which would burden the public purse, especially while welfare services are being cut. Squatters currently save taxpayers in England and Wales between £21 – 52.7 million a year because they do not claim housing benefit. If a new law to criminalise squatting forced those who currently squat to claim benefits to permit their move into the private rental sector, it would cost the taxpayer between £35.9 – 89.8 million a year. Criminalising squatting may increase the burden felt by the already over-stretched homelessness provision of local authorities and charities. For example, this move would see between 10,400 – 130,000 under-25’s join the currently overstretched waiting list for young people seeking accommodation, which the Citizens Advice Bureaux (CAB) has highlighted is a growing problem.^{14 15}

The costs of enforcement would also be very high. The full impacts on the police have been detailed by the Metropolitan Police (representing the Association of Chief Police Officers - ACPO):

“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.”¹⁶

Squash has estimated that if all the current squats were evicted, it would cost an additional £29.3 – 73.3 million in police and magistrate costs to enforce.¹⁷ It should also be noted that squatters would be able to claim Legal Aid under the new law, which they currently do not claim in civil cases regarding possession. SQUASH believe that a full Impact Assessment of the proposed legislation must be conducted by the Public Accounts Committee or the National Audit Office, before any such legislation is discussed.

Clause 130 is also likely to be unworkable, since it demands that the police make decisions on the doorstep about complex points of criminal and property law. As mentioned above, it would be difficult for the police to quickly ascertain whether or not suspected trespassers (i.e. “squatters”) are in fact vulnerable tenants whom 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, would be 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 is problematic. This ambiguity opens the police to criticism and numerous civil suits for illegal eviction.

RETROSPECTIVE CRIMINALISATION

The present wording of Clause 130 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.” Retro-activity 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, and is thus a fundamental tenet of English Law.

CONCLUSION

Therefore to summarise, SQUASH believe that the Lords should oppose Clause 130 of the Legal Aid, Sentencing and Punishment of Offenders Bill (‘the Legal Aid Bill’), for the following reasons:

- 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 who are seeking to meet their basic need of shelter.
- It will further exacerbate the dual crises of homelessness and empty properties.
- Creating unnecessary new laws is a burden on the judiciary, the police and the taxpayer, and undermines some fundamental government policies on public expenditure, housing and homelessness.
- In practice it will be unworkable, and will have significant implications for public resources and budgets.
- Enacting the legislation retroactively contradicts fundamental tenets of English Law and the Human Rights Act.
- These issues could be mitigated by the introduction of amendments to the Clause, such as that already written by Crisis which would exempt properties which have been left empty for more than 6 months. To discuss further details of amendments which could reduce the negative impacts of these proposals please get in touch with Squash.

NOTES

¹ *Options for dealing with squatting: Response to Consultation CP12/2011*; Ministry of Justice, 130 October 2011 <http://www.justice.gov.uk/downloads/consultations/options-dealing-with-squatting.pdf>

² Liberty's *Second Reading Briefing on the Legal Aid, Sentencing and Punishment of Offenders Bill in the House of Lords*. Page 38 (96) "We are concerned that the proposed new offence will largely affect empty or abandoned homes and will expose vulnerable homeless people to the criminal law... [it] could leave individuals with no choice but to sleep on the streets, exposing them to acute suffering and considerable risks to their personal safety. At the very least Liberty support an amendment proposed by Crisis which would see an exception to the new criminal offence where the occupied property has been empty for more than 6 months and where there are no steps being taken to bring it back into use." <http://www.liberty-human-rights.org.uk/pdfs/policy11/liberty-s-second-reading-briefing-on-the-legal-aid-etc-bill-in-the-house-of->.pdf

³ Sources for figures: 42,000 homeless - Communities and Local Government, *Live Tables on Homelessness*: <http://www.communities.gov.uk/housing/housingresearch/housingstatistics/housingstatisticsby/homelessnessstatistics/livatables/>; 2 million on council house waiting lists: http://england.shelter.org.uk/campaigns/housing_issues/waiting_lists; Eric Pickles warns David Cameron of rise in homeless families risk, 2 July 2011; *The Guardian* <http://www.guardian.co.uk/politics/2011/jul/02/eric-pickles-david-cameron-40000-homeless>; Mortgage repossessions 45,000 - Council of Mortgage Lenders <http://www.cml.org.uk/cml/media/press/3119>

⁴ Empty Homes Agency Figures 2010: <http://emptyhomes.com/statistics-2/breakdown-of-statistics/>

⁵ *SQUASH Research Report: Property Ownership, Transactions and Housing Affordability in England and Wales*. Available on request.

⁶ See House of Commons debate on empty homes, 29 November 2011: <http://www.theyworkforyou.com/debates/?id=2011-11-29a.910.0&s=empty+homes#g914>

⁷ *SQUASH Research Report*

⁸ Results of Bradford Resident's Survey; *Bradford Empty Homes*; <http://www.bradford.gov.uk/NR/rdonlyres/0DB1DFF8-1FF0-4DAB-9704-54D2B61B6130/0/BradfordEmptyHomesResultsofResidentsSurvey.pdf>

⁹ *Empty Properties Survey 2008*; The University of Nottingham Survey Unit and East Midlands Empty Property Forum; May 2008; <http://www.bshf.org/ukhpp/empty-properties/publication.cfm?lang=00&thePubID=6CE4799C-15C5-F4C0-999C09189EF6ED4E>

¹⁰ Squatting law is being misrepresented to aid ministers' reforms, claim lawyers; 25th September 2011; *The Guardian* <http://www.guardian.co.uk/politics/2011/sep/25/squatting-law-misrepresented-claim-lawyers>

¹¹ Wilson and Wendy, *Policy on Squatting in the Criminal Justice and Public Order Bill [Bill 9 of 1993/4]*, Research Paper 94/2, House of Commons Library, 10 January 1994.

¹² *Options for dealing with squatting: Response to Consultation CP12/2011*; Ministry of Justice, 26 October 2011, p.19. <http://www.justice.gov.uk/downloads/consultations/options-dealing-with-squatting.pdf>

¹³ *The Coalition: Our Programme for Government*; May 2010, p.10. <http://www.libdems.org.uk/siteFiles/resources/PDF/Government/Coalition-Programme.pdf>

¹⁴ All figures in this paragraph are taken from *SQUASH Research Report*.

¹⁵ Housing issues on the rise for under 25s says Citizens Advice. June 2011. http://www.citizensadvice.org.uk/index/pressoffice/press_index/press_20110606.htm

¹⁶ See Appendix, Note 2.

¹⁷ *SQUASH Research Report*

APPENDIX - NOTES FROM CONSULTATION RESPONSES

From the Ministry of Justice Consultation Response: Options for dealing with squatting: Response to Consultation CP12/2011; Ministry of Justice, 26th October 2011

[Note 1] Criminal Bar Association and The Law Society

“The Criminal Bar Association and the Law Society strongly opposed the creation of a new criminal offence. They both argued that the current law was effective and that unnecessary new regulation should be avoided. The Law Society argued that squatting was a rare problem and introducing new offences when there was already a range of existing offences would be disproportionate and counterproductive. They queried whether the police would have the resources to enforce new offences when they appeared to be unwilling to enforce existing laws. (Page 10)

“The consultation paper acknowledges that there are no reliable data on the nature and extent of squatting. In the absence of any such evidence, we have no reason to believe that the existing law does not deal adequately with squatting. The civil remedies available appear to us to be adequate and there is a sufficiency of criminal offences already available as remedies. From the information provided, we feel what may be required is for existing remedies to be more vigorously enforced rather than any changes to the criminal law.” (Criminal Bar Association)

“The current law deals adequately with squatting. Home owners are protected by section 7 of the Criminal Law Act 1977. A home-owner will be a ‘displaced residential occupier’, or, if they are not yet residing in the property, a ‘protected intended occupier’. It is a criminal offence for a squatter to remain once they have been informed of the displaced occupier or a protected occupier. The police can arrest any trespasser who does not leave.” (Law Society p.20)

[Note 2] The Metropolitan Police

“The Metropolitan Police, responding on behalf of the Association of Chief Police Officers, considered 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 home-owner to be displaced). If changes were made to legislation, however, they could see that there might be a case for widening existing offences to ensure that residential properties which are not currently under occupation are protected by any new offence, for example homes under renovation or second properties. They warned that new offences could have an impact on policing in terms of community relations, local policing objectives and cost. They pointed out that many of the known squats in the London boroughs were occupied by foreign nationals and significant work would need to be undertaken with the communities affected, local councils and related third sector organisations, to ensure that enforcement was carried out in a proportionate and appropriate manner.” (p.10)

“224 squats were identified across London as a result of the MPS survey. This included both residential and non-residential property, and single or multi-occupancy premises. No specific data was captured regarding the status of these properties prior to being occupied, but the majority of the reports suggested that they were empty or abandoned. However, the actual number of squats in London is suspected to be significantly higher than the reported figure.” (p.16)

“The Metropolitan Police similarly suggested that if a new offence were created, it should perhaps be linked to buildings that are in use and driven by reports from victims:

“In these circumstances enforcement is more likely to take place where buildings are in use, and not where

abandoned or dilapidated, or where buildings have been empty for a long time. Such an approach may also help with preventing false or vexatious allegations.” (p.25)

“The Metropolitan Police said:

‘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.’

Many respondents suggested that a new offence would discourage the positive community activities which it is said can be provided by squatters. One was concerned at young people receiving criminal records and being punished for their enterprise and initiative.” (p.35)

For more information please contact SQUASH:

www.squashcampaign.org
info@squashcampaign.org