PARLIAMENTARY DEBATES

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GENERAL COMMITTEES

Public Bill Committee

PUBLIC ORDER BILL

Third Sitting

Tuesday 14 June 2022

(Morning)

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Saturday 18 June 2022

The Committee consisted of the following Members:

Chairs: † Peter Dowd, David Mundell

† Anderson, Lee *(Ashfield)* (Con)
† Bridgen, Andrew *(North West Leicestershire)* (Con)
† Chamberlain, Wendy *(North East Fife)* (LD)
† Cunningham, Alex *(Stockton North)* (Lab)
† Doyle-Price, Jackie *(Thurrock)* (Con)
† Elmore, Chris *(Ogmore)* (Lab)
† Elphicke, Mrs Natalie *(Dover)* (Con)
† Hunt, Tom *(Ipswich)* (Con)
† Huq, Dr Rupa *(Ealing Central and Acton)* (Lab)
† Jones, Sarah *(Croydon Central)* (Lab)
† Longhi, Marco *(Dudley North)* (Con)
† McCarthy, Kerry *(Bristol East)* (Lab)
McLaughlin, Anne *(Glasgow North East)* (SNP)
† Malthouse, Kit *(Minister for Crime and Policing)*
† Mann, Scott *(North Cornwall)* (Con)
† Mohindra, Mr Gagan *(South West Hertfordshire)* (Con)
† Vickers, Matt *(Stockton South)* (Con)

Anne-Marie Griffiths, Sarah Thatcher,
Committee Clerks

† attended the Committee

Public Bill Committee

Tuesday 14 June 2022

[Peter Dowd *in the Chair*]

Public Order Bill

9.25 am

The Chair: A few preliminary reminders for the Committee: please turn off electronic devices, or switch them to silent. No food or drink is permitted during sittings except for the water provided. Hansard colleagues would be grateful if Members emailed their speaking notes to hansardnotes@parliament.uk, or passed their written notes to Hansard colleagues.

We now begin line-by-line consideration of the Bill. The selection and grouping list is available in the room; it shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or similar issues. Decisions on amendments are taken not in the order in which they are debated, but in the order on which they appear on the amendment paper. The selection and grouping list shows the order of debates. Decisions on an amendment are taken when we come to the clause to which the amendment relates. Decisions on new clauses will be taken once we have completed consideration of the clauses of the Bill. Members wishing to press a grouped amendment or new clause to a Division should indicate that when speaking to it.

Clause 1

Offence of locking on

Wendy Chamberlain (North East Fife) (LD): I beg to move amendment 29, in clause 1, page 1, line 10, leave out

"or is capable of causing".

This would limit the offence to an act that causes serious disruption.

The Chair: With this it will be convenient to discuss the following:

Amendment 46, in clause 1, page 1, line 10, leave out from "disruption" to the end of line 12.

Amendment 30, in clause 1, page 1, line 15, leave out "or are reckless as to whether it will have such a consequence".

This would limit the new offence to ensure that there must be intent to cause serious disruption.

Wendy Chamberlain: As the Minister and others may be aware, I am a former police officer; I served with the Lothian and Borders police between 1999 and 2011. I am working with my colleague Lord Paddick, who is in the other place; he is also a former police officer, and considered the provisions of the Bill that were put in the Police, Crime, Sentencing and Courts Bill in the other place, so we have some experience of police debates.

The Chair: Order. I am sorry; none of the mics is working, so we will have to suspend the sitting for a few minutes.

9.27 am

Sitting suspended.

9.29 am

On resuming—

Wendy Chamberlain: As this is my first Bill Committee, I was worried that I had already made a mistake. I am glad to hear that the issue causing us difficulty was beyond my purview.

As I say, I have policed events and protests; Lord Paddick has been the commander at them. I highlight the evidence that we heard last week from police officers, particularly Chief Superintendent Phil Dolby, who leads on the management of such events. What really came through for me in the evidence was the need for ongoing dialogue and agreement with those exercising their democratic right to protest. I have concerns that the legislation will hinder that dialogue. As former Chief Constable Peter Fahy said, we do not live in France or any other country with a paramilitary aspect to their policing. We do not want any legislation to risk our approach. I have concerns about that balance, about unnecessarily criminalising protesters, and about bringing into the scope of the legislation people who have nothing to do with a protest.

Chief Constable Chris Noble observed in his opening remarks last week that the vast majority of protest activity is non-contentious. I urge us all to remember that in our deliberations. The provisions in the Bill were introduced into the Police, Crime, Sentencing Courts Act 2022 when it was in the Lords last Session, and they were resoundingly opposed in the other place, so I am surprised that the Government are pretty much reintroducing the same measures and are not taking the experience in the Lords into account. I thank Lord Paddick, who spoke strongly against the provisions; the Chair may find that some of my remarks bear a resemblance to his.

Clause 1 will criminalise people who lock on even if there is no disruption caused, as long as there is potential for disruption. Amendment 29 would remove the words

"or is capable of causing"

which are incredibly broad and uncertain. If the Government are determined to create these additional offences—it appears that they are, given that we are back considering this Bill—the law that introduces them must be legal. These provisions are vague, undefined and open to subjective interpretation, as we will see in the law courts if the Bill as drafted passes into law.

The National Police Chiefs' Council said in evidence that it is concerned about the phrasing, as it will be open to interpretation, and the onus will be on officers to decide the meaning. As I said in our evidence session last week, the first officer to attend a protest, whether they be a police constable, sergeant or inspector, is in charge and takes control and command—they lead. No one officer has the overall picture necessary to make such decisions, and I argue that this measure places the onus on individual officers to decide its meaning. Not only are the police unable to enforce such restrictions, but, as we have heard from organisations such as Amnesty International, the lack of certainty and broad scope makes the conduct in question illegal from the outset. That is not what we should intend to do in legislation. The provision severely curtails the fundamental human right to protest peacefully and will further damage our global reputation.

The clause potentially criminalises all sorts of protests. What about a counter-demonstration to stop holocaust deniers marching past a synagogue? If protesters linked arms to protect the synagogue, they could be caught by this clause. There is no definition of "capable of causing". We do not criminalise behaviour that might cause crime. We prosecute people who have caused crimes.

The Minister for Crime and Policing (Kit Malthouse): Amendments 29, 46 and 30 target clause 1, which introduces a new offence of locking on. Locking on is an extremely disruptive and often dangerous tactic that can place both protesters and police at extreme risk. It is unacceptable that protesters can use bike locks, glue and an imaginative range of other equipment to inflict disruption on businesses and the public, and the testimony we heard in the oral evidence sessions highlights the need for the Government to act.

Amendment 29 would raise the threshold of the offence by requiring a person's lock-on to have caused, rather than be capable of causing, serious disruption before they were liable for the offence. That would not account for situations where, for example, a person locks on with intent to cause serious disruption but is quickly removed by the police before serious disruption can be inflicted. If there is to be a deterrent effect, it is important that those who commit acts that could cause serious disruption face appropriate penalties. I do not see the value of accepting the amendment.

Amendment 46 would inadvertently lower the threshold for serious disruption; it would remove the statement that serious disruption is caused by a lock-on only if the disruption applies to two or more individuals or the activities of an organisation. It is entirely reasonable to assume that if someone commits a lock-on that causes serious disruption to one or more person, they may be arrested and charged with the offence. I am not sure the hon. Member had the intention of lowering the threshold of application of this clause.

Alex Cunningham (Stockton North) (Lab): I am looking at subsection (2) which says:

"It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse for the act mentioned in paragraph (a) of that subsection."

Will the Minister please explain what is meant by that, and who might be caught by the Act? Who would actually have a reasonable excuse? Can he give us an example?

Kit Malthouse: The notion of reasonable excuse is well defined in our common law and is adjudged by courts daily, particularly in protest situations. We have seen that over the last few months. Although I assume that the hon. Gentleman seeks some precision in definition, "reasonable excuse" is for the courts to define, and they do so regularly.

Amendment 30 would raise the threshold for the offence of locking on by requiring individuals to have intended their lock-on to cause disruption, rather than having been reckless about that. Recklessness is, however, also a very well understood term in criminal law, and it applies to numerous criminal offences. I do not see the value in removing it from this clause, not least because, as I am sure the hon. Member for North East Fife knows, it is a well-known term in Scottish law and is often used in Scottish courts to adjudge an offence. For the reasons I have set out, I ask hon. Members not to press the amendments.

Sarah Jones (Croydon Central) (Lab): It is a pleasure to serve under your chairmanship, Mr Dowd. I thank the hon. Member for North East Fife for tabling her amendments, which we are happy to support. She spoke clearly and eloquently about them, and I echo some of her arguments. We agree with the narrowing of scope proposed in amendment 29, which would mean that locking on must cause disruption, rather than just being capable of doing so. The Minister has already spoken, but I think there is an issue with the wording, and with defining an act as being capable of causing disruption. The definition is so broad and imprecise that it could include almost anything.

Kit Malthouse: On Cromwell Road in west London, a lorry pulled up and scaffolding was quickly brought out and semi-erected, but as Territorial Support Group 5 happened to be on the scene, the scaffolding was quickly removed. That offence was capable of causing significant disruption, but because of swift police action, it did not. Does the hon. Lady believe that an offence was committed in that case, and that the sentence should deter those people from trying again?

Sarah Jones: It was jolly good that the police were there and able to deal with that case. We do not need new legislation to enable them to do their job, which they did swiftly and well.

We will come on in more detail to the fundamental flaws in the Bill, but our underlying argument is that it will not deal with the small number of repeat offenders who come back time and again. It may, however, criminalise people who protest peacefully. Whatever the Government intended, that is not necessarily how the provision will be interpreted. That is why laws need to be drafted very clearly. As the former Prime Minister has said on several occasions, she might have thought that she would interpret her powers very sensibly when she was Home Secretary, but who knows who will come next? If we do not have sensible people making decisions, we do not necessarily want them to be able to interpret these very broad powers, so the law needs to be precise.

The hon. Member for North East Fife referenced Lord Paddick, who made the point that if the locking on

"were on a different road or at a different time, it would be capable of causing serious disruption. But if it is 3 am on a Sunday, is that still capable of causing serious disruption?"—[*Official Report, House of Lords,* insert date in form 1 January 2057; Vol. 816, c. 980.]

That is a good and interesting point. We are happy to support the amendments put forward by the hon. Member for North East Fife.

Amendment 46 addresses another of our concerns. All those who gave evidence last week discussed the scale of the disruption caused by protest. We were all horrified by the astronomical costs involved, such as the £126 million that High Speed 2 spent on protester removal, which might rise to £200 million next year. However, under clause 1, the offence is triggered where a lock-on causes disruption to just two people. There is clearly a huge difference between the enormous scale of

[Sarah Jones]

disruption caused to HS2, or by lock-ons on the motorway, and disruption caused to two people. They are simply not the same thing, and it is problematic that the clause appears to conflate them.

Wendy Chamberlain: The hon. Lady has referred to the astronomical costs. The Minister said that it is for the courts to make some of the decisions around the wideness of the scope. The reality is that if we arrest more people for these offences and they go through the criminal justice system, those costs will increase. By having such a wide scope, we are making the situation more expensive in the longer term.

Sarah Jones: Sadly, the Government are good at wasting taxpayer money. We have seen lots of cases of the profligate use of funds; let us hope this will not be a similar case.

Kit Malthouse: To be clear, all the people who currently lock on are arrested and charged with other offences, including in Scotland. It is not necessarily the case that more people would be arrested. In fact, given the specificity of the offence, and as we hope that the sentence that we attach to it will prove a deterrent, in time fewer people will commit this offence and cause serious disruption; there will therefore be fewer arrests. Is that not the point of the laws we pass in this place?

Sarah Jones: The point is that the offence would not be a deterrent, given that there are plenty of other things that people are charged with, and imprisoned and fined for. It would not be a deterrent to those difficult people who come back time and again, as they can already be arrested, charged and sent to prison for a multitude of existing offences.

Alex Cunningham: My hon. Friend is correct. I was surprised to hear the Minister say, "It's okay: we can already charge these people. There are plenty of offences that they can be charged with and fined for." Why the new legislation, then? I do not quite understand the Minister.

Sarah Jones: I absolutely agree. In addition—this is most peculiar—a whole raft of legislation on protest has been passed by this House but not yet implemented. We are layering legislation on top of a whole raft of legislation that has passed but not yet implemented, before we even know whether the previous legislation has worked.

Amendment 46 aims to amend clause 1 so that it actually deals with the scale of the disruption that our witnesses were concerned with. In doing so, it will also address the concerns of the public. I do not think that the public are much interested in protests that cause disruption to just two people. That is not so egregious, and certainly not egregious enough to risk seriously harming the right to protest. The National Police Chiefs' Council agrees; it states in its written evidence that:

"we believe using the definition of 'serious disruption to the community' may be preferable to 'two or more people, or an organisation', as the former is more widely understood and will allow more effective application consistent with human rights legislation."

Amendment 30, tabled by the hon. Member for North East Fife, would

"limit the new offence to ensure that there must be intent to cause serious disruption."

As I have mentioned, one of our key concerns with this clause is how widely drawn it is. With such broad wording, it is fair to ask the police to determine whether there is genuine intent to cause serious disruption. As has been pointed out by Liberty and other organisations, the Bill already carries the danger of criminalising peaceful protest, and has the potential to sweep up many peaceful protesters. Recklessness is not a good measure in the law. How should the police try to prove that an individual has been particularly reckless? Recklessness is not a good measure in the law. Can the Minister say what "recklessness" is? Is it defined by a lack or an abundance of action? What would his definition be?

9.45 am

Wendy Chamberlain: It is obvious that on this side of the Committee we are keen to ensure that there is definition to what the Government are proposing so that people do not fall inadvertently within the scope of this. I agree with the shadow Minister, and we heard this in evidence last week, that those who see locking on or committing such offences as a badge of honour will not be deterred by what the Government propose. Although I do not intend to press either amendment 29 or 30 to a vote, it has been important for us to understand what the Government propose and the fact that they are continuing to press ahead with a wide scope for the clause. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: Sarah Jones, do you wish to move amendment 46 formally?

Sarah Jones: I know it is early in the morning to test the will of the Committee, but I wish to move the amendment formally, in part because the NPCC has concerns about the wording, as do many other organisations.

Amendment proposed: 46, in clause 1, page 1, line 10, leave out from "disruption" to the end of line 12.—*(Sarah Jones.)*

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 10.

Division No. 1]

AYES

Chamberlain, Wendy	Huq, Dr Rupa
Cunningham, Alex	Jones, Sarah
Elmore, Chris	McCarthy, Kerry

NOES

Anderson, Lee	Longhi, Marco
Bridgen, Andrew	Malthouse, rh Kit
Doyle-Price, Jackie	Mann, Scott
Elphicke, Mrs Natalie	Mohindra, Mr Gagan
Hunt, Tom	Vickers, Matt

Question accordingly negatived.

Wendy Chamberlain: I beg to move amendment 31, clause 1, page 1, line 21, after "fine" insert

"not exceeding level 2 on the standard scale".

A person convicted of an offence of "locking on" may be subjected to a fine. Under this clause there is no limit on the fine that may be imposed. This amendment would place a maximum limit on the fine.

The Bill allows for unlimited fines but the amendment would limit the fine for the offence to level 2, £500. The amendment belongs with my amendments 34 and 37, because as currently drafted the offences of locking on, being equipped to lock on or obstructing major transport works can carry an unlimited fine.

To divert slightly, reference was twice made during last week's evidence sessions—and this morning— to Scots law, although I appreciate that the Bill relates to England and Wales. Last week, the Minister referred to the crime of malicious mischief in Scotland, which carries an unlimited fine or prison sentence. That took me right back to my basic training days at the Scottish Police College—is it vandalism or malicious mischief? It is a crime at common law, and that is why it carries unlimited fines or imprisonment. The Scots Advocate, Andrew Crosbie, a member of the Faculty of Advocates in Scotland, describes common law offences on his crime.scot blog as follows:

"I tend to summarise common law cases…they're crimes because they just are."

You know us Scots, we are blunt and to the point. But common law crimes such as assault, theft, murder, fraud and breach of the peace were not created by Parliament, and as such are not defined in legislation. In fact, David Hume, whose statue stands outside the High Court of Justiciary in Edinburgh, pooled all the High Court decisions to produce the authoritative account of the state of Scots criminal law in the 1840s. All of those offences could result in unlimited fines or prison time, and I have lost count of the number of times that I charged someone with the breach of the peace, because it is a catch-all piece of legislation. The reality is that those offences do not carry those sanctions because sentencing decisions are usually made within a scale and scope, dependent on the seriousness of the offence and previous case law. I would argue therefore that, contrary to the Minister's argument last week, it is not as straightforward as it first looks that Scots law is more draconian; it is about the scope of previous stated cases and decisions.

Malicious mischief consists of the wilful, wanton and malicious destruction of, or damage to, the property of other persons. There must be malice, either actual or inferred, on the part of the perpetrator, as destruction or damage caused by accident or under a reasonable belief of right, is not criminal. One main difference between that offence and vandalism is that the latter must result in damage to actual property, whereas under malicious mischief financial damage brought about by a criminal act would suffice. I hope Members will note why malicious mischief might be an appropriate offence in Scotland for some of matters that we are considering in the Bill.

From a police officer's perspective, if property is damaged and the value of the damage is high, it may be more relevant to label the act as a common law crime other than vandalism. That is certainly how I recall it from my police college days—if it was high value, or involved cruelty to animals, it was malicious mischief, otherwise we preferred statutory vandalism.

I wanted to touch on that because in a democracy punishments are made to be proportionate to the crimes. Is it proportionate to fine someone potentially tens of thousands of pounds for a single act of protest? My simple proposal is that the fine should be limited to level 2 on the standard scale at £500. I am happy to hear from the Government should they have other proposals for a limit, but I argue that it cannot and should not be limitless.

Sarah Jones: The intent behind the amendment—to prove whether an unlimited fine is proportionate or not—is sensible. It is difficult to find examples of offences that have resulted in huge fines, and I wonder whether the Minister could provide some examples of the scale of fines for the offence set down in clause 1. I know that the coalition Government introduced an unlimited fine in 2015 under the terms of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The explanatory notes to those regulations state:

"For the most serious offences tried by magistrates that maximum is generally £5,000 although for certain offences where the financial gain from offending is substantial—for example in some environmental offences—the maximum fine can be as high as £50,000."

How will the offences we are considering compare? I understand that when a similar amendment was considered during the passage of the Police, Crime, Sentencing and Courts Bill, the Minister in the other place said,

"We think that an unlimited fine is appropriate in the case of these new offences; a level 1 or level 2 fine…would not…in our view…reflect the seriousness of the conduct in question. An unlimited maximum fine allows courts to determine the level of any fine on a case-by-case basis, having regard to the gravity of the offence and the ability of the offender to pay."—[*Official Report, House of Lords,* 24 November 2021; Vol. 816, c. 994.]

It would be helpful if the Minister could shed some light on an estimated fine that he believes could reflect the seriousness of the conduct in question, which, as we have just debated, is so broad in scope.

Kit Malthouse: I have already spoken about the harm that locking on can cause and we feel strongly that those who commit locking on should face a sentence proportionate to the harm they cause. The maximum fine of £500, which the amendment provides, is simply not proportionate to some of the offences we have seen and the courts should have the discretion to impose an unlimited fine on a case-by-case basis. Judges do this on a regular basis within the framework set for them, dependent on the individual's circumstances, their relative wealth and the likely deterrent effect the fine will have.

Although I understand and hear what the hon. Member for North East Fife says about what happens north of the border with malicious mischief, it is the case that in theory that offence carries an unlimited fine and, indeed, an unlimited prison sentence, notwithstanding the guidance judges operate under. I am conscious that the fuel protestors recently arrested outside Glasgow have all been charged, as I understand it, with malicious mischief. We will wait to see what the result may be, but I have no doubt that Scottish judges will look to the circumstances of those individuals and the damage and disruption they caused while they decide what the fines should be. Although she might say that that is not more draconian, we are simply seeking to mirror what would be experienced north of the border, and I urge the hon. Lady to withdraw the amendment.

Wendy Chamberlain: We ask the Minister to accept that because malicious mischief is a crime of common law there are unlimited fines and imprisonment attached

[Wendy Chamberlain]

to it. We have no legislation that does not have a fine scale within it, which is why I think we should ensure that we have something on this. My amendment is very much intended to probe what the Government would consider reasonable, so I have no intention of pressing it to a vote. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Sarah Jones: Clause 1, as we know, establishes a new criminal offence targeting people who engage in the act of locking on. It criminalises those who attach themselves to another person, an object or land, those who attach a person to another person, object or land and those who attach an object to another object in the same scenario, as long as such activities cause or are capable of causing serious disruption to two or more people or to an organisation in a public place. Those involved must intend the act to cause and be capable of causing serious disruption to two or more individuals or an organisation or be reckless as to whether it will have that consequence. A reasonable excuse is the defence, and breach of this offence means a maximum of 51 weeks imprisonment, a fine or both. That is how the clause is laid out in the Bill.

I should make one thing clear at the start. During the evidence sessions last week we heard examples of really egregious breaches of law—smoking on oil tankers, gluing oneself to motorways and tunnelling under High Speed 2. There should be no doubt that those are examples of criminal behaviour. They are also highly dangerous to the protestors, to the police and to the public. Many of the examples of what is called protest, as several witnesses explained last week, involve people who have gone way across the line and are committing criminal acts. We do not think that those are examples of legitimate protest; they are criminal acts.

We heard about the deportation flight in 2017, scheduled to take off from Stansted. Protestors cut through the safety fencing around the airport perimeter and locked themselves on to a Boeing 767 jet. Flights were disrupted, delayed and cancelled and the runway was closed for an hour. For oil refineries or oil tankers, as Elizabeth de Jong mentioned, people lock themselves on or attach themselves to the top of stationary tankers, often full tankers. They have locked on at height, often with machinery. Once again, that is illegal behaviour. We also heard evidence of protestors blocking motorways. Insulate Britain blocked junction 25 of the M25, which is the Enfield junction to the north-east of London. Four protesters sat on the road, on both sides of the carriageway. There can be no doubt that that is dangerous to road users and the police as well as the protesters.

10 am

That is targeted disruption by a hardcore few. Those individuals could be, and were, arrested and charged under existing police powers. In the words of Adam Wagner, the barrister who gave evidence last week, that is "absolutely uncomplicated". It is really important that, as lawmakers in this place, we are precise when talking about contentious issues. Police are able to arrest people for obstruction of the highway, in the same way that they have been able to do for a long time.

The Public Order Act 1986 gives the police a wide range of powers to deal with peaceful protest. The Highways Act 1980 makes wilful obstruction of the highway without lawful excuse illegal. The Criminal Justice and Public Order Act 1994 created the offence of aggravated trespass, where a person trespasses on land to intimidate, obstruct or disrupt the lawful activity of others.

Mrs Natalie Elphicke (Dover) (Con): Will the hon. Lady comment on there being an offence for every crime she has described? We heard in evidence, and I commented on it, that the Court of Appeal said of the Stansted incident that there was not an offence that reflected the gravity of the situation there. Does she agree that it is important to ensure that that gap is filled?

Sarah Jones: I thank the hon. Member for her remarks. I hope she will forgive me, as I do not have the evidence in front of me, but as I recall it, clearly the charge made there did not lead to the outcome that those people had intended. Perhaps there were other offences, of aggravated trespass, for example, which is imprisonable and could have led to a charge.

Trespass laws can apply even on public roads, when someone is not using them for a permitted purpose. Other legislation is also available. In the evidence session, the Minister suggested that some existing legislation does not allow prison sentences, but it does. Wilful obstruction of the highway comes with a fine but in the Police, Crime, Sentencing and Courts Act 2022—

Kit Malthouse: It does now.

Sarah Jones: Well, it does not, because it has not been implemented. When it is, there will be six-month sentences attached to that. Criminal damage can lead to up to 10 years in prison, depending on the value of the damage. Aggravated trespass can lead up to three months in prison, a fine, or both. Breaching an injunction, as we have heard, can lead to two years, a fine, or both. Public nuisance can lead to 12 months on summary conviction, or 10 years on conviction on indictment.

Failure to comply with a condition can lead to a fine, but one year in prison if someone incites someone else to breach a condition. Organising a prohibited trespassory assembly can lead to three months in prison, a fine, or both. Participating in a trespassory assembly can lead to a fine. It is clear there is a broad list of offences of which criminal protesters can be found guilty. On fines, as we discussed, the law changed in 2015, to allow magistrates courts to issue unlimited fines for serious offences. Prior to that, there was only an unlimited fine in the Crown court.

Conditions on protests only need to be applied to public land. That was again an issue that the Minister raised in the evidence session. The de facto position on private land is that permission for protest is not granted, unless an invitation has been extended by the landowner. If people protest on private land, they could be found guilty of either aggravated trespass or trespassory assembly. Even if the threshold for those offences is not met, they would still be committing an offence, merely by their incursion on to private property and, whether they were aware of doing so or not, of the more basic offence of trespass, which is a civil wrong, not a criminal one.

Two things are required to commit aggravated trespass: trespassing and intentionally disrupting, obstructing or intimidating others from carrying out lawful activities. Further, a senior police officer has the power to order any person believed to be involved in aggravated trespass to leave the land. If they refuse to do so, that is an additional offence. The maximum penalty is three months' imprisonment or a fine of £2,500, or both. First-time offenders would likely get a fine of between £200 and £300. I could go on, but I will not.

There are several examples in recent history of the police responding to lock-on protests. In September 2020, 80 Extinction Rebellion protesters were arrested and charged with obstruction of the highway after blocking printer works at Broxbourne and Knowsley. In October 2021, Kent police arrested 32 people for obstructing a highway and conspiring to commit public nuisance on the A40 and M25. In early 2021, the police used trespass offences to clear anti-High Speed 2 protestors from Euston Square. The police are entirely able to use reasonable force—indeed, they should be encouraged to do so—to, where necessary, unlock people who are locked on.

In the case of Insulate Britain, people have been jailed for defying a court order preventing them from protesting on the M25. Five Insulate Britain campaigners who had held a demonstration on the motorway in September were jailed and all charged with contempt of court. Ben Taylor, Ellie Litten, Theresa Norton, Stephen Pritchard and Diana Warner were given jail terms, each lasting between 24 and 42 days. Eleven others from that group received suspended prison sentences. A number of High Court injunctions were put in place after Insulate Britain's road blockades last year. Nine other Insulate Britain campaigners were given jail time or suspended sentences. Two protestors were handed prison sentences of two months and 30 days, while seven others received two-month suspended jail terms for breaching injunctions.

As Liberty has pointed out, people have not gone to prison in some cases, but have in others. The courts look at the location and the manner of the protest. They are very unsympathetic to protesters who block the M25, because they have a damaging effect on people who have nothing to do with their cause, but more sympathetic to those who demonstrate against the actual object of their protest, because they do not affect the public in general.

Sometimes the police do not use the powers at their disposal. There is a number of reasons for that, including lack of training. We heard from John Groves from HS2, who said:

"Certainly, there is frustration from my team on the ground that the police are not more direct with some of the protesters".—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 23, Q43.]

Part of that is about resources. We do not have the French system, nor do we want it, but in some cases we do not have enough people. As Peter Fahy said:

"There is not a standing army waiting to deal with protest. They come out of normal policing when they are required to do so, and the amount of neighbourhood policing that is affected by just keeping up with that demand is…quite acute."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 63, Q123.]

The other reason why the police do not always act on a raft of existing legislation—as HS2 found, to its frustration—is lack of training. We have debated several times the report by Her Majesty's inspectorate of constabulary and fire and rescue services. Written by Matt Parr, it looked at protest, the nature of protest and what should be done. Most of its recommendations had nothing to do with changing the law, focusing instead on training for officers. Its findings included that,

"protester removal teams…are trained to remove protesters from lock-on devices. But we found that forces do not have a consistent way of determining the number of trained officers they need. As a result, the number of specialists available varies widely throughout England and Wales."

Matt Parr also highlighted that

"the police should develop a stronger rationale for determining the number of commanders, specialist officers and staff needed to police protests."

He looked at whether chief constables were making good use of their legal services teams, and at a raft of different systems for gathering intelligence on protests and for dealing with them when they happen. In the evidence that Matt Parr gave us, he was really clear and enthusiastic that his changes are beginning to be implemented in the way in which he wants them to be. Before seeking to change things again, we need to wait for the implementation of all of those recommendations—which he has said will significantly improve the police response to protests—and of the Bill that has recently been passed.

The police seem to be in possession of some very useful powers to help deal with lock-on protests when they go beyond the scope of a legitimate protest. Even if we look further back into history, we find really good examples of peaceful lock-on protests and of the police making good use of the powers available to them when they need to.

For example, people look back on the Greenham Common women's peace camp as a protest by a group of women who made good points and achieved some success. It involved a series of protest camps against nuclear weapons at RAF Greenham Common in Berkshire. Women began arriving in 1981 after cruise missiles were stored there, and they employed lock-on tactics by chaining themselves to the base fence. The camps became well known in 1983—I was 11 at the time—when, at the height of the protests, about 70,000 people formed a 14-mile human chain around the base. It is interesting that we are talking about the methods used by Insulate Britain and Just Stop Oil as if they are a new phenomenon. I do not remember it, as I was too young, but it must have been quite something to have 70,000 people form a 14-mile human chain—a lock-on—around the base.

Another encircling of the base occurred in December of that year, with 50,000 women attending. Sections of the fence were cut, but the police acted and arrested hundreds. Protest activity continued to occur at Greenham, and the last missiles left the base in 1991, following the intermediate-range nuclear forces treaty. The Greenham women clearly left their mark on history. They used peaceful lock-on tactics, and when they entered the RAF site, they were arrested by the police. As today, the women were apparently subjected to abuse and hatred. Vigilante groups attacked them with slogans such as "Peace Women: You Disgust Us".

Lee Anderson (Ashfield) (Con): The hon. Lady says she was 11 years old at the time. I was about 16 or 17, and I remember the Greenham Common women coming up to Ashfield during the miners' strike. I can remember

[Lee Anderson]

the scenes at Greenham Common—they were disgusting scenes—although they made it a legitimate protest. Does the hon. Lady recall the time when they were hanging certain feminine products around the perimeter fence? That was disgusting.

Sarah Jones: Gosh. I do not know what feminine products the hon. Gentleman means, but perhaps I will not ask further. *[Interruption.]*

The Chair: Order. Can we stop shouting across the room, please?

Sarah Jones: My point is that where the police needed to intervene at Greenham Common, they intervened. Where they needed to arrest and charge people, they arrested and charged people.

Dr Rupa Huq (Ealing Central and Acton) (Lab): My hon. Friend is making an excellent speech, and I am not quite sure what the previous intervention had to do with it. Is it not the point that, after the passage of time, people who were criminalised for what they did are now seen as valiant? Not far from here, there is a statute of Viscount Falkland in St Stephen's Hall. The statue's foot spur was broken off by suffragettes in, I think, 1912. At the time, that was a locking-on offence, because they attached themselves to the statue and the police took them away. The foot spur has never been replaced because it is part of our history, and we now see the suffragettes, the women at Greenham and the anti-apartheid protesters as valiant people who were on the right side of history. This clumsy offence gets it all wrong by getting heavy-handed at an early stage.

Sarah Jones: My hon. Friend is absolutely right. Not all lockons are a criminal offence and nor should they be, but where people are locking on in a way that is dangerous and disruptive, that should be an offence.

Kit Malthouse: Does the hon. Lady accept that, in the Bill as drafted, the reasonable excuse defence and the serious disruption requirement mean that not all lock-ons will necessarily be a criminal offence? If something similar to the St Stephen's Hall example given by the hon. Member for Ealing Central and Acton were to occur, that would not necessarily cause serious disruption to the life of the community, and would therefore not necessarily constitute an offence under the Bill.

10.15 am

Sarah Jones: Well, my hon. Friend the Member for Ealing Central and Acton could get a 10-year prison sentence for damaging a statue. Clause 2, which we have not got to, is even more vague, but a person does not have to cause serious disruption; they can intend to have a consequence that will cause serious disruption. I know several very respectable elderly ladies in my constituency—I am sure the Minister has the same—who attend environmental protests. Given that the Bill is so vague, I am absolutely sure that they will be scared of being arrested just for turning up to or taking part in protests. That is the point that we are trying to make.

Wendy Chamberlain: The hon. Lady has given a very good example. We on the Opposition Benches accept that there are forms of protest that are illegal, which we heard evidence about last week from witnesses. However, we also heard that there is a hard core of illegal protesters who will not be deterred by this Bill. The people who will be deterred are those who wish to engage in peaceful and legal protest, as is their democratic right, but will be prevented from doing so.

Sarah Jones: The hon. Lady is absolutely right, and it is also the case that we have seen protests of this scale and nature for many years. The problems we see now are not unique, and they are able to be dealt with through existing legislation.

Our fundamental argument is not that people who are gluing themselves to motorways are not committing an offence or causing a major problem. It is not that the people who were digging tunnels at HS2 sites were doing nothing wrong, and nor is it that the representatives of HS2 and the others who gave evidence to us are wrong to ask that something be done. Our argument is that, first, the Bill will not act as a deterrent to the small number of people we are talking about—those who repeatedly offend and, indeed, want to get arrested. Secondly, it will not speed up the practical business of removing those who lock on. As we heard about the protest at the newspaper, it took several hours for specialist police to arrive. That was the cause of the delay, but once those police arrived and removed those who were locking on, the problem was dealt with. The delay was the problem, and the Bill will not do anything about that.

Thirdly, there are plenty of existing powers that can be, and are, used by the police. Fourthly, lots can be done, and is being done, to improve the way in which the police manage protests, as a result of Matt Parr's report and other things. Finally, the Bill is drawn so widely that it risks criminalising non-criminal contact, which will have a huge, chilling impact on people who want to peacefully protest. In short, it seems that the Minister wants us to move towards the French, Spanish and Italian systems that we heard about from Peter Fahy. I will read a paragraph from his evidence, because I thought it was incredibly powerful:

"People do not realise that we are pretty unique. When you hear about the sophistication and negotiation the chief superintendent talked about"—

that was the West Midlands chief super—

"that is the British style. In all the protests it is escalation, which looks in the early stages like the police are being weak, but in the background they are talking to people and they are escalating. They are saying, 'If you keep on coming back, we will use this power and that power. Have you heard about that?' That is the British style of policing. You do not start with the heaviest. You work up to it, and that then maintains the confidence in your legality and proportionality."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 62, Q122.]

Peter Fahy also said:

"We are not like France, Spain and Italy, which have paramilitary police forces. If this had happened in France, they would have turned out the CRS very rapidly...they would use water cannon, they would probably use rubber bullets, and essentially the French population would accept that level of force. Thankfully, we do not live in a country like that".—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 50, Q110.]

The reason why we are here in this House is to make the best law we can, but as it stands I do not think that the breadth and scope of clause 1 is proportionate to

what we are trying to deal with. The right to protest is not an unconditional one; nobody says that it is. It will always be about mediation and compromise, and action where there needs to be action. I and other Opposition Members are horrified by some of the disruption that we heard about in the evidence sessions.

Tom Hunt (Ipswich) (Con): On that topic, I am interested to know whether the hon. Lady would condemn the protest that took place at the weekend in Peckham, where immigration officers and police officers were actually prevented from carrying out their role in upholding the law of the land. I understand that a Labour councillor may have been involved in the organisation of that; and many Labour Members of this House have actually applauded those protesters in the media.

Sarah Jones: I did not see that protest. I am sure the police did the job that they needed to do, but—

Tom Hunt: It was widely reported.

Sarah Jones: I have not read about that.

As I said, Opposition Members have been horrified by the disruption that we heard about in the evidence sessions. However, everybody who gave evidence was clear that it is a very small proportion of protests that cause disruption; the vast majority pass by with no problems at all.

The final issue that I want to cover is the chilling effect that Matt Parr writes about in his report. If we look closely at the drafting of clause 1—the hon. Member for North East Fife has referenced this—we see that it is so broadly drawn that it criminalises an innumerable list of activities and not just what we typically consider to be lock-on protests, which would be dangerous and require intervention. The term "attach" is very broad and goes undefined in the Bill. Does it perhaps include the linking of arms? Yes, technically it does. Liberty, in its recent briefing, notes that the wording might interfere with articles 10 and 11 of the ECHR, as laid out in the Human Rights Act 1998. We have already debated what is a reasonable excuse and how that is defined. We note that someone does not even need to actually cause any disruption in order to commit an offence. They have only to be "capable" of causing serious disruption. That provides a practical difficulty and perhaps a headache for the police when determining the crucial context of a protest that might well cause serious disruption if it were to take place at a different time, but actually happens on empty roads in the middle of the night.

I will sum up by saying that clause 1 is unnecessary for the proper policing of protests. Most of the extremely irritating and disruptive events that were described by our witnesses were criminal acts, and they were already covered by a raft of existing legislation that allows the police to deal with protests. The police have the power; they need more support and more training, but this broad and ill-defined clause does not provide that support. Instead, it tips a crucial balance and risks criminalising, at a very low threshold, legitimate and peaceful protest, one of our core human rights.

Kerry McCarthy (Bristol East) (Lab): I echo what my colleague on the Front Bench, my hon. Friend the Member for Croydon Central, was saying about how we approach the policing of protests in this country. Obviously, Bristol has had quite a reputation for protests, particularly around the time of the events involving the Colston statue. We know that the people involved in that protest were eventually acquitted of criminal damage.

I have been out with the police to see how they approach things. There were a number of weekends in a row when there were protests against the Bill that has become the Police, Crime, Sentencing and Courts Act 2022. People were, quite rightly, very unhappy about what the Government were trying to do. I went out with the police and also went to the operations centre to see their approach; what they wanted to do was to facilitate protest. They wanted to facilitate peaceful protest and were very good at trying to ensure that it did not turn into something that put people at risk. For the most part, they were successful. Can the Minister say where the parameters of the clause come in?

There are historical examples. My hon. Friend the Member for Croydon Central mentioned Greenham Common, but if we look back at the suffragettes, part of their tactics was to tie themselves with belts or chains to Buckingham Palace or Parliament. In January 1908, Edith New and Olivia Smith chained themselves to the railings at No. 10, which would not happen now, while one of their colleagues, Flora Drummond, went inside to disrupt the Cabinet meeting. I dread to think what the response would be now; they would not get anywhere near it. They chained themselves because that they wanted to make their voices heard. If they were immediately arrested, they would not have the chance to make their speeches, so it was a tactic to stay in place and at least get a few sentences out before they were removed.

Kit Malthouse: We might as well address that point straight away. As I said to the hon. Member for Croydon Central earlier, there are two tests that the police or, indeed, the courts will have to apply. The first is that serious disruption is caused. I am not sure necessarily that somebody chaining themselves to the railings outside this place would cause serious disruption. Secondly, there would be a defence of reasonable excuse. In the case of the suffragette who chained herself in St Stephen's Hall, we would imagine that there may well be other offences but I doubt that this provision would apply. Indeed, if someone were able to chain themselves to the railings serious disruption would not necessarily be caused. We are trying to address some of the events we have seen over the last couple of summers, not least the fuel protests, which have been dangerous and caused massive and serious disruption to the community.

Kerry McCarthy: The Minister has rather pre-empted what I was going to say. The suffragettes knew that they would be arrested but took the decision because they felt their cause warranted it and they knew, roughly speaking, what the response would be and the sort of punishment available. If people are going to engage in this sort of activity and knowingly do things that would break the law, when we have an offence that treats something so seriously, my concern is at what point people can make that calculation on whether they are going to be arrested and taken to court under lesser legislation or whether the clause will be invoked. Its vagueness means that it is not clear where those parameters are.

This silly example is more for the Committee's amusement: we had the case of an Extinction Rebellion protestor in Bristol who tried to glue himself to the

[Kerry McCarthy]

doors of City Hall. However, they were automatic sliding doors, so the moment someone approached them, they opened. I think it was caught on camera, but every time he tried to glue his arms to the door, they opened. He could not manage to do it. I do not suppose the protestor would be dealt with under an offence of this kind and he probably deserves a prize for entertaining everybody.

That was an aside, but to give an idea of the sort of calculations people make, in my constituency I have a good activist on disability issues who has disabilities himself. He has a personal assistant who went on a protest with him, and he insisted that his personal assistant chain handcuff him to the pole by the door of a London bus. There was a big protest of disability activists blocking the streets—I think it was around Piccadilly Circus—to protest about accessibility and public transport. When the police came along, they did arrested not the guy who was chained up but the personal assistant for locking him to the pole. It was the personal assistant's birthday and he spent the night in the cells, while somebody else managed to get my friend, the activist, home.

There is a clause in the Bill about locking somebody else to something and that raises interesting issues about the situation for a personal assistant. They are there to act at the will of the person they are assisting and to do anything they ask. If somebody were asking a personal assistant to commit a criminal offence, such as assaulting someone or something that is generally regarded as beyond the pale, the assistant would not do that. If disability activists want to exercise their right to protest, are they allowed to exercise their right to break the law as well? Personal assistants are not meant to have their own opinions on such matters; they are meant to do as they are asked.

10.30 am

I raise those points as examples of the calculations that enter people's minds when they decide whether to act. Sometimes, protests will not be pre-planned. People will get caught up in them, which can result in criminal behaviour and arrests. There is already legislation that covers such examples. I am more concerned about people who decide they are not getting anywhere, such as disability activists, suffragettes or some environmental campaigners. If they feel they cannot get their voices heard through legitimate means, they are entitled to make the decision—

Andrew Bridgen (North West Leicestershire) (Con): Will the hon. Lady give way?

Kerry McCarthy: If I may just finish this point. They are entitled to make the decision to break the law and suffer the consequences. That is something that we accept in this country. People can choose to do that, provided they are willing to accept the consequences. To make that decision and exercise their democratic rights in that way, they need some certainty about how they will be treated by the law. It is a basic concept of operating in society that we ought to know how the criminal justice system will treat us.

What is likely to happen if the provision on excuses is invoked? If the clause is invoked when people do not feel it should be, the courts will acquit because it is unfair. I do not get a sense of clarity and I am looking for one from the Minister. We know that the clause will apply to the most serious cases, of people chaining themselves to planes. We know that it will not apply to a guy trying to superglue a hand to a sliding door at Bristol City Hall.

Mr Gagan Mohindra (South West Hertfordshire) (Con): Why would it not?

Kerry McCarthy: The Parliamentary Private Secretary asks why not. That is quite worrying. Would that cause serious disruption, if he had one hand attached to the door and was wiggling backwards and forwards as everyone went in and out? That is exactly my point. If that is deemed to cause serious disruption, that is very worrying. I cannot think of many locking-on offences that would not be deemed serious disruption. It proves my point if the PPS thinks that the provision would cover a case as ludicrous and minor as that. That proves my point, so I will sit down and ask the Minister to explain where the middle ground and that clarity is.

Kit Malthouse: Clause 1 is a key part of the Government's plans to protect the public from the dangerous and disruptive tactic of locking on. Recent protests have seen a minority of selfish individuals seek to cause maximum disruption by locking themselves to roads, buildings, objects and other people. That has seen traffic disrupted, public transport impacted and the transport of fuel from terminals ground to a halt, to name just a few examples.

Such tactics cause misery to the public, with people unable to access their place of work or schools, or to attend vital hospital appointments. It is impacting people's ability to go about their daily lives and is causing considerable anger. The Committee will remember the frustration and anger expressed by members of the working public at Canning Town station in 2019, when protesters from Extinction Rebellion glued themselves to a Docklands Light Railway train during the morning rush hour, risking their own safety and that of the travelling public.

I welcome the condemnation of some of those protests by the hon. Member for Croydon Central, and her possibly belated support for the increase in sentencing in the Police, Crime, Sentencing and Courts Act 2022, which has just received Royal Assent. As she said, there is now a suite of offences that may or may not be committed. To address the point made by the hon. Member for Bristol East, we want people thinking about using this tactic to make a calculation about whether and how they break the law. It is not a human right to break the law. If people calculate that they want to do that, they must, as she said, face the consequences. In employing dangerous tactics and causing disruption, those who call themselves protesters, but are in many cases trying to effect a mass blackmail on the British public, should make a calculation about whether they are causing an offence, and there should be an air of jeopardy to what they do.

Andrew Bridgen: The hon. Member for Bristol East said that many of these people's protests might be spontaneous and not pre-planned. Does the Minister

agree with me that it would be very unlikely that people would have the equipment to lock on if it was not a pre-planned protest?

Kit Malthouse: My hon. Friend makes a very strong point. Certainly a lot of the most disruptive protests that we have seen will have taken meticulous planning and preparation and the acquisition of materials, not least the adhesive chemicals required, scaffolding poles and vehicles. We have seen all sorts of tactics employed, which, as he rightly says, take serious preparation to put into effect.

Kerry McCarthy: To clarify, when I was talking about protests in general and people breaking the law during a protest, I was not talking about locking on.

Kit Malthouse: I will give way to the hon. Member for Croydon Central.

Sarah Jones: To be clear, the clause makes it an offence to attach oneself in any way to any person, which means that any form of linking arms is a criminal offence. Does the Minister genuinely believe that a group of women standing outside Parliament locking arms would be committing a criminal offence as soon as they do that?

Kit Malthouse: That is just nonsense. The hon. Lady will not address the issue of disruption or reasonable excuse. I am sure the police are able to determine and the courts will interpret what is designed in this legislation. She has said rightly that the people we are talking about should go to prison. She said they are committing crimes. The only dispute between the two sides of the Committee is what offence they should be charged with, which is what we seek to provide.

Opposition Members have sought clarity and precision. We have seen that those who are arrested and charged in these circumstances are charged with a range of offences—obstruction of the highway, aggravated trespass, which the hon. Lady referred to, and criminal damage and public nuisance, depending on where the offence occurred and the circumstances. Unfortunately, we have seen situations where, on technicalities, a lack of precision in our ability to deal with the offence has meant that people have got off. For example—

Alex Cunningham *rose—*

Kit Malthouse: As the hon. Gentleman will know, there were protesters who locked on to a printing press in Knowsley in Liverpool. They were charged with aggravated trespass, but avoided conviction because the prosecution was unable to prove where the boundary was between the private and the public land. We are trying to provide precision in that offence area, and that is what this part of the legislation does. Aside from the disruption and anger that they cause, lock ons also waste considerable amounts of police resource and time, with specialist teams often required to attend protest sites to safely remove those who have locked on.

The hon. Member for Croydon Central seems to imply that we should have at-height removal teams on stand-by in all parts of the country 24 hours a day, but it is not realistic for British policing to do that. Some lock ons, particularly those that occur at height, place both the police and protesters at serious risk of injury and even death. For example, protesters at HS2 sites have deployed bamboo structures, necessitating the deployment of specialist teams who are trained to remove them at height at considerable risk to themselves and the protesters they are removing. That is why the Metropolitan Police have asked us to provide them with more powers to tackle that kind of reckless behaviour, and the Government have now responded.

Sarah Jones: I just want to clarify what the Minister says because he misrepresented my point, which was not that we should have thousands of officers ready in a kind of French-style tool. My point related to the points that Matt Parr made about how forces do not have a consistent way of determining the number of trained officers they need. There are not enough specialist roles in the right places at the right time. That was his recommendation, and there is a programme of work to fix that. I am arguing that we should wait for that fix so that the police can do the best job that they can.

Kit Malthouse: As the hon. Lady rightly says, Mr Parr said, I think, that the responses had been exemplary. Work is ongoing. She referred to the printing press incident in Hertfordshire, and she put the problems experienced down to the delay in the police getting there—in the middle of the night, in some numbers—to remove protesters who had managed to erect scaffolding very quickly and glue themselves effectively to the top of it. It is just not realistic for the police to be there in seconds to deal with such an incident. I believe that the hon. Lady said that the main problem was the delay.

Sarah Jones: Nothing in the Bill will fix that type of delay.

Kit Malthouse: No, but the point is that the clause will make such protesters think twice about their actions, because the offence that they are committing when charged is not necessarily vague.

Dr Huq: Will the Minister give way?

Kit Malthouse: Just a minute.

The clause creates a new offence of locking on that will be committed when an individual causes serious disruption by attaching either themselves or someone else to another individual, an object or to land, or attaching an object to another object or land. Their act must cause or be capable of causing serious disruption to an organisation or two or more individuals, and the person intends or is reckless as to that consequence. The offence carries a maximum penalty of six months' imprisonment and an unlimited fine.

Referring only to the act of locking on rather than to the equipment used recognises that protesters deploy a wide range of equipment to lock on, from chains and bike locks to bespoke devices, and ensures that the offence will keep pace with evolving lock-on tactics. The offence can be committed on either public or private land, and that ensures that those who use that tactic in, say, an oil refinery do not evade arrest and prosecution for the offence. Furthermore, new stop and search powers that we will consider shortly will allow the

[Kit Malthouse]

police to take proactive action to prevent locking on in the first place, by seizing items that they believe will be used by protesters to lock on.

Alex Cunningham: The Minister has just referred to oil refineries and private space. Chris Noble said in his evidence

"If we moved more into a private space than currently, we would see that as potentially being incredibly significant for money and opportunity lost in terms of policing communities. Those abstractions would probably quite fundamentally change my local model of policing, in terms of being able to maintain that."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 13, Q17.]

Does the Minister accept that he is putting greater pressure on the police, and certainly on their resources?

Kit Malthouse: As I said earlier, I do not accept that because if we get the cocktail of deterrent correct, and get those protesters—

Alex Cunningham: It is not going to be a deterrent.

Kit Malthouse: He has to see all the clauses in the round. If we get those protesters to think twice about their actions, we hope that they will desist—

Alex Cunningham: But they won't!

Kit Malthouse: Or at least they will be incarcerated, such that they will not be able to continue with their protests.

Tom Hunt: The Opposition are arguing that the Bill will not act as a deterrent and will not bother some of these extreme protesters. If that is the case, why are they being so strong in their opposition to the Bill?

Kit Malthouse: That is—*[Interruption.]* It is a strong point.

The Chair: Order. Minister, just a moment. We are actually dealing with the Public Order Bill, and I would like a little bit of order in here as well. Can we stop shouting across the room and keep some order?

Kit Malthouse: We are trying to provide some precision in the offences that the police are able to charge offenders with in certain protest situations that have evolved in the past couple of years. Lock ons have caused significant distress, alarm and disruption to the community. The police, particularly the Metropolitan police, have asked us to introduce the offence and we are pleased to be able to help them. We heard in evidence to the Committee from the operational police chief that he thought that the legislation would help with the situation. We also heard from Her Majesty's inspectorate of constabulary and fire and rescue services, notwithstanding the fact that he thought there was an exemplary response to his original report, that what we were doing seemed sensible. The clause will ensure that those who resort to inflicting misery on the public by locking on will face the maximum sentences, proportionate to the serious harm that their actions cause.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2

Offence of being equipped for locking on

Sarah Jones: I beg to move amendment 47, in clause 2, page 2, line 13, leave out "may" and insert "will".

The Chair: With this it will be convenient to discuss the following:

Amendment 32, in clause 2, page 2, line 14, leave out "or in connection with".

This is to probe what actions may also be criminalised "in connection with" an offence.

Amendment 48, in clause 2, page 2, line 14, leave out—

"in connection with the commission by any person of".

Amendment 33, in clause 2, page 2, line 14, leave out "any person" and insert "them".

Currently the offence of "being equipped for locking on" does not require the object to be used by the person with the item specifically, but by "any person". This amendment is intended to limit the offending behaviour to a person who commits the offence of locking on.

10.45 am

Sarah Jones: Amendments 47 and 48 are in my name, and I will speak to amendments 32 and 33 in the name of the hon. Member for North East Fife.

Amendments 47 and 48 are similar and intended to deal with a similar problem. Amendment 47 narrows the clause and puts the onus on the police to be sure that a particular object was absolutely intended to be used in a lock-on, not just that it "may" have been. We should be clear—again, we will talk about this when debating clause stand part—that, if the police are to criminalise someone for being equipped to lock on, which we disagree with, then they must be entirely clear that the object in question is absolutely there for a lock-on.

Liberty, for example, expressed concerns about a vast range of possibilities of things that "may" be used in the course of locking-on. I hope that the Minister will help us with his ideas of what "may" means. Speaking to amendment 48 as well as this amendment, would bottled water or food for other people who are locked on come under that definition? They may be used in a lock-on, although also most likely would not be.

Amendment 48 also contains important wording changes to protect those good people who attend protests with entirely the best intentions, but who risk being criminalised by drafting that is too broad. The amendment removes the possibility that an individual could be criminalised due to the possibility that an object in their possession may—"may" is the important word here—be used by someone else in the course of a lock-on. Let us imagine that my son is on his way to a protest. He cycles there, much as my staffer cycles to work. He is already at risk of criminalisation by having a lock in his bag. As it

turns out, however, he is doubly at risk, as that lock could be used by any person for a lock-on and he would be liable for it. It should be noted that the clause also does not contain any reasonable excuse defence.

Such issues, because bad and careless drafting gives clauses such breadth and scope, cut to the core of what we are grappling with in the Bill. As I said earlier, the Opposition do not stand with those who cause serious disruption and break the law, but we absolutely stand with those who protest peacefully, not causing disruption, and who wish to be loud, annoying and proud in a peaceful manner about the issues that they deeply care about.

Wendy Chamberlain: My party and I are happy to support Labour's amendments 47 and 48. The scope of my amendments 32 and 33 is similar.

The intention of our amendment 32 is to probe what might be criminalised in connection with an offence. The theme this morning has been the broadness of the legislation as drafted, and the Opposition are looking to get some definition of what that might look like. Amendment 33 intends to ensure that the person who is prosecuted for the offence of being equipped also did the locking on themselves.

My concerns are linked to those set out by the shadow Minister, the hon. Member for Croydon Central. As she asked, will the provision of food and drink to someone engaged in protest activity be included? What about medical supplies, if a protester is injured in the course of the protests? What about a parent, simply worried about the safety of a young adult, who makes sure before they go to a protest that they are wearing sturdy clothing? What about the community group that lends its loudspeakers to an event?

The scope is so broad that such people, arguably, could get caught. This morning, we have discussed how the law will be interpreted. Those interpretations, given the Bill's existing scope, are valid. What about people who happen to be caught passing a protest while carrying material used for locking on? For example, lots of MPs cycle in to Westminster, and demonstrations happen in Westminster all the time. Are MPs to be caught by this legislation simply because they are carrying their bike locks as they make their way into the estate? Under the Bill, that could theoretically happen.

While the police may not prosecute MPs, we know from the evidence we heard last week and from other evidence that sections of the population are overly policed. We will discuss the stop-and-search powers later—I am sure that Members will have much to say then—but if the evidence currently says that black people are eight times more likely to be stopped and searched, it follows that black people will also be disproportionately criminalised for carrying innocent items in the wrong place at the wrong time. As such, I am keen to hear from the Minister what this clause includes, and for amendments to be tabled that will limit its scope appropriately.

Amendment 33 addresses some of those problems. As drafted, the Bill allows for someone to be prosecuted for carrying an item that someone else uses to lock on. This has the potential to criminalise people who are peacefully protesting, or indeed those who are not protesting at all. We need to be clear: it is not a crime to attend a protest, nor is it a crime to carry the sorts of household items that are used for locking on—if that were the case, how would anyone purchase those items? Doing so without then breaking the law, simply put, cannot be a crime.

Kit Malthouse: I will speak to the amendments now, and then speak more substantively on stand part.

The amendments seek to raise the threshold for the offence of going equipped to lock on. Amendment 47 would raise the threshold for that offence, requiring that individuals "will" intend that the equipment be used in the course of locking on, rather than "may" intend. It is important that the police can protect the public from the possibility of someone locking on. Raising the threshold of the offence to "will" rather than "may" would restrict its effectiveness and the ability of the police to take proactive action against lock-ons, which we heard from the operational police chief during our evidence session was critical to minimising disruption.

Amendments 32 and 48 would remove from the scope of the offence of being equipped to lock on, someone who carries equipment intended to be used in connection with the locking-on offence, rather than in the course of that offence. Amendment 33 would also narrow that offence by applying it only to the individual who commits a lock-on. These amendments would mean that during disruptive protests, those who deliberately brought lock-on equipment to hand over to fellow protesters for them to use would not be criminalised for doing so, effectively allowing protesters to continue to legally provide lock-on equipment to others and removing a key deterrent aspect of the offence. Doing so would severely limit the effectiveness of the offence in stopping the use of lock-ons from spreading during a fast-moving protest situation, and I am afraid that we cannot support it. We ask that the amendment be withdrawn.

Sarah Jones: Given the vote that we have had on a similar measure, I see little point in pressing amendment 47 to a Division. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Wendy Chamberlain: I beg to move amendment 34, in clause 2, page 2, line 17, after "fine" insert

"not exceeding level 1 on the standard scale".

A person convicted of an offence of "being equipped for locking on" may be subjected to a fine. In the Bill there is currently no limit on the fine that may be imposed. This amendment would place a maximum limit on the fine.

The amendment is very similar to the amendment to clause 1 that I tabled previously. It ensures that any fines levied for the offence of being equipped for locking on are quantified, rather than left as an unlimited fine. I have very little to add beyond the remarks that I made regarding my previous amendment.

Kit Malthouse: As I made clear when speaking to the hon. Lady's previous amendment, we disagree with lowering the maximum fine available for this offence. We feel strongly that those who commit lock-ons and carry lock-on equipment should face a proportionate sense of the harm they cause. The maximum fine that the hon. Lady proposes, £200, is simply not proportionate; we believe that the courts should have discretion to apply an unlimited fine. As such, I encourage the hon. Lady to withdraw her amendment.

Wendy Chamberlain: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Sarah Jones: The clause creates a new criminal offence targeting people who have an object with them in a public place with the intention that it will be used in the course of or in connection with the commission of the new offence of locking on, as we have been debating. The punishment for the offence is an unlimited fine.

Our concerns about the clause should be read and understood in conjunction with our concerns about clause 1. This very short clause is too vague and ambiguous to be useful. Line 12 talks of an "object", but that object need not be related to protesting at all. All that is required to be criminalised under this offence is that a person might have intended to use the object—potentially, any object—in a certain way. Perhaps more pressingly—I will come back to this later—the object does not have to be used by the person who has it in their possession. It needs to be used only

"in the course of or in connection with"

a lock-on.

It is so important that we consider the limits of the legislation that we create in this place. None of us who works here in Parliament is a stranger to protests. We see them outside our offices almost every day. The example of the bike lock is real and I do not think it has been meaningfully disputed by the Minister. Perhaps it is in someone's bag or attached to the bike, but that makes no difference.

Someone could wheel their bike through Parliament Square—multiple protests might be going on at once, which is not uncommon—and be in potential breach of this legislation. No proof that the bike lock is to be used in a lock-on is needed, only that it "may" be. Hard-working, law-abiding people simply trying to get in to their place of work are at risk of being found to have committed this offence. The original drafting of the clause is deeply ambiguous.

It was notable that so many of our witnesses last week spoke of the deterrent effect that they hoped the Bill would provide—a desire for something to be done to act as a deterrent. John Groves from High Speed 2 Ltd hoped that

"this legislation is about the deterrent effect".—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 18, Q28.]

Nicola Bell noted:

"what is included in the Bill, I hope, offers that deterrent."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 20, Q37.]

We have real doubts, however, as to whether the Bill will provide anything close to a deterrent to hardcore repeat offenders. Instead of providing a deterrent to the hardcore of the protest movement, who are intent on causing disruption, such people might be delighted that their lock-on protests would be criminalised. We were told last week that those protesters

"will not be deterred by this legislation."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 44, Q91.]

For them, going to prison for the cause is a badge of honour.

Sir Peter Fahy said:

"I do not know whether there is actually any evidence that people are deterred...but clearly some people are so determined, and have a certain lifestyle where it does not really have any consequence for them, that—if anything—it makes them martyrs."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 58, Q120.]

However, we must absolutely not ignore the people who will be deterred, those who are not willing to go to prison, but who might not do anything illegal at a protest—those who just want to express their democratic right.

The title of Matt Parr's report was "Getting the balance right?", and it seems abundantly clear that the Government have not got the balance right with this legislation. I note that, with regard to lock-on, he was

"impressed by forces for the work they have done to make sure that PRTs"—

protester removal teams—

"are able to deal safely with lock-ons."

He noted:

"It is vital that PRTs remain up to date with the rapidly evolving problems presented by lock-on devices."

I agree, and much of the evidence from last week suggests that improved sharing of best practice, more resources and better training would help the police to deal with nuisance protests much better—without the need for this specific legislation.

Lord Rosser noted in the other place:

"The reality is that powers already exist for dealing with lock-ons. What we should be looking at is proper guidance, training and…improving our use of existing resources and specialist officers."—[*Official Report, House of Lords,* 17 January 2022; Vol. 817, c. 1433.]

Matt Parr's report also notes that most interviewees, who were junior police officers, did not wish to criminalise protest actions through the creation of a specific offence concerning locking on. With regard to his fifth proposal, Matt Parr noted explicitly that the purpose was not to create an offence of lock on during a protest. He did not call for that in his report.

The Government have brought back these overreaching clauses without any real evidence that they will work. Our witnesses were unable, quite rightly, to comment on the new clauses with any specificity. Elizabeth de Jong was unable to be specific about how the clauses would help. She noted:

"I can see a direct reference to locking on."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 33, Q59.]

Steve Griffiths stated:

"I am really here to talk about the impact of disruption, and I am probably not qualified to comment intensely on the Bill."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 34, Q60.]

He later noted:

"I cannot really talk about the policy itself"—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 39, Q81.]

Those witnesses were right: they were present to define the problem as they saw it, and not to tell us that the legislation will work: that is our job. In the Opposition's view it will not work. It is fair and understandable that the witnesses instinctively feel hopeful about something being done, but they did not claim that they had the expertise to know that.

The clauses, which make provision for the offences of locking on and going equipped to do so, are ill thought through and represent a knee-jerk reaction to events that have caused real disruption and annoyance—no one disputes that. There were criminal acts that were

infinitely more disruptive to people and the police acted. There is no evidence that the clauses will act as a deterrent and it seems likely that they will be welcomed by the hard core of protestors who are willing to go to prison for their cause. The clauses will, however, deter those who come to protest peacefully, and that is our concern.

Kit Malthouse: Clause 2 supports the new offence of locking on created by clause 1, and specifically it creates a new criminal offence of going equipped to lock on and cause, or risk causing, serious disruption. During fast-moving protest situations, the police need the power to proactively prevent individuals from locking on to roads, buildings and objects, as we heard powerfully from the operational police commander during our evidence sessions. Therefore, along with the associated stop-and-search powers, which the Committee will scrutinise later, the new offence will allow the police to prevent lock ons before they occur, taking punitive action against those who attempt to lock on and deterring others from considering doing so.

Much has been made of criminalising people who happen to be carrying everyday items such as bike locks—the hon. Member for Croydon Central raised that—near a protest. To be clear, that will not be the case; the offence will be committed only when someone is carrying an object with the intention that it may be used by themselves or someone else in the course of, or in connection with, committing a lock-on offence as defined in clause 1. The police will need reasonable grounds for suspicion to arrest someone for that offence. There is a clear difference between a person pushing a bicycle past a protest and a person walking purposefully towards a gate with a lock in hand.

As the hon. Member for North East Fife knows from her policing experience, the offence of going equipped is well used by the police in England and Wales, and indeed in Scotland, in the prevention of burglary. I have had individuals arrested in my constituency who were going equipped to commit a burglary, and I am not aware of a plethora of plumbers, carpenters or builders with vans full of tools being arrested in my constituency on the basis of their going equipped, or having the capability to break into my home. The police are well able to adduce intention—and often that is tested in court—in charging someone with going equipped.

As we heard most powerfully from the operational police commander in our evidence session, the ability to stop and search, which we will consider later, and the ability to charge with going equipped would allow the police to operate in a situation where there would be less infringement on people's right to protest, rather than more. He was strongly supportive.

Dr Huq: I remind the Minister that it is not just the Opposition who think that the locking on offence and the offence of preparing to lock on is a crazy idea. The last time the matter was subject to a vote in the Lords it was defeated massively, in a vote of 163 to 216. Has he got any new arguments for them, because the offence of being equipped to lock will never make it to a vote? Is there not a definition of insanity that is repeating the same action and expecting a different result? That saying is attributed to Einstein. I just wonder what new arguments the Minister will pull out of the bag for the Lords.

Kit Malthouse: As I understand it, one of the main arguments used in the House of Lords to vote against the measures in the Police, Crime, Sentencing and Courts Bill was that they did not feel that the matters had been properly scrutinised by the House of Commons. Those measures were introduced as amendments in the Lords, and therefore would not have gone through Committee here. So here we are, listening to their advice and subjecting the measures to democratic scrutiny by a forensic Committee of which she is a part, in the hope that the House can now the support them. We can then signal to the Lords that the intention of the democratic House is to strengthen the police's ability to deal with this difficult and dangerous tactic.

Anyone found guilty of the offences will face a maximum penalty of an unlimited fine. I commend the clause to the Committee.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Ordered, That further consideration of the Bill be now adjourned.—*(Scott Mann.)*

11.5 am

Adjourned till this day at Two o'clock.