PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PUBLIC ORDER BILL

Sixth Sitting

Thursday 16 June 2022

(Afternoon)

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not later than

Monday 20 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

Thursday 16 June 2022

(Afternoon)

[David Mundell *in the Chair*]

Public Order Bill

2 pm

Clause 12

Serious disruption prevention order made on conviction

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

The Minister for Crime and Policing (Kit Malthouse): Clause 12 will protect the British public from the small minority of protesters who are determined to repeatedly inflict disruption on those who simply wish to go about their daily lives. In 2021, approximately 170 Insulate Britain protesters were arrested about 980 times for obstructing motorways. That means that each protester was arrested on average nearly six times, on separate occasions. It is clear that something needs to be done to prevent these people from returning time and time again to ruin the daily life of the wider public, and to stop them cocking a snook at our justice system.

We have heard, and no doubt will hear more, criticism of serious disruption prevention orders, but there is one big misconception that I want to address: the claim that SDPOs ban protests. Critics have referred to the report by Her Majesty's inspectorate of constabulary and fire and rescue services about the policing of protest, which found protest banning orders to be incompatible with human rights legislation, and we heard that during our evidence day. But the clue is in the name: HMICFRS considered orders that sought to outright ban people from protesting. SDPOs only enable the independent judiciary to place necessary and proportionate conditions on people to prevent them from engaging in criminal acts of protest and causing serious disruption time and time again. Those conditions could include curfews or electronic monitoring. Most importantly, they will be for the courts, not Government, to decide.

Under this clause, an SDPO can be imposed on a person convicted of a protest-related offence where, in the past five years, that person has been convicted of another offence or has committed other specified protest-related behaviour. A breach of an order will be a criminal offence, punishable by an unlimited fine, six months' imprisonment, or both. An SDPO can be made if the court is satisfied, on the balance of probabilities, that the person has, on two or more occasions, been convicted of a protest-related offence; has been found in contempt of court for a protest-related breach of an injunction; has caused or contributed to a protest-related criminal offence or breach of an injunction; or has carried out, or caused or contributed to the carrying out by another person of, protest-related activities that resulted, or were likely to result, in serious disruption.

Along with the stop-and-search measures, these measures provide pre-emptive powers for the police. Officers will be able to interrupt and arrest those who breach the conditions of their SDPO before they have the opportunity to commit another disruptive act. SDPOs mirror many characteristics of injunctions, which the Opposition parties have been so keen for us and others to use. I urge that clause 12 stand part of the Bill.

Sarah Jones (Croydon Central) (Lab): A raft of clauses relate to serious disruption prevention orders, but clauses 12 and 13 are the most significant, so I will direct focus my attention on them. The shadow Home Secretary, my right hon. Friend the Member for Normanton, Pontefract and Castleford (Yvette Cooper), and I put our names to amendment 12, which would have left out the entirety of clause 12.

The clause, as we know, creates a new civil order—the serious disruption prevention order. These orders can be imposed on individuals who have a previous conviction for a protest-related offence and who have participated in another protest within a five-year period. There is a very broad list of conditions that may be met, including that the offender has been convicted of another protest-related offence; has been found in contempt of court for a protest-related breach of an injunction; has carried out activities related to a protest that resulted, or were likely to result, in serious disruption to two or more individuals or to an organisation; has caused or contributed to any other person committing a protest-related offence or protest-related breach of an injunction; or has caused or contributed to the carrying out by any other person of activities related to a protest that resulted, or were likely to result, in serious disruption to two or more individuals or to an organisation. That means that someone can be given an order if they have one previous protest-related offence and just contribute to another person's activities, which were likely to result in serious disruption to only two people. As in so much of the Bill, that is a low threshold for such a restriction on someone's rights.

Serious disruption prevention orders can last anywhere from a week to two years, with the potential to be renewed indefinitely. They can ban individuals from protesting, associating with certain people at certain times, and using the internet in certain ways. Those subject to the orders might have to report to certain places at certain times, and even be electronically monitored. If they fail to fulfil one of the requirements without a reasonable excuse, provide the police with false information, or violate a prohibition in the SDPO, they will have committed a crime. The consequence is a maximum of 51 weeks' imprisonment, a fine, or both.

When we debated these clauses previously, we had, as the Minister referred to, a conversation about protest banning orders and the work that has gone into looking at them. In the evidence session, the Minister said of SDPOs that

"this measure is a conditional order, which may place restrictions or conditions on somebody's ability to operate in a protest environment."

However, the restrictions are significantly broader than just being prevented from attending protests. Martha Spurrier from Liberty pointed out that

"the serious disruption prevention orders have the capacity to be absolute bans in the same way as the protest banning orders...under judicial supervision—but... to a low standard of proof."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 69, Q131.]

Again, the Government are extending to peaceful protest powers that we would normally make available just for serious violence and terrorism.

Kit Malthouse: Perhaps I can reiterate the point that I made, because I am interested in the hon. Lady's view, although I know we want to get through a lot this afternoon. Other than, for example, the condition of electronic monitoring, which we will come to, what would be the difference between an injunction, on which she is so keen and which could be used as a complete ban on attending any protest, and an SPDO, which has many more safety measures around it?

Sarah Jones: I do not think that an SPDO has much more safety around it. The conditions under which someone can get an order—which I have just read out—include that they have caused, or contributed to, the carrying out by any other person of activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals. Conditions could be put on people and, if those people were deemed to have not adhered to them, new conditions could continue indefinitely, or people could go to prison or be fined. There is a specific condition that is put on an individual, with a very broad and legally difficult to identify range of conditions that would then be possible. It is different.

Police officers themselves, whom we turn to so often, said that an SPDO is

"a severe restriction on a person's rights to protest and in reality, is unworkable".

It is worth reflecting on what the inspectorate said about protest banning orders:

"We agree with the police and Home Office that such orders would neither be compatible with human rights legislation nor create an effective deterrent. All things considered, legislation creating protest banning orders would be legally very problematic because, however many safeguards might be put in place, a banning order would completely remove an individual's right to attend a protest. It is difficult to envisage a case where less intrusive measures could not be taken to address the risk that an individual poses, and where a court would therefore accept that it was proportionate to impose a banning order."

The inspectorate's report also said:

"This proposal essentially takes away a person's right to protest and…we believe it unlikely the measure would work as hoped."

In the evidence sessions, the National Police Chiefs' Council protest lead said:

"unless we knew the exact circumstances of the individual it would be hard to say how exactly the orders could be justified."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 15, Q23.]

Senior officers noted that protest banning orders would

"unnecessarily curtail people's democratic right to protest"

and be

"a massive civil rights infringement".

In the words of Liberty, the orders are

"an unprecedented and highly draconian measure that stand to extinguish named individuals' fundamental right to protest as well as their ability to participate in a political community. They will also have the effect of subjecting individuals and wider communities to intrusive surveillance."

It is worth digging down a little into the detail of these prevention orders. For example, would buying a lock, paint or superglue, observing a protest from afar or holding a banner be enough to contribute to a protest-related offence? As the noble Lord Paddick noted at Report stage of the Police, Crime, Sentencing and Courts Bill, when these measures were first introduced,

"you do not even have to have been to a protest to be banned from future ones."—[*Official Report, House of Lords,* 17 January 2022; Vol. 817, c. 1439.]

That is where we are.

Restrictions imposed via a serious disruption prevention order are not necessarily directed at preventing anything criminal, but at preventing the facilitation of non-criminal protest-related activities, which could include sharing songs or chants, flag designs or just some information about where protests are being held. Underpinning our concerns is the wide and diffuse definition of serious disruption, and the power of the Secretary of State to redefine it.

For those given an SDPO, there are a wide set of requirements and prohibitions, which, again, might interfere with rights to respect for private and family life and to freedom of thought, belief and religion, expression, and assembly. Individuals might be prevented from associating with particular people or community members. They might not be able to possess locks, paint or glue. Crucially, they would not be allowed to participate in protests. They might also not be allowed to worship—the Quakers see direct action as a crucial part of their faith. Although there is a safeguard in the Bill, it does not match up to the overreach that the clauses represent.

The enforcement of an SDPO is also potentially problematic. Let us take electronic monitoring. There is the potential for 24/7 GPS tracking under the Bill. We are unclear whether that is proportionate for the undefined prevention of serious disruption.

Failing to comply with an SDPO could result in a maximum of 51 weeks in prison, a fine, or both, but none of the breaches is criminal without an SDPO. The clause criminalises potentially normal activities. When we consider that there is no limit to the number of times that an SDPO can be renewed by the court, we risk people being pushed into a cycle of criminalisation and indefinite periods of not being able to protest or associate with people, look on the internet or take part in other normal parts of life.

For something that places really serious restrictions on a person's liberty, the court can make an SDPO if it is satisfied

"on the balance of probabilities that the current offence is a protest-related offence",

rather than that being beyond reasonable doubt. That is the civil standard of proof. SDPOs on conviction can be made on the basis of lower-quality evidence.

Kit Malthouse: I am conscious of the point the hon. Lady is making about the infringement of people's liberties. Will she accept that this is not a novel concept and in fact happens already? For example, she will remember the incident where anti-lockdown protesters chased and harassed a journalist outside Downing Street. When that happened, those protesters got a fine and unpaid work, but the judge also banned them from attending near Parliament and in Whitehall for 18 months as part of the condition of their punishment. This concept is not a novel one. In many ways, codifying this seems a sensible thing to do, rather than leaving it entirely to judicial discretion.

2.15 pm

Sarah Jones: I will come in a moment to similar orders that I think the police are struggling with in terms of how they are implemented. I hope to make a point about some of the problems with these measures as they stand.

Amnesty's written evidence states:

"Even where based on previous convictions, these provisions are wholly disproportionate—they restrict the exercise of a fundamental right of peaceful assembly based on past conduct and there is no requirement that the past conduct be of a serious nature. Given the extremely broad and vaguely defined list of potential convictions that could be used to impose an SDPO, this provision…will risk depriving a large number of people for up to five 5 years of a fundamental universal human right."

We heard from Amnesty in the evidence sessions about how there is

"a disconnect…between the statements that the UK puts out internationally and the role we see ourselves playing in the world community, and the kinds of measures we are putting in place on our own domestic legislative front."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 65, Q124.]

Amnesty noted Lord Ahmad's closing remarks at the 49th session of the Human Rights Council. He made reference to the resolution about the need to promote and respect the rights of human rights defenders around the world. He said that the resolution essentially requires that all states refrain from measures that excessively criminalise human rights defenders and their rights to freedom of expression.

Amnesty's written evidence states that it is

"striking to note that many of the provisions in the"

Public Order Bill

"mirror similar public order provisions in countries considered by the UK to be overly repressive, including through placing undue restrictions on the rights to freedom of assembly."

When the Police, Crime, Sentencing and Courts Bill comes into force, the Government could stop protesters singing the Ukrainian national anthem too loudly in the street, while the SDPOs in clause 12 mirror the restrictions in countries where laws prohibit certain categories of people from organising protests. The UK's reputation on the world stage as a beacon of democracy, freedom of expression and a style of policing that works through a social contract with the public based on consent is at risk of being undermined by the provisions in this Bill. As Amnesty wrote,

"The UK often uses its voice on the international stage to condemn repressive policies in a number of countries." —

quite right. We should not have such policies in this country.

Serious disruption prevention orders, as we know and as the Minister has just said, mirror the kinds of orders that the Government have brought in to deal with other things, such as serious violence. Serious violence reduction orders were in the Police, Crime, Sentencing and Courts Bill and are yet to be implemented. They will be piloted first.

Knife crime prevention orders were in a previous Bill, and I was a member of that Bill Committee. It would be useful to look at how knife crime prevention orders are working in practice, because it does not look at the moment as though they are working. An article from last September said that the pilot had failed to result in a single court action during the first six weeks of the 14-month trial that started last July. The PA news agency's freedom of information request showed that only two orders were applied for by the Met during the first six weeks of the trial, and both were turned down by magistrates.

Knife crime prevention orders have challenges in themselves. We debated at the time how we would enforce them if we put a condition on somebody that they have to attend a certain place. For example, in the knife crime situation, they have to attend a meeting with a youth worker every week. If they do not attend, is it really the job of the youth worker to intervene in the criminal situation and report to the police that the individual has not turned up? The point of the youth worker is to build relationships with that individual. We know that there are significant problems. Does the Minister have any more information on how knife crime prevention orders are working? There could be similar issues.

As the Minister has acknowledged and as we have said many times, it is a very small proportion of hard-line protesters who are causing disruption and who we are trying to deal with. Our concern is that the Government are introducing wide-ranging laws on protest that will potentially bring a large number of peaceful protesters into the criminal justice system, as well as applying disproportionate penalties when there are already significant laws in place.

One point about the existing laws that I have not made yet, which is brought out in places such as the Matt Parr report, is that there are some offences for which we do not gather data. We do not know, for example, how many times the police have made applications to prohibit trespassory assemblies, so in some cases, we know that there are offences but do not have the numbers on how often they are used.

I will conclude by saying, as I have said many times, that there is a British way to deal with these things—and clause 12 does not sit happily alongside it.

Kit Malthouse: The fount of these orders is the antisocial behaviour order, which as you will remember, Mr Mundell, was introduced by the then Labour Government in 1998. Alarmingly, I do not think that the hon. Lady has paid enough attention to the high bar that all this conduct must cause serious disruption. She also seems to have little faith in the ability of our independent judiciary to form a judgment about when the orders should be applied.

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

The Committee divided: Ayes 7, Noes 6.

Division No. 4]

AYES

Bridgen, Andrew	Malthouse, rh Kit
Doyle-Price, Jackie	Mann, Scott
Elphicke, Mrs Natalie	
Hunt, Tom	Mohindra, Mr Gagan

NOES

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

Question accordingly agreed to.

Clause 12 ordered to stand part of the Bill.

Clause 13

SERIOUS DISRUPTION PREVENTION ORDER MADE OTHERWISE THAN ON CONVICTION

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

Kit Malthouse: Clause 13 provides that the police may make applications to the magistrates court for an SDPO to be imposed on an individual. The conditions that the court must be satisfied of before making an SDPO, and the purposes of any SDPO made on application, are the same as for SDPOs made on conviction. I will not repeat them here, but instead refer the Committee back to my comments on clause 12. It will be the responsibility of chief constables to apply for an SDPO; however, as with SDPOs on conviction, it will ultimately be for the independent judiciary to decide whether to impose an SDPO, and ensure that the conditions included are necessary and proportionate.

Sarah Jones: I will start, as I did with clause 12, by noting that I and the shadow Home Secretary, my right hon. Friend the Member for Normanton, Pontefract and Castleford, have put our names to amendment 13, which would leave out the entirety of clause 13.

This clause creates the new civil order, the serious disruption prevention order, which can be imposed on individuals who have never been convicted of a crime. Subsection (2) sets out the conditions that must be met for an order to be made, namely that the person in question must have done two of the following during different protests, or during the same protest but on different days: been convicted of a protest-related offence; been found in contempt of court for a protest-related breach of an injunction;

"carried out activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals, or to an organisation";

caused or contributed to any other person's committing

"a protest-related offence or a protest-related breach of an injunction";

or

"caused or contributed to the carrying out by any other person of activities related to a protest that resulted in, or were likely to result in, serious disruption to two or more individuals, or to an organisation".

The two trigger protest-related events must have occurred no earlier than the period starting five years before the order is made, but each event must have taken place after clause 13 comes into force, and the person concerned must be aged 16 or over at the time. The fact that an SDPO could be imposed on a person who has not committed a criminal offence at all, but only contributed to the carrying out by someone else of activities related to a person, goes way further than we believe makes sense in law. The vagueness of how and when the serious disruption prevention orders can be imposed is astonishing.

Under subsection (2)(a)(v), the courts must be satisfied on the balance of probabilities that on two different occasions someone

"caused or contributed to the carrying out by any other person of activities related to a protest that resulted in, or were likely to result in, serious disruption".

The person does not even need to have done the act themselves. Someone else could have caused—or not even caused, but just been likely to cause—the disruption of two people, and the person in question only needs to have caused or contributed to someone else's action. Just to be clear, that other person does not need to have caused serious disruption to two or more people.

The wording is so broad. Rather than trying to work out what activity needs to be done to assist someone doing anything related to a protest, perhaps thinking about what would not need to be done would have been a shorter exercise. I am concerned that there does not seem to be any requirement for the person to have had knowledge that the protest activities were going to cause serious disruption when they caused or contributed to the carrying out of those activities.

The clause could also capture a wide range of behaviour. Let us say that the person being considered for an SDPO attends a peaceful protest, they shout something about the issue that they are angry about, and the person next to them becomes violent, but that act of violence was not within the control of the person who was shouting. Could that person who was shouting be held responsible under clause 13?

As I laid out when detailing our concerns about clause 12, the police are concerned that the use of serious disruption prevention orders is unworkable and potentially unethical. This proposal essentially takes away a person's right to protest, and we believe it unlikely that the measure would work as hoped. In the evidence sessions, the National Police Chiefs Council protest lead said:

"From a policing point of view, unless we knew the exact circumstances of the individual it would be hard to say how exactly the orders could be justified."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 15, Q23.]

Senior officers noted that protest banning orders would necessarily curtail people's democratic right to protest and be a massive civil rights infringement, and in the evidence sessions Matt Parr could not have been any clearer in what he said:

"I have mentioned that we were not supportive of SDPOs."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 55, Q117.]

I suggest to the Committee that these views are not just held by Liberty or Amnesty International—the pressure groups founded on the basis of protecting human rights—but are concerns from senior, experienced police officers and the Home Office.

Alex Cunningham (Stockton North) (Lab): It strikes me that my hon. Friend is talking about the need for training. The Minister has talked about guidance and all manner of other measures being put in place, but if the police do not understand what they are doing in relation to this particular set of orders, how on earth are we supposed to train them to recognise the extent of their powers and how they can apply them?

2.30 pm

Sarah Jones: My hon. Friend makes a really good point, and we have seen exactly that with the pilots of the knife crime prevention orders. In the first six weeks only two police officers made the request to the courts, and both were turned down. Probably because of the

[Sarah Jones]

lack of clarity about how the orders should be imposed, there were not vast numbers of police officers coming forward. Equally, there must have been confusion between what the police thought the conditions were and what the courts thought the conditions were, because the courts turned those two cases down.

Alex Cunningham: I am grateful to my hon. Friend for giving way again.

I was chastised on Tuesday by the Chair for talking about the courts at some length. My hon. Friend has already talked about the need to go to court for this particular order, which seems a waste of time to me. More and more time is being placed on the courts, which of course are in crisis as it is, so perhaps this is one that the Government could let go.

Sarah Jones: My hon. Friend is exactly right. In the HMICFRS report on protests, many interviewees expressed intense frustration with the system, and the many reasons they gave for protest cases being stopped included "substantial backlogs in court" and

"so much time passing since the alleged offence that the CPS deemed prosecution to be no longer in the public interest",

which is really important and has probably stopped quite a lot of people going to court who should have done. Those issues cannot be ignored when we are looking at this subject.

As I was saying, it is not just the likes of Liberty or Amnesty that have issues with the Bill; it is experienced senior officers and many organisations involved in criminal justice. We do not believe that SDPOs are workable in practice, and the language of the clause reflects the concerns that we have had throughout. A serious disruption prevention order could be applied to someone who has never committed a criminal offence before, but who is deemed—on the civil standard, not the criminal one—to have contributed to someone else's action that is "likely to result" in serious disruption to two or more people.

It is worth picking that apart. Any one of us in the room could be given an order—one with really intrusive measures attached—on the mere probability that we have contributed to, not caused, another person's action that has possibly, but not definitely, caused disruption to two or more people. I do not have to have attended a protest and no disruption needs to have been caused, and all this is on the balance of probability. Surely basing the orders on hard cases and a minority of hardliners could have wide-ranging implications for peaceful protesters.

The Bill was the Government's flagship legislation in the Queen's Speech. Despite the fact that crime has increased significantly in the last two years, prosecutions are down significantly. There is a cost of living crisis, a climate crisis and many other things with which the Government could concern themselves. There was no victims Bill in the Queen's Speech, and nothing to tackle violence against women and girls. The Government have focused on this Bill, which is full of broadly drafted and unworkable clauses that would apply the same kinds of restrictions to peaceful protesters who have been convicted of no crime as could be applied to violent criminals and terrorists.

Alex Cunningham: These orders will apply to women, as they will to men. Has my hon. Friend seen the statement from Hannah Couchman, the senior legal officer for Rights of Women? She says:

"Rights of Women has joined together with 17 other women's rights and VAWG organisations to resist the measures outlined in this Bill. Protest is a feminist issue, firmly embedded in the struggle for women's rights—and particularly the rights of Black and minoritised women. Our fight to end violence against women relies heavily upon our ability to gather together and collectively demand change."

These types of order could prevent people from organising effective protests with Rights of Women and other groups.

Sarah Jones: My hon. Friend makes a good point. I have not yet quoted from the evidence we had from the coalition of about 20 very reputable women's organisations that have come together to form a view, which is worth listening to.

Similar conditions that exist in law are imposed on terrorists and violent criminals, but we do not think these conditions should be imposed on protesters. These provisions will increase disproportionality, bring peaceful protestors unnecessarily into the criminal justice system and undermine public trust in the police trying to do their job. We have seen worrying figures about public confidence. We deeply support the police and want them to do the best job they can, but public confidence in policing has gone down in recent times because of a series of events that have taken place.

It is our job in this place to do everything we can to ensure that the public can and do have confidence in the police, but passing this broad, difficult to implement legislation, which may never even be implemented because it is too complex, is not helpful. We should be giving the police the resources they need, being much clearer about what we expect them to do, and ensuring they can spend the right resources in the right places in order to reduce crime and support victims.

Although potentially open to interpretation, in his report Matt Parr called for only a "modest reset" of the scales. Throughout the debates on the Police, Crime, Sentencing and Courts Bill, we argued that that Bill was not introducing a modest reset of the scales, but this is a whole raft of legislation on top of what is in Police, Crime, Sentencing and Courts Act 2022 that has yet to be implemented.

On clause 13, does the Minister genuinely believe that the creation of the serious disruption prevention orders, which can be given to people who have not committed any criminal act, is a modest reset? We think it is not and that the orders will contribute to the chilling effect on peaceful, legitimate protest that we have talked about, and we are not convinced that they would stand up in court. The requirements and prohibitions in this clause, as in clause 12 and as laid out in clause 15, are too harsh and too intrusive, and we cannot support it.

Kit Malthouse: The hon. Lady asked me if I genuinely believe these orders are a modest reset; I genuinely do. I take from her speech that she has no answer to the statistic I put to her that some of these protesters have now been arrested six times and are still not responding to the suite of charges brought against them.

I remain dismayed at the hon. Lady's lack of faith in our independent judiciary to make sensible judgments within this framework, as they do in—

Sarah Jones: On that point, will the Minister give way?

Kit Malthouse: In a moment. I am also dismayed at her implication that there are not enough police officers who are members of Mensa and that they cannot cope with what, in my view, is a relatively simple concept that the hon. Lady seems to think is complex. I assure her that police officers deal with much more complex situations than this.

This clause is about giving the police the ability to apply for an order to an independent judiciary to deal with somebody who is persistently offending or assisting offending that causes serious disruption to the public. We have seen the current legislative arsenal that the police are able to deploy in action over the last two years, and it simply has not been enough, so that is why we support the introduction of these orders.

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

The Committee divided: Ayes 7, Noes 6.

Division No. 5]

AYES

Bridgen, Andrew	Malthouse, rh Kit
Doyle-Price, Jackie	Mann, Scott
Elphicke, Mrs Natalie	Mohindra, Mr Gagan
Hunt, Tom	

NOES

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

Question accordingly agreed to.

Clause 13 ordered to stand part of the Bill.

Clause 14

PROVISIONS OF SERIOUS DISRUPTION PREVENTION ORDER

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

Kit Malthouse: Clause 14 provides detail on the kind of prohibitions or requirements that a court may include in an SDPO. It is important to note that the clause provides a non-exhaustive list. The court will still—as it does now, as I outlined—have the discretion to impose whatever prohibitions or requirements it considers are necessary. The prohibitions and requirements are in the Bill. I do not propose to repeat them and I am sure the hon. Member for Croydon Central will not want to either, but they include curfews and a requirement to check in at a local police station at certain times.

Furthermore, courts must, so far as is possible, ensure that the requirements and prohibitions imposed are such that those subject to an SDPO can continue to practise their religious beliefs and access their place of work and education. I said to the hon. Lady earlier that this is not a novel concept. We already have an individual who has been banned from protesting outside the mother of democracies for 18 months, and we have a number of protesters who are subject to similar conditions through injunctions. I hope she will see the sense in codifying the measure, and I commend the clause to the Committee.

Sarah Jones: I think I have made my criticisms about SDPOs clear. We disagree with clause 14 and the premise of serious disruption prevention orders. There is a non-exhaustive list, which includes a person not being allowed in a particular place or their being subject to electronic monitoring. We believe the conditions are harsh given the fact that, as I said earlier, someone could be given an SDPO without having ever attended a protest.

The Chair: Minister, do you have anything further to add?

Kit Malthouse *indicated dissent.*

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Clause 15

REQUIREMENTS IN SERIOUS DISRUPTION PREVENTION ORDER

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

Kit Malthouse: As with clause 14, clause 15 details part of the framework for SDPOs. It sets out that when requirements are placed on a person, the court must specify who is responsible for supervising their compliance with the requirements or prohibitions that have been set. The clause is relatively self-explanatory and I commend it to the Committee.

Sarah Jones: The shadow Home Secretary—my right hon. Friend the Member for Normanton, Pontefract and Castleford—and I have put our names to amendment 15 tabled by the hon. Member for Glasgow North East, who is not present today. The amendment would leave clause 15 out of the Bill. We have made our criticisms clear, and we think clause 15 should be struck from the Bill.

I note that the clause requires a named individual or organisation to supervise compliance with an SDPO. We know from the knife crime prevention orders that that has been problematic. If an organisation is to supervise, there must be a specific individual named within that organisation. Implementation could be problematic, but our opposition to this general topic stands on clause 15.

Question put and agreed to.

Clause 15 accordingly ordered to stand part of the Bill.

2.45 pm

Clause 16

Further provision about electronic monitoring requirements

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

Kit Malthouse: Clause 16 allows courts to consider using electronic monitoring as a requirement of an SDPO. Electronic monitoring—or tagging—has been an extremely useful tool to ensure compliance with the terms of existing preventive court orders, such as domestic abuse protection orders. The clause makes it clear to the courts that they may consider making tagging a requirement in an SDPO.

Given that an SDPO may prohibit individuals from being in certain places at certain times of day, electronic monitoring offers the courts and authorities a useful tool with which to ensure compliance. The clause is modelled on the electronic monitoring requirement in the Domestic Abuse Act 2021. Courts will be able to impose electronic monitoring only in cases in which the person subject to an SDPO, and if necessary, a person whose co-operation with the monitoring is required, are present at the hearing. The courts must also be satisfied that the necessary provisions for monitoring exist in their local justice area.

In practice, any notification about electronic monitoring arrangements available to the courts will come from the Ministry of Justice. An SDPO that includes electronic monitoring must also specify the person or authority responsible for the provision of any necessary apparatus and the monitoring of the subject. The clause provides a delegated power for the Home Secretary to identify that responsible person via regulations. Those regulations will not be subject to any parliamentary procedure.

Individuals who are subject to an electronic monitoring requirement must allow the authorised person to install, inspect and repair any of the monitoring apparatus, and take all necessary steps to keep it in working order, including by not interfering with or damaging their tag. Anyone who does so will be in breach of a requirement of their SDPO, which, as clause 20 establishes, is an offence.

We recognise that electronic monitoring is a large intrusion on people's lives and freedoms, particularly their article 8 right to a private life under the European convention on human rights. To ensure that any electronic monitoring requirement is proportionate, clause 18 provides that any such requirement may last only a maximum of 12 months at a time. However, as I have said, electronic monitoring has already proven a useful tool to ensure compliance with the terms of a range of preventive court orders. The Committee will be aware of our recent expansion of alcohol monitoring, which has been enormously successful. I see no reason why electronic monitoring should not be used in respect of SDPOs.

Sarah Jones: As we have for other amendments, the shadow Home Secretary and I have put our names to amendment 16, which was tabled by the hon. Member for Glasgow North East and would leave out clause 16.

The clause deals with electronic monitoring. I do not have personal experience of tagging, but I have talked to people who have been tagged and monitored, and there is, for sure, a place for it in the justice system. I have even met a gentleman who was involved in crime and gang activity and actually wanted to be tagged so that he could say to the people he was engaging with that he could not participate in anything anymore because he had been tagged and had to stay at home. Tagging meant he had an excuse to get out of the crime he was involved in without having to say to those potentially dangerous people that that was what he wanted.

Although its intrusiveness is an issue, electronic monitoring it does have its place. Labour does not think, however, that its place is in this Bill, and Liberty wrote a comprehensive briefing laying out its concerns about electronic monitoring. We do not believe that electronic monitoring is proportionate for a serious disruption prevention order or that it should be needed after someone has attended a protest. The Minister said there is a 12-month limit on electronic monitoring, but 12 months is a long time.

The original protest banning orders, which were considered by Her Majesty's inspectorate of constabulary and fire and rescue services, were based on football banning orders in Scotland. Research showed that the methods used in policing them were disproportionate, unfair and selective. In 2018, the Ministry of Justice moved from radio frequency tags, which work by detecting when someone has moved out of a particular area past a certain time, such as a curfew, to GPS tags, which provide 24/7 monitoring. That is more intrusive than tagging was previously. Given the breadth and vagueness of the ways in which an SDPO can be imposed, we do not think it is at all appropriate to use such monitoring in this instance.

The Chair: Minister, do you have anything further to add?

Kit Malthouse *indicated dissent.*

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17

Notification requirements in serious disruption prevention order

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

Kit Malthouse: Clause 17 establishes the information that individuals subject to an SDPO must give to the police, to ensure that the police are aware of anyone subject to an order within their area and can monitor their compliance accordingly. Within three days of first receiving an SDPO, individuals must notify their local police, in person, at the local police station, of their name and any alias, their home address and any other address at which they regularly stay. If any of that information changes, the individual must notify their local police within three days of the change. It will be an offence, established under clause 20, for individuals to knowingly give false information under the requirements of this clause. I ask that it stand part of the Bill.

Sarah Jones: Clause 17 covers the general issue that we have debated already in considering earlier clauses, and although we object to it, I do not have anything further to add.

Kerry McCarthy (Bristol East) (Lab): I seek a couple of quick clarifications. Subsection (3) states that there is a duty to notify the police about

"the address of any other premises at which…P regularly resides or stays."

However, subsection (4) then refers to P deciding

"to live for a period of one month or more"

somewhere else. Obviously, there is a difference there, so I wondered what counted as regularly residing or staying. What happens if P was in a relationship with somebody and stayed over somewhere? Quite a lot of people have a permanent home address but they stay over at somebody else's for a few days or weeks, and they might notify that. But let us suppose they were not in a relationship at the time the order was granted and so have not given notice of a second address. I understand the provision to mean that if they were then in a relationship, they would not have to give notice of it if it was the sort of set-up in which they were staying somewhere else for part of the week, and that they would have to provide notification only if they were doing it for a month at a time. Is that right?

Kit Malthouse: No, that is not my interpretation. In that example, when the order is granted and the individual is not in a relationship, they would give their home address. If during course of the order they enter a relationship and start spending time at somebody else's address on a regular basis—they might be there a couple of nights a week—they should also notify as to that address. If they then move from either of those addresses for one month or more and reside elsewhere, they should provide notification of those changes as well.

Kerry McCarthy: I do not think that is actually what the Bill says, although it is a fairly technical point.

I have one other query on notifications. Subsection (6) says that the notification can be given by

"attending at a police station",

which is fair enough, or by

"giving an oral notification to a police officer, or to any person authorised for the purpose by the officer in charge of the station."

I am a little concerned about this "oral notification". Will there be a process for recording it and making sure there is a record of it happening? I am surprised that a notification in writing would not be accepted. Is there a particular reason why that would not be allowed?

Kit Malthouse: The notification requirements and the notification change requirements broadly mirror other notification requirements that are given to the police. However, although I am keen to keep the clause in the legislation, I am happy to discuss matters and provide clarity to the hon. Lady before we get to Report, so that she can see that, as I say, it is not unusual in these kinds of circumstances for people to have to notify their whereabouts or their likely whereabouts overnight to the police.

Kerry McCarthy: I have slightly lost track as to whether we are still at an intervention or not, but I think I am continuing my speech.

I have had immigration cases in which people have had a duty to report to the police station and their attending has somehow not made it on to the record, and people have fallen foul of the law as a result. It can be quite difficult for someone to prove that they did something if the police did not keep accurate records of their doing it. I just want to avoid that situation.

Kit Malthouse: Understood.

Kerry McCarthy: That is the end of my speech.

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

Clause 18

Duration of serious disruption prevention order

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

Kit Malthouse: Clause 18 provides that an SDPO may last for a minimum of one week or a maximum of two years. This provides flexibility to courts in deciding for how long any prohibitions or requirements of an SDPO are necessary to prevent the subject from causing serious disruption at a protest—we should never forget that high bar of serious protest. In particular, a court can specify that certain requirements or prohibitions of an SDPO may apply for a more limited period than the order itself, thereby allowing courts maximum flexibility when the determine individual cases for an SDPO.

In the case of an SDPO that imposes electronic monitoring requirements, the requirements may last for no longer than 12 months at a time. As I said earlier, this is to prevent a disproportionate encroachment on the subject's right to a private life. That is in line with existing legislation on electronic monitoring.

Normally, an SDPO will take effect on the day the court imposes it. However, when someone is subject to an SDPO and is remanded in custody, serving a custodial sentence or on licence, the clause provides that their SDPO may not take effect until they are released from custody or cease to be on licence. This reflects the fact that, due to the restrictions imposed by a custodial sentence, they are unlikely to attend a protest.

Sarah Jones: Our issues with this clause are similar to those we have with all the others. We support the amendment to pull the clause from the Bill in its entirety, as it supports the general principle that we have debated at some length and with which we continue to disagree.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clause 19

Other information to be included in serious disruption prevention order

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

Kit Malthouse: Clause 19 simply states that when imposing an SDPO the court must set out the reasons why it has made the order and the possible penalties available if the individual breaches the terms of their order. This is to provide clarity all round.

Sarah Jones: My comments are similar to those I have made about previous clauses.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Clause 20

Offences relating to a serious disruption prevention order

Wendy Chamberlain (North East Fife) (LD): I beg to move amendment 40, in clause 20, page 21, line 19, after "fine" insert

"not exceeding level 2 on the standard scale".

A person convicted of an offence related to a serious disruption prevention order may be subjected to a fine. Under this clause there is currently no limit on the fine that may be imposed. This amendment would place a maximum limit on the fine.

This amendment is similar to the amendments I tabled to previous clauses that we discussed on Tuesday. It is a probing amendment to test the Government's justification and explanation for why they are proffering unlimited fines in the Bill. I do not intend to move the motion today and look to withdraw it.

Kit Malthouse: I will just say briefly, as I have about the hon. Lady's previous amendments, that I am afraid we just do not think that 500 quid is enough of a deterrent, not least because we want to recognise the fact that we are talking about the breach of a judicially imposed order. The level of fine suggested in the amendment is just not proportionate to that kind of offence, so we urge the hon. Lady to withdraw the amendment.

Wendy Chamberlain: What would be acceptable to the Minister then? I suppose that is the purpose of my probing amendment.

Kit Malthouse: What is acceptable is what is in the Bill.

Mrs Natalie Elphicke (Dover) (Con): Opposition Members seem very sympathetic to these extreme protesters. As the Committee knows, I am no stranger to the frontline when it comes to a protest, but we need to recognise the impact of these extreme protesters.

In Dover, when protesters close the main road—be they Extinction Rebellion, the oil brigade or anyone else that decides to rock up and make a nuisance of themselves—it does not just bring our trade to an end; it disrupts the lives of everybody in the town. It also puts the emergency services at risk because they cannot get through if people glue themselves to the motorway and cannot be moved safely. The provisions are important to areas such as mine that are at the forefront of actions by extremists. It is proposed that this be a summary offence; does the Minister think that the level of fine is appropriate? How has he come to that decision?

3 pm

Kit Malthouse: My hon. Friend is making broadly the same point. We think the provisions in clause 20 are commensurate and in line with those for other breaches of judicially imposed orders; effectively, there can be an unlimited fine. Certainly, if an injunction is breached, the judge has unlimited powers of fine—something that I know the hon. Member for Croydon Central is keen on. Given that this is a judicially supervised order, it should be for the judge to decide what the fine should be. It is worth remembering that when judges are given flexibility in making fining decisions, they have to take into account the circumstances of the individual—they have to means-test them, effectively—decide on the level of impact and the likely deterrent effect of the fine. We think that should be left to judicial discretion.

Wendy Chamberlain: I have nothing further to add. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Kit Malthouse: As we have discussed, clause 20 creates various offences relating to a serious disruption prevention order. It will be an offence for an individual to, without reasonable excuse, fail to comply with any requirement of their order, or do anything that the terms of their order prohibit them from doing. For example, an individual subject to an SDPO could commit an offence if they attend a protest at a designated time and place that is prohibited under the terms of their order. In line with the notification requirements established in clause 17, an individual subject to an order will also commit an offence if they knowingly provide false information to the police as part of their notification requirements.

If found guilty of one of these offences, upon summary conviction, the court will be able to impose a maximum sentence of 6 months' imprisonment and/or an unlimited fine. Subsection (3) provides that the maximum term of imprisonment will increase to 51 weeks if section 281(5) of the Criminal Justice Act 2003 comes into force. This sentence reflects how seriously the Government take anyone breaching the terms of an SDPO, and also acts as a deterrent to anyone considering breaching this judicially imposed and supervised order. As I outlined while discussing clause 19, courts will be required to make clear the possible penalties for a breach of an order to each individual subject to an SDPO, so there will be clarity about what happens if they do not do as the order requires.

Kerry McCarthy: Can I ask the Minister to clarify a bit more? He said that someone would be in breach of the order if they attended a protest that the order covered. In Bristol, we tend to have quite a lot of political activity. We have marches that wind their way through the city centre and parks. We also had the Police, Crime, Sentencing and Courts Bill protests, which lasted for several days in certain pockets. I am concerned about how "attending a protest" would be interpreted; if someone was just walking through the city centre alongside a march, would they be deemed to have attended the protest? I am concerned about how the courts would interpret "without reasonable excuse". It

might be difficult to prove that someone was just on their way through town, as opposed to being part of a march.

Kit Malthouse: Obviously, those questions would be matters for judicial judgment. When an individual is presented to the judge for breach of the order, it is for the judge to decide what penalty is required. The police, in presenting that individual, will have to provide evidence. These are not novel matters. An individual has already been barred by a judge from attending a protest outside Parliament. If that individual were to walk down Whitehall and the police were to apprehend them and present them to court for breach of that order, evidence would have to be produced. That is a standard practice; we have courts in which police and others can offer evidence and the accused can offer a defence. A judge can then decide. The same would be true in these circumstances.

Sarah Jones: First, I should respond to the comment that Labour Members are in some way sympathetic to extreme protesters who are breaking the law. We absolutely are not. I want to be very clear about that, as I have been all the way through our conversations.

There are already offences that can be used by the police in such cases. Whether it is wilful obstruction of the highway, criminal damage, aggravated trespass, breaching an injunction, public nuisance, failure to comply with a condition, organising a prohibited trespassory assembly or participating in a trespassory assembly, there are many avenues that the police can and do use for repeat offenders, who put people's lives at risk; that is not in question.

Clause 20 sets out certain conditions with which failure to comply is an offence. It highlights the fact that we have not sufficiently teased and played out how these orders will work in practice. When this Government introduced knife crime prevention orders, they introduced pilots before their implementation. When serious violence reduction orders were introduced in the Police, Crime, Sentencing and Courts Act 2022, the Government introduced pilots for them. Colleagues may remember, as I do, the debate during the passage of that Bill on what those pilots should be, how they should work and where they should be applied. These things are difficult to interpret.

Clause 20(1)(a) says that someone commits an offence if they fail

"without reasonable excuse to do anything"

that they are

"required to do by the order".

We have already talked about those conditions, which relate to where someone lives, their addresses and their use of the internet. We are talking about very broad, difficult to understand, complicated things that it is easy to fail to do. Someone could break the conditions without knowing it.

We remain deeply concerned about the serious disruption prevention orders. I encourage the Government to do a bit more thinking, provide a bit more guidance and, perhaps, pilot the orders before bringing them in.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21

VARIATION, RENEWAL OR DISCHARGE OF SERIOUS DISRUPTION PREVENTION ORDER

Wendy Chamberlain: I beg to move amendment 41, in clause 21, page 21, line 29, leave out ", renewing".

This amendment would prevent an existing serious disruption prevention order from being renewed.

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

Amendment 42, in clause 21, page 22, line 15, leave out ", renewing".

This amendment would prevent an existing serious disruption prevention order from being renewed.

Amendment 43, in clause 21, page 22, line 23, leave out paragraph (b).

This amendment would prevent an existing serious disruption prevention order from being renewed.

Amendment 44, in clause 21, page 23, line 12, leave out paragraph (b).

This amendment would prevent an existing serious disruption prevention order from being renewed.

Amendment 45, in clause 21, page 23, line 14, leave out "or renewing".

This amendment would prevent an existing serious disruption prevention order from being renewed.

Wendy Chamberlain: These amendments take out all the provisions that allow an SDPO to be renewed once its original period has expired. We need sanctions in the justice system to be applied consistently and fairly, and to provide a degree of certainty. The Bill allows the police to apply for an SDPO and, effectively, renew it indefinitely, if they think not only that there is a risk that someone will commit a further offence, but—particularly in relation to clause 13—that renewing the order will prevent offences from being committed generally.

We do not stop people going to the shops because they once got caught stealing. We do not punish people into perpetuity just to control the actions of others, which would be a consequence of an SDPO in relation to clause 13. It would be like the Standards Committee deciding that suspensions from the House could be renewed indefinitely because there was a risk that someone might fail to comply with the standards expected of Members of this House. It is unacceptable for the Government to limit the right to protest, free speech and freedom of assembly when we apply different standards to ourselves.

Sarah Jones: As we do not support this entire section of the Bill, I will not talk at length about the hon. Lady's comments. We support the amendments, and I thank her for her tabling them.

Kit Malthouse: As the hon. Member for North East Fife said, amendments 41 to 45 would prevent the courts from being able to renew serious disruption prevention orders. That would mean that where there was evidence that a person subject to an SDPO would go on to commit a protest-related offence or cause serious disruption soon after its expiration, nothing could be done to ensure that they were still bound by

[Kit Malthouse]

the conditions of their order. As a result, these amendments would undermine the purpose of the orders. I therefore encourage the hon. Lady to withdraw amendment 41.

Wendy Chamberlain: I intend to withdraw the amendment, but I do not agree with the Minister that we should apply orders that can apply indefinitely, and that could therefore breach people's right to freedom of assembly and speech. If a police officer agrees that another SDPO is needed, they should apply for a new one, rather than renewing one in perpetuity, but I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Kit Malthouse: I am happy to address the hon. Lady's earlier point in the sidebar if she wishes, but in effect it would be for a judge to make a judgment about renewal; it would not necessarily just be for the police to impose a renewal.

Clause 21 enables a person—an individual subject to an SDPO or a relevant police officer—to apply to the appropriate court for the variation, renewal or discharge of an SDPO. Either of those individuals may apply at any point during the duration of the SDPO, and subsection (12) provides that the normal six-month time limit on magistrates hearing complaint cases does not apply. That is to ensure that applications for SDPOs with a duration of six months or longer can still be made to these courts.

When deciding whether to vary, renew or discharge an order, the court must hear from both sides—for example, the relevant police officer applying for a renewal of the order and the person subject to that order—before making its decision. That is to ensure that the court has the opportunity to consider arguments both in favour and against any changes to the terms of the order. When making its decision, the court can decide to vary, renew or discharge either the whole of an SDPO or certain prohibitions or requirements in an order, depending on the evidence presented to it. In deciding whether to vary or renew an order, the court must satisfy itself on the same grounds as are required when imposing an order—namely, that the order will prevent the person subject to an SDPO from committing, or contributing to others committing, a protest-related offence, a protest-related breach of an injunction or activities that result or are likely to result in serious disruption at a protest. It must also consider whether varying or renewing the terms of an order will protect organisations or two or more individuals from the risk of serious disruption arising from any of these activities.

Any changes to an SDPO will be subject to the requirements set out in clauses 14 to 19, apart from subsections (2) and (3) of clause 17, which deal with notification requirements when an order is first made. In practical terms, this means that any changes to an SDPO will be subject to the same duration limits as apply when an SDPO is first imposed—namely, they may last a minimum of one week and a maximum of two years. If a court decides to vary or renew an electronic monitoring requirement, that will again be limited to a 12-month duration. Nothing in this clause prohibits further variances or renewals of an SDPO if a court and a judge consider them necessary. I urge that clause 21 stand part of the Bill.

Sarah Jones: I do not have a significant contribution to make on this clause, given that we have already debated the principle. I will just ask this. The Minister has twice said that there will be a duration limit of 12 months on an electronic monitoring requirement. That is true; it is in subsection (9). However, the explanatory notes to the Bill say that

"this does not preclude a further extension…if the SDPO is renewed."

Therefore in reality that requirement can be extended—if the SDPO is renewed—in the same way as other conditions.

Kit Malthouse: That is certainly the case, if evidence is presented to the judge that the person is likely to persist in the disruptive activity for which the original order was originally imposed, which seems perfectly reasonable to me.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill

Clause 22

Appeal against serious disruption prevention order

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

3.15 pm

Kit Malthouse: Clause 22 provides for various routes of appeal either against either the imposition of an SDPO or against an SDPO being removed, varied or discharged under clause 21. When an SDPO has been imposed following a conviction for relevant protest-related offences, subsection (1) provides that the individual on whom the SDPO is imposed may appeal against the making of the order, following the normal procedure for appealing against a sentence imposed following conviction for a criminal offence.

The appellate court will be the court immediately senior to that which imposed the original order, so if an order is made following conviction in a magistrates court, the appeal would be made to the Crown court, and so on. When an SDPO is imposed following an application by the relevant chief police officer to a magistrates court, the individual on whom the SDPO is imposed may appeal against the order to the Crown court. In cases where the magistrates court refuses to impose an order, the relevant chief officer of police may appeal that to the Crown court also. If a Crown court made the SDPO, the appellant court would be the Court of Appeal. Furthermore, both individuals who are subject to an SDPO and the relevant chief officer of police may appeal to the Crown court against the decision of a magistrates court to vary, renew or discharge an SDPO. As is the case with all other routes of appeal detailed in the clause, the Crown court has the power to make any orders necessary to give effect to its decisions on appeals and any necessary consequential or incidental matters.

Sarah Jones: The many and various ways in which someone can appeal to the courts depend on the court system working. As we know, it does not at the moment. The delays are many, and tens of thousands of cases are clogging up our courts. As we heard, the Crown Prosecution Service has had to drop cases because of the amount of time that has passed. Although I do not have a particular objection to the clause, I would say that people will be lucky if they find their slot in court.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clause 23

GUIDANCE

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

Kit Malthouse: Clause 23 provides that the Home Secretary may issue guidance to chief officers of police relating to SDPOs. While the guidance may cover any aspect of SDPOs, we envision that it will guide police on the exercise of their functions, particularly for orders made following application to a court. The guidance will include advice on identifying persons for whom it might be appropriate for the police to make an application for an SDPO and on how police can assist prosecutors for SDPOs made on conviction. Any guidance issued under the clause must be published and may be revised by the Home Secretary. Chief officers of police will be required to consider any guidance issued when exercising their functions in relation to SDPOs. Our intention is to provide as much assistance as possible to the police, so that the orders are used in a proportionate and effective manner.

Sarah Jones: Given that the SDPOs have no pilots, unlike serious violence prevention orders and knife crime prevention orders before them, will the Minister consider producing some of the guidance in time for Report, as happened with the Police, Crime, Sentencing and Courts Bill, so that Members can look at it and get more clarity on the intention behind the orders?

Kit Malthouse: I will certainly consider the hon. Lady's request, although we are obviously keen for this legislation to hit the statute book as quickly as possible, given the serious disruption that has been caused by a small number of protesters. I will give consideration to whether it is practical to do that before Report in this House, but I shall have to consult with officials.

Question put and agreed to.

Clause 23 accordingly ordered to stand part of the Bill.

Clause 24

GUIDANCE: PARLIAMENTARY PROCEDURE

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

Kit Malthouse: Clause 24 establishes the procedure by which Parliament may have a say on any guidance the Home Secretary issues to police regarding these orders. It provides that guidance will be laid before both Houses of Parliament under the draft negative resolution procedure. Members of either House will have 40 days to adopt a resolution against such guidance. If neither House chooses to adopt such a resolution within 40 days, the guidance may be issued.

Sarah Jones: I would add only that if the Government, in this clause, are keen to ensure that the Houses of Parliament, both the Commons and the Lords, have as much information and as much opportunity to look at the draft guidance as possible, that strengthens my request that some of this guidance be provided in time for either the Commons or the Lords Committee consideration.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25

DATA FROM ELECTRONIC MONITORING: CODE OF PRACTICE

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

Kit Malthouse: Clause 25 requires that the Home Secretary publish a code of practice for the processing of data collected from individuals subject to an electronic monitoring requirement in one of these SDPOs. While in line with existing codes of practice on data from electronic monitoring, the code will not be binding. It will offer clear guidance to controllers and authorities on the retention of data, sharing and transmission of data and other associated issues, while ensuring that all data gathered is held in accordance with the data protection requirements.

Sarah Jones: We have talked about the intrusive nature of electronic monitoring and the fact that new types of monitoring mean that it does not just register whether someone has gone beyond a certain boundary at a certain time of day, but tracks them every moment of every day. That data, as we know, is worth a lot of money and is very intrusive, and there are organisations, and indeed hon. Members on both sides of this House, concerned about the gathering of data and what is done with it. In this case, the guidance is not binding, so I add our concern that we need to be very clear what happens to that data and how it is used.

Question put and agreed to.

Clause 25 accordingly ordered to stand part of the Bill.

Clause 26

INTERPRETATION OF PART

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

Sarah Jones: I will just continue in the same vein: we disagree with SDPOs in the main.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

Clause 27 ordered to stand part of the Bill.

Clause 28

EXTENT, COMMENCEMENT AND SHORT TITLE

Kit Malthouse: I beg to move amendment 22, in clause 28, page 26, line 32, at end insert—

"(3A) Section (Assemblies and one-person protests: British Transport Police and MoD Police) comes into force at the end of the period of two months beginning with the day on which this Act is passed."

This amendment provides for the new clause inserted by NC4 to come into force two months after Royal Assent.

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

Government amendment 23.

Government new clause 4—*Assemblies and one-person protests: British Transport Police and MoD Police*.

Government amendment 24.

Kit Malthouse: New clause 4 closes a gap in the existing powers at part 2 of the Public Order Act 1986 for policing public processions and assemblies. It does so by harmonising the position between on one hand the territorial police forces, those covering a geographical force area, and on the other hand the British Transport police and Ministry of Defence police force.

The present position is that the territorial forces are able to exercise those powers, but the British Transport police and MOD police are not. New clause 4 extends to those forces some of the powers of part 2 of the 1986 Act where there is an operational case for doing so. It does not extend all the part 2 powers, as not all are relevant to the functions of those forces. I emphasise that new clause 4 does not create any new powers, nor does it broaden existing ones. It simply serves to close a potential gap in jurisdiction by extending certain existing powers to these two additional non-territorial police forces. The powers contain various limitations and safeguards. For example, only the most senior of the officers present may exercise the powers, and there is a requirement that the officer must reasonably believe that the assembly may result in certain forms of serious disorder. These limitations and safeguards are replicated in new clause 4.

These modest and proportionate measures largely seek to address an anomaly in the powers currently available to our specialist non-territorial forces. I imagine it would surprise the British public that the British Transport police in particular does not have these powers.

Mrs Elphicke: Will the Minister confirm that port police are not included in these provisions relating to transport because they operate using existing powers? I have the port of Dover police in mind particularly.

Kit Malthouse: My hon. Friend is exactly right. It applies where they are part of a territorial police force. I know she has a particular interest in Dover port police, and we will seek clarity for her on that before Report.

I think the British public would be surprised to know, given how much protest is targeted at the transport network, that the British Transport police does not have these powers. The new clause will deal with that anomaly. The existing legal tests and safeguards for the use of these powers will continue to apply. Making these changes will help to promote a consistent and effective response to public order protests. I commend the amendments to the Committee.

Sarah Jones: When we debated the Police, Crime, Sentencing and Courts Bill, the Government brought in a police covenant, for which many people had campaigned for years. We had a debate at that time because British Transport police and Ministry of Defence police were not included in that covenant. The Government said it was too difficult to include them in any Bill that introduced new powers. After a lot of pressure from other organisations, they were able to do it. It is good to see them doing it again.

The various parts of our policing system have different funding pots, ways of existing and remits, but they are just as important as our main police force. British Transport police does crucial work on all kinds of issues, particularly county lines over recent years. The provisions on protests we are debating here cover everything BTP does as well as potentially what the Ministry of Defence police does. We do not agree with the premise of the Bill, but I have spoken to people in some parts of the policing system who say they feel slightly neglected by the wider policing family. It is absolutely right that they should be on the face of the Bill and play a part of wider policing.

Amendment 22 agreed to.

Wendy Chamberlain: I beg to move amendment 27, in clause 28, page 26, line 32, at end insert—

"(3A) Except as provided by subsection (3), sections 1 to 5 and 11 to 22 of this Act may not come into force before the Secretary of State has laid before Parliament and published a report containing—

(a) an assessment of the current capability of police services in England and Wales in relation to the provisions of this Act,

(b) an assessment of the numbers of police officers who will need to be trained in relation to the provisions of this Act, the number of officers who will be needed to deliver the training and the amount of time that that training will take for each officer,

(c) details of how police units will be deployed in relation to the provisions of this Act, including the number of police officers who may be redeployed from other duties, and

(d) an assessment by the Home Office of the likely impact of the provisions of this Act on the number of police officers who will be moved from their usual duties to public order operations in other places."

This amendment would mean that sections 1 to 5 and 11 to 22 of this Act could not come into force until the Government has laid before Parliament a report assessing the current capability of police services to operate the provisions in those sections and the impact on police deployment.

The Chair: With this it will be convenient to discuss amendment 28, in clause 28, page 26, line 35, at end insert—

", which for sections 1 to 5 and 11 to 22 may not be before the date of publication of the report set out in subsection (3A)"

See Explanatory Statement for Amendment 27.

Wendy Chamberlain: Amendment 28 is consequential on amendment 27. We may not have found much to agree on so far in Committee, but what we have all agreed on is how hard our police officers work, how challenging the job is, and how difficult it can be to fulfil their variety of functions. The amendments would place a duty on the Government to report to Parliament on the police's ability to meet their obligations under the Bill before it comes into force.

I am asking for an assessment that includes an analysis of current capability, how many officers would need to be trained to fulfil the requirements, and how many officers would be diverted from day-to-day policing. We all care about local policing and local services, and ensuring that when somebody does contact the police, they have a timeous response that deals with their complaint. We need police officers in our communities, we need them on the streets, and we need them to respond to the public and investigate crimes.

3.30 pm

We heard in evidence last week that responding to protest activity already overstretches the police. Chief Constable Noble told us that Staffordshire police has two or three officers at gold standard and a dozen at bronze. Those courses—gold, silver and bronze levels—are accredited by the College of Policing, so I suggest that people cannot undertake those roles without having completed that training and having had it accredited.

What Chief Constable Noble was not able to tell us, and what we have no way of knowing at the moment, is whether that will be enough to meet the obligations under the Bill. Although I have talked about the accredited courses, there will be a number of other trainings with no accreditation, particularly at constable level. There are additional stop-and-search powers in the Bill, as well as the new offence of being equipped to lock on and the processes for applying for and monitoring SDPOs. That will take up time for police forces that are already overstretched.

Prior to October 2019, it was well documented that police forces in England and Wales were suffering from a lack of numbers. While the Government have since announced the recruitment of 20,000 officers, that simply reverses the previous cuts. Recent reports into the state of policing by Her Majesty's inspectorate of constabulary and fire and rescue services found that recruitment is slow and retention rates are unclear. We also know that the McCloud judgment in relation to pensions will potentially impact officers at the ranks of chief inspector, superintendent and above, so the capability that Chief Constable Noble talked about could also be impacted as those people leave the service.

If there are not enough police officers trained to properly respond to protests and apply these new laws, that means that more people must be trained—training that costs thousands of pounds and means that officers are potentially in classrooms, not out on the street. Chief Constable Noble estimated that the most basic training for an officer takes a few days each year; for a command officer, training takes a week; and the most specialist roles must undertake two to three weeks of training. I know from my own experience how onerous that training commitment is for public order officers. Sir Peter Fahy agreed with him, saying

> "There is no time in policing for training. Again, those officers who are going to be on training courses have to be taken away from other duties".—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 54, Q116.]

How are police supposed to train with all the day-to-day of policing?

With new laws, such as the Police, Crime, Sentencing and Courts Act 2022 and this Bill, training is potentially going to get longer and more complicated. Sir Peter went on to tell the Committee that police officers

> "with due respect to them, do not have the sort of professional background on how to interpret legislation".—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 54, Q116.]

I am pretty sure that Sir Peter did not mean, as it was suggested the shadow Minister meant earlier, that police officers are not capable of interpreting legislation. It absolutely does not mean that, but the job of a police officer is a little bit like the job we do as MPs, in that we are generalists. We have to know lots about everything. If we are very lucky, we get to specialise in a particular area, but we know a lot about a number of things so that we can respond appropriately to our constituents and to legislation.

Kerry McCarthy: I entirely agree with the hon. Lady. As I said, the police in Bristol will be used to dealing with these sorts of situations on the streets, but we will have to bring in police from other forces who will not be accustomed to dealing with them. Does she agree that that is of particular concern? They will not have the knowledge that comes from just being on the job, dealing with cases and talking to colleagues.

Wendy Chamberlain: I agree with the hon. Member. The COP26 policing effort of last year involved mutual aid. That involved, for example, training in Scots law for officers coming from England and Wales, so that created an additional training requirement as well. We have to think about those things. As for my own police experience, my specialism was in sexual offences; I was a sexual offences-trained officer, but from a general perspective, I policed football matches, marches and local demonstrations, and interpreted the law accordingly.

Returning to the evidence given by Chief Constable Noble, the chief constable for Staffordshire, if his numbers are reflective of England and Wales as a whole and assuming that no more officers need to be trained—although I have illustrated why I do not think that is the case—over 3,000 officers across England and Wales will have to be removed from duties and trained in these new laws. That is equivalent to about 125 lost days of frontline policing in local communities, and once those people are fully trained, they will need to be diverted from their duties to police the offences set out in the Bill.

It is logical to think that if it takes 25 officers, currently, to police a protest—I am not putting a number on how many people might be there—through the additional offence of being equipped to lock on, and opening the door to extensive stop and search, many more officers may be required. As I said on Tuesday, if we start arresting protesters, we will run out of police officers before we run out of protesters. I also remember Chief Superintendent Dolby talking about the fact that part of their safety techniques in dealing with protesters involves five police officers to arrest a single protester, so the Minister can quickly see how the odds shift.

[Wendy Chamberlain]

Nearly 47,000 incidents of knife crime were reported to the police in England and Wales in 2021. That is 128 every day. There were nearly 185,000 sexual offences —more than 500 each day. Given the choice between having police officers responding to those calls, filling in paperwork for SDPOs or stopping and searching protesters, I think I know what I and the public would choose. In a recent YouGov poll, more than half of respondents stated that they do not have any confidence in the police to deal with crime. Traffic offences were the only crime that more people than not thought the police were handling with enough rigour.

I also know what the police would choose. That is because our witnesses told us, and because it is set out in the HMICFRS report. Accepting that protests do need policing, all the evidence tells us that best practice requires strong, pre-existing community relations, which simply cannot be established by constantly lifting police officers in and out of the day job and abstracting them to other duties.

I would hope that these amendments would just require the Government to properly look at how the police are resourced. Government Members want this legislation to be successful, but it will not be if the police are under-resourced. Again, Sir Peter Fahy referenced the fact that, in relation to the response to protest, the police could be viewed as incompetent. I am sure that those on the Government Benches would not like that to be the outcome of this legislation.

The Minister heard the same evidence that I did, and he will have heard the same significant concerns about resourcing. Will we get to a position where, in all areas, police officers have been called to deal with protests, and where a demonstration is more strongly policed than crime? The police cannot be given more work and left to struggle. I would argue that all our communities deserve more. I am potentially looking to withdraw my amendment, but I would be happy to discuss, constructively, with the Minister, how we ensure that capability is there.

Sarah Jones: I thank the hon. Lady for her speech. She covered a wide range of challenges the police have before them. It is not unreasonable to expect the Government to ensure that there is capacity within policing to implement legislation if we are making them do so. I also think that she is probably the only person in this room who has policed protests, so, unless anyone else has, we should probably listen to what she says.

On funding, there is a raft of information out there on the lack of and need for training. I would add a couple of other points, made by the inspectorate and others, on what we must do to ensure that we do these things better. The first is on intelligence gathering—finding out, upstream, what is being planned—to ensure that we have enough resources in that area, because that is one of the most effective ways to prevent those repeat offenders.

There is also an interesting chapter in Matt Parr's report on collaboration between agencies, because to effectively police a protest, we need all of the other agencies, such as the local authority and emergency services, alongside the police as well. There were many examples where that collaboration was not working properly, perhaps because people do not have the time to put that in place. In his report, Matt Parr recommended a joint review of that process. I understand that there will be one, but, of course, that has not happened yet, and so those challenges are still there.

I know that the hon. Member for North East Fife is intending this as a probing amendment. However, I think it is a reasonable challenge to the Minister that we should have enough resources to implement this when crime has risen, prosecutions have fallen, and we have seen huge cuts to policing across the board—the numbers have not yet gone back to previous levels. We would support the hon. Lady's amendments.

Kit Malthouse: I have great respect for the experience of the hon. Member for North East Fife, and I salute her service as a police officer. It is a noble calling and she has my admiration for her career, but I am genuinely perplexed by the amendments. They are unnecessary, not least because much of what we have discussed so far and the amendments that we are putting through are about giving the police more prosecutorial powers and allowing them to get ahead of certain protest tactics and to prevent them, therefore reducing the resources required.

For example, we have discussed stop and search. We have had episodes where police officers have seen the lorries going past with the scaffolding poles sticking out of them, but are unable to stop the vehicles and search them for the equipment and have to wait until the individuals erect them. Then the height team has to be called and the unlocking team has to be called. The ability to intervene earlier would mean that we need fewer specialist teams; that we are able to deal with things much more quickly and on a preventative basis, and therefore there is likely to be less call upon resources.

Notwithstanding what the hon. Lady says, we have significant police resources at our disposal now. The last published police officer numbers figure was 142,000. The peak in 2010 was 144,000. We still have 6,000 or 7,000 to go in our recruitment, so we will be well above the previous peak when we get there. There are lots of resources there.

Obviously, police officers need to be trained properly and there need to be adequate resources to deal with public order issues, but we are acting in this debate as if the police are not already heavily engaged in public order, and as if there is not already an enormous absorption of resources. With the Just Stop Oil protests, for example, officers were drafted from Scotland to come down and assist Essex police and Warwickshire police with the policing of the protests.

We are acting as if it is the legislation that we are going to pass—I hope—that will put a demand on the police, rather than the protesters themselves, who are dragging the police officers away from their important work dealing with knife crime and burglary and robbery in our neighbourhoods. The hon. Member for Croydon Central makes much of overall crime being up; she never mentions that kinetic crime—crime in our neighbourhoods—is actually well down. As she says, fraud is up, and that adds to crime and is something that we need to address but, overall, the crimes that impact on us physically are significantly down and that is a tribute to the work that the police have been doing over the last couple of years.

The other thing I find perplexing is the unwillingness to address the urgency of the situation. I understand that on a hot afternoon, on a Thursday with a one-line Whip, it is easy to be relaxed about this, but we should be in no doubt that in recent months we have seen some extremely dangerous protest tactics: people lighting cigarettes on top of petrol tankers; strapping themselves to fuel gantries, through which millions of gallons of fuel are flowing; or digging tunnels that have been caused to collapse on contractors, bringing people's lives into danger.

There is an urgency to what we need to put in place. I understand the desire of the hon. Member for North East Fife to have a training audit before we do anything, but I do not think the situation gives us the time to do that at our leisure. We have to act as swiftly as possibly. I am happy to write to the hon. Lady with what we understand the impact is likely to be, but I ask her to withdraw the amendments on the basis that we must act urgently.

We cannot wait, given the danger that is being presented to the protesters and certainly to the police, and the disruption that the public are seeing. At this time of a cost of living crisis, with people struggling and with rail strikes and whatever we may see over the summer to come, we really cannot have these protest tactics taking place. That is why I would be keen for her to withdraw her amendments.

Wendy Chamberlain: I suppose we could say that the Minister and I have a difference of opinion here. Without an assessment, we will not know who is accurate. The Minister's position is that the measures in the Bill will ultimately mean less abstractions. My argument is that they potentially mean more, from a training and deployment perspective. Without an assessment, we will not know.

The hon. Member for Stockton North asked Sir Peter Fahy about resources last week. Sir Peter said that

"the public think that there are lots of police officers sitting around in police stations doing nothing, whereas the reality is—somehow the police service needs to find a better way of articulating this—that no, even the Metropolitan police does not have loads of spare officers."—[*Official Report, Public Order Public Bill Committee,* 9 June 2022; c. 62, Q123.]

The Minister has said that he believes there are sufficient resources, but he also went on to say that the authorities needed to bring police officers from Scotland in order to stop a Just Stop Oil protest. There are issues with resources, and my amendment would ensure that there was a report looking at the capability of police services. I welcome the Minister's offer to write to me on what assessment the Government have taken into consideration, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

3.45 pm

Amendment made: 23, in clause 28, page 26, line 33, leave out "subsection (3)" and insert "subsections (3) and (3A)".—*(Kit Malthouse.)*

This amendment is consequential on Amendment 22.

Clause 28, as amended, ordered to stand part of the Bill.

New Clause 4

ASSEMBLIES AND ONE-PERSON PROTESTS: BRITISH TRANSPORT POLICE AND MOD POLICE

"(1) The Public Order Act 1986 is amended as follows.

(2) In section 14 (imposing conditions on public assemblies)—

(a) in subsection (2), after paragraph (b) (and on a new line) insert "This is subject to subsections (2ZA) and (2ZB).",

(b) after subsection (2) insert—

"(2ZA) The reference in subsection (2)(a) to a police officer includes—

(a) a constable of the British Transport Police Force, in relation to a place within section 31(1)(a) to (f) of the Railways and Transport Safety Act 2003 in England and Wales;

(b) a member of the Ministry of Defence Police, in relation to a place to which section 2(2) of the Ministry of Defence Police Act 1987 applies.

(2ZB) The reference in subsection (2)(b) to a chief officer of police includes—

(a) the chief constable of the British Transport Police Force, in relation to a place within section 31(1)(a) to (f) of the Railways and Transport Safety Act 2003 in England and Wales;

(b) the chief constable of the Ministry of Defence Police, in relation to a place to which section 2(2) of the Ministry of Defence Police Act 1987 applies.", and

(c) in subsection (3)—

(i) omit "by a chief officer of police", and

(ii) after "(2)(b)" insert "or (2ZB)".

(3) In section 14ZA (imposing conditions on one-person protests)—

(a) in subsection (5), after paragraph (b) (and on a new line) insert "This is subject to subsections (5A) and (5B).",

(b) after subsection (5) insert—

"(5A) The reference in subsection (5)(a) to a police officer includes—

(a) a constable of the British Transport Police Force, in relation to a one-person protest—

(i) being held at a place within section 31(1)(a) to (f) of the Railways and Transport Safety Act 2003, or

(ii) intended to be held at a place within sub-paragraph (i) in a case where a person is in that place with a view to carrying on such a protest;

(b) a member of the Ministry of Defence Police, in relation to a one-person protest—

(i) being held at a place to which section 2(2) of the Ministry of Defence Police Act 1987 applies, or

(ii) intended to be held at a place within sub-paragraph (i) in a case where a person is in that place with a view to carrying on such a protest.

(5B) The reference in subsection (5)(b) to a chief officer of police includes—

(a) the chief constable of the British Transport Police Force, in relation to a one-person protest intended to be held at a place within section 31(1)(a) to (f) of the Railways and Transport Safety Act 2003, other than a one-person protest within subsection (5A)(a)(ii);

(b) the chief constable of the Ministry of Defence Police, in relation to a one-person protest intended to be held at a place to which section 2(2) of the Ministry of Defence Police Act 1987 applies, other than a one-person protest within subsection (5A)(b)(ii)."

(c) in subsection (9)—

(i) omit "by a chief officer of police", and

(ii) after "(5)(b) insert "or (5B)".

(4) In section 14A (prohibiting trespassory assemblies)—

(a) after subsection (4) insert—

"(4A) Subsection (4D) applies if at any time the chief constable of the British Transport Police Force reasonably believes that—

(a) an assembly is intended to be held at a place—

(i) within section 31(1)(a) to (f) of the Railways and Transport Safety Act 2003 in England and Wales, and

(ii) on land to which the public has no right of access or only a limited right of access, and

(b) the conditions in subsections (4B) and (4C) are met.

(4B) The condition in this subsection is that the assembly is likely—

(a) to be held without the permission of the occupier of the land, or

(b) to conduct itself in such a way as to exceed—

(i) the limits of any permission of the occupier, or

(ii) the limits of the public's right of access.

(4C) The condition in this subsection is that the assembly may result—

(a) in serious disruption to the provision of railway services (within the meaning of Part 3 of the Railways and Transport Safety Act 2003) in England and Wales,

(b) in serious disruption to the life of the community, or

(c) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument.

(4D) Where this subsection applies, the chief constable of the British Transport Police Force may with the consent of the Secretary of State make an order prohibiting for a specified period the holding of all trespassory assemblies in a specified area.

(4E) An area specified in an order under subsection (4D) must comprise only—

(a) the place mentioned in subsection (4A)(a), or

(b) that place together with any place in England and Wales—

(i) within section 31(1)(a) to (f) of the Railways and Transport Safety Act 2003, or

(ii) where an assembly could affect a railway within the meaning of Part 3 of that Act or anything occurring on or in relation to such a railway.

(4F) Subsection (4I) applies if at any time the chief constable of the Ministry of Defence Police reasonably believes that—

(a) an assembly is intended to be held at a place—

(i) to which section 2(2) of the Ministry of Defence Police Act 1987 applies, and

(ii) on land to which the public has no right of access or only a limited right of access, and

(b) the conditions in subsections (4G) and (4H) are met.

(4G) The condition in this subsection is that the assembly is likely—

(a) to be held without the permission of the occupier of the land, or

(b) to conduct itself in such a way as to exceed—

(i) the limits of any permission of the occupier, or

(ii) the limits of the public's right of access.

(4H) The condition in this subsection is that the assembly may result—

(a) in serious disruption to the use for a defence purpose of—

(i) a place within section 2(2)(a) to (c) of the Ministry of Defence Police Act 1987,

(ii) a place within section 4(1) of the Atomic Weapons Establishment Act 1991, or

(iii) in relation to a time after the coming into force of section 5 of the Defence Reform Act 2014, a place within subsection (1) of that section,

(b) in serious disruption to the life of the community, or

(c) where the land, or a building or monument on it, is of historical, architectural, archaeological or scientific importance, in significant damage to the land, building or monument.

(4I) Where this subsection applies, the chief constable of the Ministry of Defence Police may with the consent of the Secretary of State make an order prohibiting for a specified period the holding of all trespassory assemblies in a specified area.

(4J) An area specified in an order under subsection (4I) which is not made in reliance on subsection (4H)(a) must comprise only one or more places to which section 2(2) of the Ministry of Defence Police Act 1987 applies."

(b) in subsection (7), for "or subsection (4)" substitute ", subsection (4), subsection (4D) or subsection (4I)", and

(c) in subsection (9), in the definition of "occupier", for "and (4)" substitute ", (4), (4B) and (4G)".

(5) In section 15 (delegation), after subsection (2) insert—

"(3) The chief constable of the British Transport Police Force may delegate, to such extent and subject to such conditions as the chief constable may specify, any of the chief constable's functions under sections 14 to 14A to an assistant chief constable of that Force; and references in those sections to the person delegating shall be construed accordingly.

(4) The chief constable of the Ministry of Defence Police may delegate, to such extent and subject to such conditions as the chief constable may specify, any of the chief constable's functions under sections 14 to 14A to a deputy chief constable or assistant chief constable of that force; and references in those sections to the person delegating shall be construed accordingly.""—*(Kit Malthouse.)*

This new clause makes provision for members of the British Transport Police Force and the Ministry of Defence Police to exercise certain powers in Part 2 of the Public Order Act 1986 in relation to assemblies and one-person protests.

Brought up, read the First and Second time, and added to the Bill.

New Clause 5

OFFENCE OF CAUSING SERIOUS DISRUPTION BY TUNNELLING

"(1) A person commits an offence if—

(a) they create, or participate in the creation of, a tunnel,

(b) the creation or existence of the tunnel causes, or is capable of causing, serious disruption to—

(i) two or more individuals, or

(ii) an organisation,

in a place other than a dwelling, and

(c) they intend the creation or existence of the tunnel to have a consequence mentioned in paragraph (b) or are reckless as to whether its creation or existence will have such a consequence.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse for creating, or participating in the creation of, the tunnel.

(3) Without prejudice to the generality of subsection (2), a person is to be treated as having a reasonable excuse for the purposes of that subsection if the creation of the tunnel was authorised by a person with an interest in land which entitled them to authorise its creation.

(4) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court, to a fine or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 3 years, to a fine or to both.

(5) For the purposes of this section—

(a) "tunnel" means an excavation that extends beneath land, whether or not—

(i) it is big enough to permit the entry or passage of an individual, or

(ii) it leads to a particular destination;

(b) an excavation which is created with the intention that it will become or connect with a tunnel is to be treated as a tunnel, whether or not—

(i) any tunnel with which it is intended to connect has already been created, or

(ii) it is big enough to permit the entry or passage of an individual.

(6) References in this section to the creation of an excavation include—

(a) the extension or enlargement of an excavation, and

(b) the alteration of a natural or artificial underground feature.

(7) This section does not apply in relation to a tunnel if or to the extent that it is in or under a dwelling.

(8) In this section "dwelling" has the same meaning as in section 1 (offence of locking on)."—*(Kit Malthouse.)*

This new clause creates a new offence of creating a tunnel, where this causes serious disruption and the person in question intends to cause serious disruption or is reckless as to whether their actions will do so.

Brought up, read the First and Second time, and added to the Bill.

New Clause 6

OFFENCE OF CAUSING SERIOUS DISRUPTION BY BEING PRESENT IN A TUNNEL

"(1) A person commits an offence if—

(a) they are present in a tunnel having entered it after the coming into force of this section,

(b) their presence in the tunnel causes, or is capable of causing, serious disruption to—

(i) two or more individuals, or

(ii) an organisation,

in a place other than a dwelling, and

(c) they intend their presence in the tunnel to have a consequence mentioned in paragraph (b) or are reckless as to whether their presence there will have such a consequence.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that they had a reasonable excuse for their presence in the tunnel.

(3) Without prejudice to the generality of subsection (2), a person ("P") is to be treated as having a reasonable excuse for the purposes of that subsection if P's presence in the tunnel was authorised by a person with an interest in land which entitled them to authorise P's presence there.

(4) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates' court, to a fine or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 3 years, to a fine or to both.

(5) For the purposes of this section—

(a) "tunnel" means an excavation that extends beneath land, whether or not it leads to a particular destination;

(b) an excavation which is created with the intention that it will become or connect with a tunnel is to be treated as a tunnel, whether or not any tunnel with which it is intended to connect has already been created.

(6) The reference in subsection (5)(b) to the creation of an excavation includes—

(a) the extension or enlargement of an excavation, and

(b) the alteration of a natural or artificial underground feature.

(7) This section does not apply in relation to a tunnel if or to the extent that it is in or under a dwelling.

(8) In this section "dwelling" has the same meaning as in section 1 (offence of locking on)."—*(Kit Malthouse.)*

This new clause creates a new offence of being present in a tunnel, where this causes serious disruption and the person in question intends to cause serious disruption or is reckless as to whether their actions will do so.

Brought up, read the First and Second time, and added to the Bill.

New Clause 7

OFFENCE OF BEING EQUIPPED FOR TUNNELLING ETC

"(1) A person commits an offence if they have an object with them in a place other than a dwelling with the intention that it may be used in the course of or in connection with the commission by any person of an offence under section (Offence of causing serious disruption by tunnelling)(1) or (Offence of causing serious disruption by being present in a tunnel)(1) (offences relating to tunnelling).

(2) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences, to a fine or to both.

(3) In subsection (2), "the maximum term for summary offences" means—

(a) if the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for certain summary offences: England and Wales) comes into force, six months;

(b) if the offence is committed after that time, 51 weeks.

(4) In this section "dwelling" has the same meaning as in section 1 (offence of locking on)."—*(Kit Malthouse.)*

This new clause creates a new offence committed by a person who has an object with them in a place other than a dwelling with the intention that it may be used in the course of or in connection with the commission by any person of an offence relating to tunnelling under the new clause inserted by NC5 or NC6.

Brought up, and read the First time.

Kit Malthouse: I beg to move, That the clause be read a Second time.

[Kit Malthouse]

I will be brief, because we have already had a substantive debate on the new tunnelling offence. As with the overall offence, the offence of going equipped to tunnel makes it clear that protesters' tactic of building tunnels in order to disrupt legitimate activity—while endangering themselves, the police and the emergency services that respond—will not be tolerated. New clause 7 makes it an offence to go equipped for tunnelling, which will be punishable by six months' imprisonment, an unlimited fine or both.

As we heard from the NPCC, it is clear that the police need powers to proactively tackle tunnels before they occur. New clause 7, combined with amendments 25 and 26, will allow the police to take the necessary preventive action against those who they believe may be intending to tunnel, protecting the public from serious disruption. We have already debated the principle of the offence of going equipped, and the police's ability to decide between those who are going equipped to commit an offence and those who are going equipped for legitimate purposes.

Sarah Jones: This new clause creates a new offence committed by a person who has an object with them in a place, other than a dwelling, with the intention that it might be used in the course of, or in connection to, the commission by any person of any offence relating to tunnelling—under new clauses 5 and 6, which we have just agreed to.

The concerns that I raised earlier apply to new clause 7, so I do not intend to detain the Committee for long. Our key point, as I said earlier, is that the National Police Chiefs' Council lead in this area, Chris Noble, said of the Government's plans to make it an offence to cause serious disruption by tunnelling, or be present in a tunnel or equipped for tunnelling:

"Whilst forces have experienced tunnelling in recent operations, we do not believe that a specific offence around tunnelling will add anything above and beyond our current available powers."

We know the Criminal Damage Act 1971 creates those offences of damaging property and having articles to damage property. The Minister talked about the police's inability to stop people who might be on their way to commit some of these offences, but the police already have the power to search in order to allow them to find articles or equipment intended to cause damage. In the case he cited—I do not know which case that was—that power is there, so a new offence of being equipped for tunnelling will only add to the police's existing powers to address the problem of tunnelling.

We do not believe the new offence would be a deterrent for repeat offenders who may have the means to withstand fines or may see convictions as a badge of honour. We heard about people using crowdfunding to pay fines, which is another example of repeat offenders who want to be in the criminal justice system.

Commenting on the new provisions, the Home Secretary said that the tunnelling protests

"divert precious police resources away from where they are needed most".

That is true, but then she said:

"These measures will give our police the powers they need to crack down on this lawlessness and continue to make our streets safer."

We do not believe that is the case.

The National Police Chiefs' Council, the national co-ordination body for law enforcement in the United Kingdom and a representative body for police chief officers, is telling the Government that the police do not need these powers on tunnelling. We all appreciate how irritating hard-line protestors are, how much they put people in danger and how much taxpayers' money is spent on policing what they have done, but I repeat that we believe the police could use existing powers to deal with these issues, and therefore we do not support new clause 7.

Question put and agreed to.

New clause 7 accordingly read a Second time, and added to the Bill.

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

3.54 pm

Adjourned till Tuesday 21 June at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

POB13 David Smart Knight
POB14 Steven Beech
POB15 John Windsor
POB16 Jaye Brighton