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GENERAL COMMITTEES

Public Bill Committee

PUBLIC ORDER BILL

Fifth Sitting

Thursday 16 June 2022

(Morning)

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CLAUSES 6 TO 11 agreed to, some with amendments.

CLAUSE 12 under consideration when the Committee adjourned till this day at Two o'clock.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 20 June 2022

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The Committee consisted of the following Members:

Chairs: PETER DOWD, †DAVID MUNDELL

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

Public Bill Committee

Thursday 16 June 2022

Morning

[DAVID MUNDELL *in the Chair*]

Public Order Bill

11.30 am

The Chair: Order. Before we begin I have a few preliminary reminders for the Committee. Please switch electronic devices to silent. No food or drink is permitted during the sittings of this Committee, except for the water provided. *Hansard* colleagues would be grateful if Members could email their speaking notes to hansardnotes@parliament.uk or, alternatively, pass on their written speaking notes to the *Hansard* colleague in the room.

Clause 6

POWERS TO STOP AND SEARCH ON SUSPICION

The Minister for Crime and Policing (Kit Malthouse): I beg to move amendment 25, clause 6, page 8, line 23, at end insert—

- “(ha) an offence under section (Offence of causing serious disruption by tunnelling) of that Act (offence of causing serious disruption by tunnelling);
- (hb) an offence under section (Offence of causing serious disruption by being present in a tunnel) of that Act (offence of causing serious disruption by being present in a tunnel)”.

This amendment applies the stop and search powers in section 1 of the Police and Criminal Evidence Act 1984 to an offence relating to tunnelling under the new clause inserted by NC5 or NC6

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

Government amendment 26.

Government new clause 5—*Offence of causing serious disruption by tunnelling.*

Government new clause 6—*Offence of causing serious disruption by being present in a tunnel.*

Kit Malthouse: It is a great pleasure to serve under your wise guidance, Mr Mundell, for our contemplation of this legislation today. The amendments make it clear that the protest tactic of building tunnels in order to disrupt legitimate activity while endangering the protesters themselves and the police and emergency services who respond will not be tolerated. The Committee heard last week how HS2 had been targeted on multiple occasions by people building tunnels that have caused enormous cost to the project, with three removal operations alone costing in excess of £10 million.

Even more recently, we have seen protesters from Just Stop Oil engaging in this dangerous and reckless activity at sites in Essex and Warwickshire. Aside from the costs, however, it is the risk of a fatality at one of the

sites that concerns us most. Whatever hon. Members think about the merits of a particular cause and the right to protest, we can all agree that such an utterly reckless practice must not be allowed to continue.

Although the individuals may be willing to put themselves at risk, it is not acceptable that they endanger those who are called upon to remove them and repair the damage inflicted. The tunnels are often structurally unsound and poorly ventilated. In addition, the protesters resist removal, increasing the risks for those we ask to enforce the law. While removing protesters from the Euston Square tunnel, for example, HS2 reported that a protester removed part of the shoring, causing a tunnel to collapse on a contractor.

New clause 5 therefore creates a new offence of creating a tunnel, which will be committed when an individual causes serious disruption by creating a tunnel. Their action must cause, or be capable of causing, serious disruption to an organisation or two or more individuals—as we have seen in earlier clauses in the Bill—and the person must intend the tunnel to have a consequence or be reckless as to the consequence. To deter a committed cohort of protest tunnellers, the clause enables a maximum sentence of three years’ imprisonment and/or a fine. The clause also includes a reasonable excuse exemption, as have previous clauses.

New clause 6 is designed to cover those who occupy a tunnel as well as those who constructed it in the first place. They will be liable to a similar penalty of up to three years’ imprisonment and/or a fine. The threshold of serious disruption for this offence will be the same as in new clause 5. For both clauses, the tunnel has been defined as any excavation, whether it leads to a destination or is enough to permit the passage of an individual. We have also included in scope any extension or enlargement of existing natural or artificial excavations. The breadth of the definition will ensure that all stages of this dangerous tactic will be captured.

Government amendments 25 and 26 extend the Bill’s suspicion-based and suspicion-less stop and search powers to include equipment that may be used for creating or being present in a tunnel. It is clear that the police need powers to tackle tunnels proactively before they occur. Those two amendments, alongside new clause 7, which we will debate later, will allow the police to take the necessary preventive action against those they believe may be intending to tunnel, protecting the public from serious disruption.

Finally, the level of sentences for these new offences reflects the level of harm that tunnelling can cause. Not only do they cause significant disruption and cost millions of pounds to clean up, as we heard, but they place protesters and, critically, emergency workers at extraordinary risk of serious injury or death. We therefore think it is completely proportionate that the maximum sentences for these offences are as high as I have set out, for the reasons that I have set out.

Sarah Jones (Croydon Central) (Lab): It is a pleasure to serve under your chairmanship again today, Mr Mundell.

We move on this morning to powers on stop and search. In this group, the Government are making changes, including to clause 6, through two amendments and two new clauses that deal with tunnelling, which follows the evidence we heard from HS2 about problems

that were seen at its sites. It is interesting to note in the news today that an absolutely stunning Anglo-Saxon burial site has just been discovered on the HS2 route—140 people were buried with an amazing array of items. That is tangential, but interesting.

Kit Malthouse: We cannot backdate the charges.

Sarah Jones: No, we cannot, as the Minister says. Government amendments 25 and 26 apply the stop-and-search powers of clauses 6 and 7 to the new offences related to tunnelling that are included in Government new clauses 5 and 6. These amendments will make it a criminal offence to cause serious disruption by creating and occupying tunnels; going equipped to create tunnels will also be criminalised. The changes include the proposed new maximum sentence, as the Minister said, of three years' imprisonment and an unlimited fine.

I think we can all agree again today that the digging of these tunnels is incredibly disruptive and dangerous, and obviously hugely costly. As the Government's note says, they are filled with lethal levels of carbon monoxide and carbon dioxide and the tunnels can become death traps, not just for those inside them and members of the public but for those who are required to undertake rescue operations.

HS2's written evidence gives a clear picture of the danger and disruption, including:

"delay costs, policing, local authority costs, or the additional security costs to maintain a safe and secure compound once protestors have been removed. For a typical tunnel removal operation, HS2 Ltd employs specialists in soil composition, mine rescue, drone operation, health and safety, and paramedics. Protestors are either unaware of the danger of the situation they put themselves in, or have absolute faith in HS2 Ltd's ability to extract them safely. The risk of a fatality occurring during a tunnelling protest is significant.

Protestors rely on HS2 Ltd's contractors to monitor air quality, supply air and to remove human waste from the tunnels...During the Euston eviction operation, a protestor removed shoring that caused a tunnel to collapse on a rescue contractor. Whilst the latter incident caused only minor injury, the ongoing threat to the lives of HS2's staff and protestors is clearly in evidence.

Air quality is often poor inside make-shift tunnels and sometimes...deadly. Deadly levels of carbon monoxide and dioxide were found in tunnels at Small Dean, for example, and the removal team had to provide an air supply to avoid the occupants being overcome and experiencing breathing difficulties. The provision of a constant air supply is not always possible as some ground conditions mean that there is a risk of further instability and risk of collapse being created if the soil is dried out by the provision of air. Tunnels can be extremely deep and are often inadequately shored creating a very real risk of collapse".

Nobody has the right to put other people's lives in danger with this kind of dangerous act. As we heard, the removal operation following tunnelling by protestors at Small Dean in Buckinghamshire in 2021 added more than £4 million to the cost of HS2.

The act of digging a tunnel by a group such as Just Stop Oil or those at HS2 in Euston is already a criminal act—we have had this conversation already. Like most of the offences introduced in this Bill, tunnelling is already covered by existing offences. Aggravated trespass with a prison sentence of three months and criminal damage with a prison sentence of up to 10 years could both apply here.

Kit Malthouse: The hon. Lady has raised the issue of the aggravated trespass offence on a number of occasions as a charge that can be used, so I asked my team to look at why aggravated trespass is not necessarily ideal. What we have found is that in a number of situations, not least with HS2, defendants against aggravated trespass in court claim that they are disrupting unlawful activity. That shifts the burden of proof on to, in this case, HS2 to prove that what it was doing was lawful. For example, at the Euston Square Gardens tunnel aggravated trespass was used, and HS2 was required to present to the court what work was being carried out on the land at the time the protesters were in the tunnel and show it was lawful. The case was dismissed by the judge on the grounds that no construction was being carried out on the land at the time. This failed to recognise that HS2 could not start substantive work on the land because protesters were in the tunnel. This specific offence will cover that.

I am sure the hon. Lady also recognises that a tunnel may cross between different ownerships of land and between public and private land. That legal complexity causes a problem. While I understand that she is cleaving to aggravated trespass in many of her oppositions to these clauses, actually, this issue of the protesters being able to reverse the burden of proof is hugely problematic. That is what we are seeking to address.

Sarah Jones: I thank the Minister for that substantial intervention. I would answer with the words of the police themselves on that very point. The National Police Chiefs' Council lead in this area 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—that:

"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."

I think that is really significant. The police have not asked for this offence, and they do not believe it is necessary at all. They believe the existing powers they have are enough to deal with these protests. This is a point we keep coming back to. We have talked through this. I will not read it out again, but I was looking for my list of all the other offences people can be charged with in different circumstances. The police have a raft of powers and say themselves that in this case they do not need these powers. They have broad catch-all ones such as breach of the peace and very specific ones with options for long custodial sentences to deal with and manage protests that are disruptive. Two key issues come up time and again with these new offences. They are either going to be difficult for the police to put in practice or they will make no difference to the time it takes to deal with the disruption.

Kit Malthouse: Sorry, I should have been clear in what I said earlier. I heard the evidence by the National Police Chiefs' Council lead. The problem is not necessarily the police's ability to remove and charge those individuals. The problems, as I outlined in the example I used, come in the courts. The current suite of offences that are being incurred gives wriggle room for protesters to make this claim and reverse the burden of proof. I am sure the hon. Lady will agree that what happened at Euston Square was very dangerous, and I hope she agrees that an offence was committed, but at Euston Square they were able to avoid punishment for what they did by using this technicality.

Sarah Jones: I will say two things. First, there is a raft of powers, not least injunctions. HS2 has used injunctions successfully and is currently applying for this whole-route injunction. We will see what comes of that. The second point is an interesting one that we can debate further another time. It is that the courts take different views according to what people are protesting and where. They are more sympathetic to people who are protesting the thing they are against than they are when people are disrupting the public more widely. That is why they have sent people to prison for blocking motorways and have taken a different view on things like the Colston statue.

There is an interesting point about how the courts interpret these things, but I think all these issues come into play when looking at this. We do not believe it is going to make any difference to the time it takes to deal with the disruption, which is important, because that is a core part of the problem itself. Sadly, we do not think it will make the protest removal teams safer when trying to get protesters out. We do not think it will be a deterrent to those repeat offenders we have talked a lot about or that it will speed up the complex and time-consuming removal process.

11.45 am

Lee Anderson (Ashfield) (Con): I speak with some experience on the matter because I was a tunneller; I worked underground in coalmines in Nottinghamshire and Derbyshire for many years. It is a dangerous, dirty and horrible life-risking job, so I would welcome any measure that acts as a deterrent—it is a drastic measure. Does the hon. Member not agree that we should be doing everything in our power to stop these people doing this?

Sarah Jones: I agree with the hon. Gentleman's frustration, but I listen to the police when we look at what they need. They are saying that this will not help them. I would listen to them, and I would look at the existing powers. I want to read some more of the written evidence from the National Police Chiefs' Council lead on public order and public safety, who states:

"A specific offence would likely not change how these are operationally handled as whatever the offence the practical safety considerations of dealing with people in tunnels would remain. There is current legislation, such as that contained in the Criminal Damage Act 1971, that creates offences of damaging property and having articles to damage property. With the associated powers of search these allow the Police to find articles or equipment intended to cause damage. An additional significant concern is that any specific offence relating to tunnelling would apply to private land. This again could place a significant responsibility on policing. We ask that if considered that this offence is restricted to public places."

That was the NPCC highlighting a few concerns it has with the plans.

Clause 6 and new clause 5 seem to apply to tunnelling everywhere except

"to the extent that it is in or under a dwelling",

so any offence to do with tunnelling applies to private land, even if it is under a dwelling—essentially, a place where people live. Take the example of protests taking place against a particular farmer for growing a crop in a private field that protesters oppose or for another matter. If the protesters tunnel under the private field, which

could cause disruption and is annoying for the farmer, but it does not destroy the crops, what should happen? There are some complications in terms of the police concerns, which we need to bring to light here.

Chris Noble said in his oral evidence:

"this probably goes to the core of one of the key issues that police are keen to discuss within the Committee—the vast majority of that work is done by the landowners and private companies that are skilled and experienced within this work. While I have some dedicated resources allocated to that at present, if that responsibility was to significantly shift to policing, it would cost me... in the region of £80,000 a day to resource that. It would need significant officer resources, which clearly would need to come from elsewhere".

That is crucial.

He said:

"The key... is not so much even, necessarily, an offence around tunnelling, because we may well have powers that, broadly speaking, exist to deal with it—we are keen to develop that conversation. The challenge is in preventing it in the first place, and then in how we can work with industry and landowners"

so we can

"potentially remove individuals more quickly."—[*Official Report, Public Order Public Bill Committee*, 9 June 2022; c. 12, Q14.]

The challenge is how to prevent tunnelling. The new powers replicate powers the police already have, and we agree with the NPCC on a lot of their concerns.

The NPCC also raised concerns about the responsibility that the new offences will place on police. The Bill has drawn out a bit of conflict between the police and private companies, which is interesting. John Groves from HS2 said:

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

Then we have the police asking the Government to consider that this offence is restricted to public places. Surely the intention of Government legislation like this is to make the lives of the police and private companies building infrastructure easier. It is perhaps problematic when complications are raised on both sides. We need to be mindful of the position that this may put the police in, blurring the lines of public and private that we understand. Policing of protests is called public order policing for a reason: it is usually about protests happening on public land.

Kit Malthouse: I understand the argument that the hon. Lady is making, but I think we have accepted the principle that what these people are doing is not protesting. They are effectively committing a crime, and it is a well-established principle that regardless of whether a crime—for example, a burglary—is committed on public or private land, the police will apprehend, prosecute and investigate. Unless the hon. Lady is saying that tunnelling is a legitimate protest—notwithstanding the dangerous things that we have all talked about, and the cost—I do not understand her argument. Secondly, it is worth bearing in mind that regardless of whether the cost falls on HS2 or the police, it is falling on the taxpayer.

Sarah Jones: The point I was trying to make was to echo the concerns that the police have expressed about the expectation on them to go and do things on private land, the cost associated with that, and the need to deal

with that issue. To reiterate, they have said that they think there are already suitable powers for them to stop people when they are committing a criminal act, which we agree tunnelling is. They have said they do not need this extra power. There is also criminal damage, which carries a sentence of up to 10 years in prison, so there are different forms of offences that we can look to.

With regard to the new powers, there is also the issue of training. According to the Police Foundation, over the seven years up to 2017-18, 33 forces reduced their budgeted spending on training in real terms by a greater percentage than their overall reduction in spending. Some 40% of police officers say they did not receive the necessary training to do their job, so I am concerned that many things in the Bill, particularly the new clauses, need to go along with properly resourced training to make sure that people understand and know what the new powers are. We have talked about the complexities of introducing new laws and expecting the police to understand them all many times before, not least with all the covid legislation.

Kerry McCarthy (Bristol East) (Lab): I thank my hon. Friend for mentioning that, because it is something that has been bothering me. As I have said before, I was with the police in the operation centre when they were looking at protests in Bristol. Part of the briefing before protests involves telling the police what offences might be committed, what to look for and so on. We have a plethora of offences, and they have to make judgments on whether something is a serious disruption. The more complex it is, the more difficult it will be for the police to know what they are supposed to do when they are out on the streets in a very difficult situation.

Sarah Jones: I thank my hon. Friend for that perfect point. This is the challenge that policing has, and we have seen it with the recruitment of new officers as well. We need to make sure that everybody has the right training and understands the legal routes that they can use, and piling new and complex legislation on top of what we think is satisfactory legislation is problematic.

Mrs Natalie Elphicke (Dover) (Con): Having listened carefully to the hon. Lady, I have become more concerned about the complexity of the current situation that the police find themselves in. Is tunnelling okay if it is under a field because someone does not like genetically modified crops? What if the tunnelling is to do with something that will happen in the future, such as HS2? It seems to me that the Bill is a very clear piece of legislation that will address the public order issues that exist today. We will know that tunnelling is criminal, and it will be stopped under the Bill. I, too, have been in control rooms dealing with public order issues down in Dover, and it will make the police's job easier to have the kind of clarity that the Bill will bring.

Sarah Jones: I refer back to the fact that the police themselves do not share the hon. Lady's view. In this case, what they are saying is perfectly sensible. I do not think anybody is saying that we want people to be tunnelling in dangerous situations and putting people's lives at risk; nobody wants that. Everybody agrees that there should be criminal sanctions. That is not the point.

Moving to deterrents and whether this measure would act as one, companies like HS2 hope that it will. It said many times in evidence that it was not an expert on the legal side, but that it hoped the measures would be a deterrent. HS2's written evidence refers to how it is pursuing the route-wide civil injunction. It reads:

"Whilst, if granted, it is hoped that the route-wide injunction will significantly reduce disruption to the project caused by trespass and obstruction of access, it is unlikely to eliminate the problem."

HS2 also writes that civil injunctions

"serve as a relatively effective deterrent to unlawful (in the civil legal sense) activity by some groups of protestors".

We will talk about injunctions later, but as HS2 says, it is a relatively effective deterrent—if not also expensive.

The Government will take ages to implement more offences. My hon. Friend the Member for Stockton North made a speech on Tuesday about the court backlog. If we are adding new and complex criminal offences, maybe we need to sort the court backlog and the record 708 days it takes on average from offence to completion of a case. That is an extraordinarily long period of time. The longest delay from offence to completion was in Bournemouth, which recorded waits of 23 months in 2021.

I will conclude my remarks at this point by reiterating that we think tunnelling is very dangerous and that it is a difficult issue. There are existing laws in place, and we do not think that these measures are the answer. Therefore, we are not entirely convinced by the Government's arguments today.

Amendment 25 agreed to.

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

Kit Malthouse: It is clear that police need the powers to proactively prevent criminal protest activity before it occurs. The hon. Lady has put great store by the evidence of the National Police Chiefs' Council. She will recall it specifically saying that the ability to stop and search people in and around protests would be helpful, and in its report on the policing of protests, Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services argued that stop-and-search powers would improve the police's ability to prevent serious disruption.

Clause 6 extends existing suspicion-led stop-and-search powers to a range of protest-related offences. Police officers will have the power to stop and search anyone they reasonably suspect is carrying items that could be used for locking on, obstruction of major transport works, interference with key infrastructure, public nuisance, obstruction of the highway or the new offences of tunnelling and being present in a tunnel, which have been tabled as Government amendments to the Bill. Existing safeguards, including statutory codes of practice, body-worn video to increase accountability and extensive data collection will continue to apply to ensure that the police use stop and search in an effective and proportionate manner.

While I understand the concerns that have been shared about the expansion of stop and search widely in society, it is clear that these powers are required to allow the police to take the necessary action to prevent the small minority of determined protesters causing serious disruption. I commend the clause to the Committee.

Sarah Jones: Clause 6 amends section 1 of the Police and Criminal Evidence Act 1984—PACE, as we call it—to allow a constable to stop and search a person or vehicle if they have reasonable grounds for suspecting that they will find an article made, adapted or intended for use in the course of or in connection with a range of offences listed in the Bill. The exercise of stop-and-search powers under section 1 of PACE is subject to PACE code of practice A, which will be updated to reflect the extension of the section 1 powers. This gives the police wide-ranging powers to stop and search anyone in the vicinity of a protest, such as shoppers passing a protest against a library closure. In the words of Liberty:

“This amendment constitutes a mass expansion of police powers through the creation of protest-specific stop and search. This is in spite of the fact that there is no consensus among the police that protest-specific stop and search is necessary or desirable.”

12 noon

It is worth being clear about what stop and search is used for now. It is so intrusive because it is used for very serious offences. Police stop and search for drugs, weapons, knives and guns. We know that it can be a useful tool and has the potential to stop murder, serious violence and acts of terror. While we do not disagree with the premise of stop and search and recognise that it can be very helpful—I am sure we have all had conversations with both police and communities who talk of its benefits—the clauses in the Bill are a big expansion of powers.

Alex Cunningham (Stockton North) (Lab): My hon. Friend will recollect that when she and I worked on the Police, Crime, Sentencing and Courts Act 2022, many issues were raised about the disproportionate effect that that legislation would have on young black people. The same applies here. What comments would she make about how, yet again, we will see a disproportionate effect on people of ethnic minorities?

Sarah Jones: As always, my hon. Friend makes a good point. I will come on to talk about that in my later remarks.

Lord Kennedy, in the Lords, said:

“the Government are mirroring laws that currently exist for serious violence and knife crime.”

He went on to say that

“these measures apply to peaceful protesters, not people carrying knives or causing violence.”—[*Official Report, House of Lords*, 24 November 2021; Vol. 816, c. 992-993.]

Matt Parr, Her Majesty’s inspector, said that current suspicionless stop and search powers

“are intended to be used by the police to combat serious violence and the carriage of ‘dangerous instruments or offensive weapons’. Using a similar suspicion-less power to target peaceful protesters, who may cause serious (but non-violent) disruption, is a significantly different proposition. Given the potential ‘chilling effect’ on freedom of assembly and expression in terms of discouraging people from attending protests where they may be stopped and searched, we would expect any new suspicion-less powers to be subject to very careful scrutiny by the courts.”

In the same document, it was said that

“police officers highlighted operational difficulties in the targeted use of the power. Others were also concerned over the proportionality of any search as well as the potentially intrusive nature when looking for small items.

One officer reflected that the proposal had ‘complications’ – for instance, whether an otherwise innocuous items was really intended to be used to lock-on. He said that having a tube of superglue in your pocket, or chain and padlock that you intend to use to lock your bike, ‘doesn’t prove intent and presents difficulties’.”

Kerry McCarthy: Concern about that has been expressed in Bristol. There are a lot of cyclists in Bristol and many who would be carrying bike locks around with them. College Green is the area where people tend to congregate if there is going to be a march or a protest. However, there would be an awful lot of people in that area who might well be carrying things that, if the police wanted to be difficult, might put them under suspicion. Does my hon. Friend share my concern? [*Interruption.*] I do not quite know how it works if I am intervening. I am intervening on my shadow Minister, not the Minister.

The Chair: The Minister will have the opportunity to have his say at the end of this discussion.

Sarah Jones: That is absolutely right, and it is one of our issues with the Bill in general and this clause in particular. The powers are being made so broad that it makes it difficult for the police to interpret them in a meaningful way. If somebody is searching for a knife, drugs or a gun, they know if they have found it. It is a criminal offence there and then. It gets more complicated when stop and search is extended to somebody who may or may not be peacefully attending a protest but who still could be stopped under the new powers.

Andrew Bridgen (North West Leicestershire) (Con): Surely if someone were using their bicycle to travel to a protest, when they got to the protest they would have already got off their bicycle and used the chain to secure it in place. They would therefore arrive at the protest without the cycle lock.

Sarah Jones: They might be pushing their bicycle through the centre of the protest and their bicycle lock would be on their bicycle. That would be covered under the Bill. The lunacy of that is in the legislation, not our interpretation of it. It is a fact.

Lee Anderson: Does the hon. Lady really believe that our police are that daft that they would arrest somebody for carrying a lock when they are on their push bike going to a protest or wherever else? Does she really believe that?

Sarah Jones: I do not believe that our police are daft at all. I am a big champion of our police and a supporter of everything that they are trying to do. The point is that if someone goes to a protest and is carrying an item such as a bike lock, they could be stopped by the police and that that will have a chilling effect on protesters—not on the protesters we have been talking about who are about to lock on, who glue their hands to things and do need to be arrested and charged for the disruption that they cause, but on anybody else who wants to attend a peaceful protest. We are slipping from a society in which peaceful protest is a right and something that we encourage to one in which we want everybody to think twice before they go on a protest. I do not think we want to be that kind of country.

Kerry McCarthy: To give one example, a few years ago there was a protest in Bristol that involved people blocking the road by sitting and laying their bicycles down in it. That would potentially mean that they would have bike locks on them and could be subject to stop and search, would it not?

Sarah Jones: My hon. Friend is right. I urge colleagues to read the powers in clause 6. They are very clear and broad.

When Her Majesty's inspectorate of constabulary and fire and rescue services consulted police on the Home Office's proposal for a new stop-and-search power, one officer said that

"a little inconvenience is more acceptable than a police state."

That was a police officer speaking. HMICFRS went on to state that it agreed with that sentiment.

As I have said already, stop and search is a useful tool. It is important in preventing crime. But it is an invasive power and can be counterproductive and undermine the legitimacy of and trust in policing if it is not used correctly. Rightly, it is designed to be used to prevent the most serious crime—knife crime, or drug dealing—and the police themselves have recognised serious concerns about disproportionality and that those who are black are much more likely to be stopped and searched than those who are white.

Marco Longhi (Dudley North) (Con): A lot of the suggestions coming from the shadow Minister seem to be predicated on the basis that the police do not know what they are doing and that they are completely devoid of any sort of common sense. We all have to acknowledge that no one is perfect. The police will not be perfect, the law cannot be perfect and we are certainly not perfect. We are trying to give the police the widest possible tools that they can have to prevent the public from being disrupted to the extent we have seen so far. It is about the application of common sense and it seems to me that everything that is coming from the Opposition is about trying to stop that happening and effectively sending out a message that they are not on the side of ordinary citizens.

Sarah Jones: I completely disagree. I am absolutely on the side of ordinary citizens, and the evidence I am referring to comes from the police, not direct from me. I am quoting police officers who took part in the consultation back when Matt Parr did his report, and I am raising organisations' concerns. The police have talked about the disproportionate nature of stop and search; this is not me speaking, but them. Let me quote the recent Independent Office for Police Conduct report on the matter:

"Stop and search is a legitimate policing tactic...The powers have been described as an important tool in dealing with knife crime and drugs, in particular. However, its disproportionate use against people from a Black, Asian, or other minority ethnic background, particularly young Black men, has been a concern for many years and it remains one of the most contentious policing powers."

Unlike when the Minister was in the Mayor's office—stop and search went down in every year for which the Prime Minister was Mayor of London—we are debating this against the backdrop of a significant increase in the use of stop and search. In the year ending March 2021, the use of stop and search increased by 24%.

Kit Malthouse: For the sake of accuracy, when I was Deputy Mayor for policing, stop and search increased. The hon. Lady is quite right that it decreased in the second half of the Mayor's eight-year term. By then, we had got on top of the number of knife crime murders that were happening across London, not least in her constituency—although she was not the Member of Parliament then.

I want to address the issue of disproportionality. No one would deny that when stop and search is used for violence, there is disproportionality, particularly in London although not uniformly across the country. However, we are talking about stop and search in protest situations. For those numbers to show up in stop and search relies on the population in a vicinity of protest being disproportionately reflected demographically. I worry that in their desire to undermine the policy, the Opposition are conflating the two. There is no reason why people showing up to an Extinction Rebellion protest should be stopped and searched disproportionately compared with their demographic background, unless half the people who show up to the protest happen to be from a minority background. We would hope that the stop and search numbers would reflect the population coming to the protest.

The Opposition seem to think that the country is filled with police officers just waiting for their moment to stop and search us, or just looking for an opportunity to be difficult. The hon. Member for Bristol East spoke about the police wanting to be difficult, as if they ever want to be difficult. That indicates a lack of trust in the ability of our police to exercise, as my hon. Friend the Member for Dudley North said, exactly the kind of discretion that we ask them to use every day on the streets, whether in a protest environment or not. I know that the hon. Member for North East Fife has great experience of the fact that we rely on our police officers to use their discretion and judgment. In these circumstances, we are talking about suspicion-led stop and search. There have to be legitimate reasons why the police would stop and search somebody.

The Chair: This is turning into a speech.

Sarah Jones: I would be worried if the Minister were not considering these issues. Disproportionality means that if somebody is from a different race—in this case, particularly if they are black—they are more likely to be stopped and searched than they would be if they were white. It has nothing to do with the make-up of criminals; it is to do with disproportionality. The report by the NPCC and the College of Policing—I am sure the Minister has read it—talks at great length about the problem of disproportionality and how it needs to be tackled. In previous conversations in the Police, Crime, Sentencing and Courts Bill Committee, the Opposition have said that we need to get those things right before we expand powers. The police would agree that there is a big problem to be fixed.

Wendy Chamberlain (North East Fife) (LD): I would characterise Opposition parties' arguments in this Committee as seeking clarity to help the police and the legal system. Our role as legislators is to provide that clarity. The hon. Member for Bristol East highlighted in the evidence session last week that people arrested in

[Wendy Chamberlain]

relation to the destruction of the Colston statue were acquitted. We are asking for clarity in legislation, to enable the police to make the right decisions and be supported on that, and to encourage the courts to follow through on.

Sarah Jones: I agree. This is about clarity in law to enable the police to do their job. The Government are introducing sweeping and increasingly wide-ranging powers to cover things that stop and search has not historically been used for, and the Opposition think that is wrong.

12.15 pm

I want to pursue this issue of disproportionality, because it is incredibly important. Disproportionality increases when there is suspicion-led stop and search, but it very much exists in suspicion-led stop and search. The very reputable Home Affairs Committee published a report last year entitled “The Macpherson Report: Twenty-two years on”, which set out that statistics covering the year to 31 March 2020 showed that ethnic disproportionality in stop and search is worse now than it was 22 years ago. Black people were seven times more likely to be stopped and searched than white people—that is for suspicion-led stop and search—up from five times more likely in 1998. The disproportionality is even starker in no-suspicion searches, where black people were 18 times more likely than white people to be stopped.

There are many case examples in the report from the Independent Office for Police Conduct—a very serious body—looking at stop and search. It found examples where stop and search had not been done correctly, and I am sure the Minister has read about that. The report notes that

“the stop and search records of one officer showed that 79% of their stops and searches under Section 23 of the Misuse of Drugs Act since 2015 involved individuals from a Black, Asian, or other minority ethnic background. In comparison, demographic information from the 2011 census showed that only 43% of the residents in the area covered by the station where the officer was based were from a Black, Asian, or other minority ethnic background.”

It also says:

“Stop and search is often the most confrontational encounter an individual will have with the police. When a search is not carried out professionally and with sensitivity, complainants have told us of the lasting effect it can have, making them feel victimised, humiliated, and violated. And when the individual being stopped is a...child who may subsequently experience repeated stops and searches throughout their lifetime, the cumulative impact can be significant.”

The police are of course able to use reasonable force to carry out stop and search, which introduces the use of Tasers, firearms, batons and handcuffs.

The Home Office’s equality impact assessment on the expansion of stop and search says that

“this would risk having a negative effect on a part of the community where trust and confidence levels are relatively low.”

That is the Home Office’s own assessment of the expansion of these powers.

In our evidence session, we heard from Sir Peter Fahy, who said:

“you have to take into account absolutely the feelings of your local community. I would say that on things like this extension of stop and search, for me there would need to be a well-documented

community impact assessment, where the police worked with other agencies and community groups to assess what the impact is going to be.”—[*Official Report, Public Order Public Bill Committee, 9 June 2022; c. 59, Q121.*]

I am realistic about our chances of winning votes in this room. If we do not win the argument today, I ask the Minister to listen to the voices who say, “If you are introducing this, you have to do it right. You have to make sure that there is a proper impact assessment, that people are involved, that people are trained and that the whole raft of measures that the NPCC and the College of Policing are looking at are put in place to tackle some of the problems.” Those measures have been well set out over the past couple of months, and they should be introduced before changes are made. I urge the Minister to think about trialling the changes, as other measures have been in the past.

I move on to the difficulties in implementing the proposals. On stop and search, Chief Superintendent Phil Dolby said that

“it is still a key point of discussion and, sometimes, contention. We have the community coming in and scrutinising how we have used it. They watch our body-worn video of what we tried to do. We have even got youth versions of that...I do not know how you would do the same kind of thing with protest. I think there is something that needs to be done there. There is best practice advice on how to conduct stop and search, and I think there is potentially some real thinking if those go ahead to start with that position as opposed to learning those lessons as we go along.”—[*Official Report, Public Order Public Bill Committee, 9 June 2022; c. 59, Q120.*]

In the new race action plan, the NPCC has committed to really looking at what stop and search does. The plan says that, across the country:

“Chief constables will identify and address disproportionality in the use of stop and search, particularly in relation to drugs and the searches of children. This will be achieved by having robust accountability and learning processes based on scrutiny and supervision.”

It has committed to reviewing the use of the smell of cannabis as grounds for stop and search, because that increases disproportionality, as well as the use of Taser, section 60, intimate searches, standardised recording practice—I could go on. The breadth of the NPCC’s commitments reflects its concern about the issue.

Our concern is that the breadth of the Bill’s drafting means potentially endless cases. The powers are so broad: there is an endless list of objects that could be made, adapted or intended for use in the course of, or in connection with, the offences listed, so we are heading for problems. We have already talked about bike locks, but posters, placards, flyers, banners and glue could all potentially fall under this clause. Arguably, the police could have reasonable suspicion to subject any person in the street to a search. How would they establish whether a person was intending to use a poster or a placard in a protest in a way that would be considered illegal? The Government are seriously asking the police to search people on suspicion of carrying a tambourine, when they already have a power to search anyone who is intentionally or recklessly causing public nuisance.

The NPCC’s written evidence says that

“Although currently the wording around ‘intentionally or recklessly causing a public nuisance’ is open to interpretation and would require additional guidance to prevent the onus and risk being placed on an individual officer when deciding to carry out a search.”

If this clause becomes part of the Bill, another ask of the Minister will therefore be to make sure that we have proper guidance. The NPCC continues:

“It would however, evidenced by experiences from forces, be difficult for an individual officer to have the overall picture necessary to make such a decision.”

The police say that the wording is too broad for police officers to interpret without problems occurring. Is the Minister comfortable about the fact that the police have those concerns, and what measures can he put in place to address them?

I conclude by referring back to what Sir Peter Fahy said:

“You do not start with the heaviest. You work up to it, and that then maintains the confidence in your legality and proportionality.”—[*Official Report, Public Order Public Bill Committee*, 9 June 2022; c. 62, Q122.]

That is how we do British policing. Those are the Peelian principles: de-escalation, communication and negotiation. We in the Labour party think that this clause takes us in the wrong direction.

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

The Committee divided: Ayes 10, Noes 6.

Division No. 2]

AYES

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

NOES

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

Question accordingly agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

Clause 7

POWERS TO STOP AND SEARCH WITHOUT SUSPICION

Amendment made: 26, clause 7, page 8, line 40, at end insert—

“(iiiia) an offence under section (Offence of causing serious disruption by tunnelling) (offence of causing serious disruption by tunnelling);

(iiiib) an offence under section (Offence of causing serious disruption by being present in a tunnel) (offence of causing serious disruption by being present in a tunnel);”—(*Kit Malthouse*.)

This amendment applies the stop and search powers in clause 7 of the Bill to an offence relating to tunnelling under the new clause inserted by NC5 or NC6.

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

Kit Malthouse: Clause 7 builds on the Government’s plans to give the police the powers they need to prevent serious disruption at protests by introducing suspicion-less stop and search powers. The hon. Member for Croydon Central referred in her previous speech to both suspicion-led and suspicion-less stop and search.

Although the extension of suspicion-based stop and search powers, provided for by clause 6, will help the police to manage disruptive protests more effectively, it is not always possible in high-pressure, fast-paced protest environments for officers to form reasonable suspicion that individuals may be about to commit an offence. Clause 7 therefore introduces a suspicion-less stop and search power for the offences covered under clause 6.

If an officer of the rank of inspector or above believes that any of the specified offences may be committed in their police area and that individuals are carrying prohibited objects for the commission of those offences, officers may stop and search individuals and vehicles within the area specified by the senior officer, whether or not they suspect those individuals are carrying prohibited objects. If such items are found, the police may seize them.

These powers are modelled on existing suspicion-less stop and search powers available under section 60 of the Criminal Justice and Public Order Act 1994. The powers are well understood by the police, and emulating them prevents confusion between the powers and the complication of officers’ training. As with section 60, powers under clause 7 may not last longer than 24 hours unless an officer of superintendent rank or higher deems it necessary to extend them by a further 24 hours. Such an extension may happen only if senior police officers deem it necessary to prevent the offences in scope from being carried out or to prevent prohibited objects from being carried.

The hon. Lady criticised both suspicion-led and suspicion-less stop and search, and I hope I can allay some of her concerns. As with all stop and search powers, we believe, as she does, that no one should be stopped based on a protected characteristic, and there are safeguards to ensure these powers are used proportionately. This point was emphasised by Her Majesty’s inspector in the recent report on the policing of protests, in which he recognised that

“the proposed new power has the clear potential to improve police efficiency and effectiveness”

in managing protests, so long as they are

“subject to strong and effective safeguards”.

As the hon. Lady knows, we intend to amend PACE code A. We regularly review safeguards, and we now collect more data on stop and search than ever before. That data is posted online, enabling police and crime commissioners and others to hold forces to account. It is also important that communities hold PCCs to account through the electoral process, as I am sure she would agree.

We have responded to the “Inclusive Britain” report by saying that we intend to enhance the safeguards through the development of a national framework for scrutiny of stop and search by local communities, and through the consideration of any unnecessary barriers to the increased use of body-worn video. We also asked the College of Policing to update its stop and search guidance to ensure fair and proportionate use. The updated guidance, which is available to all forces, was published in July 2020 and provides best practice examples of community engagement and security. HMICFRS continues to inspect regularly on stop and search.

Sarah Jones: It is slightly worrying how the Minister talks about this differently from his own police. The NPCC and the College of Policing talk about it in a

[Sarah Jones]

very different way. They say that stop and search is an important tool—on which we all agree—but that its implementation is disproportionate and lots of work needs to be done to fix that. The Minister seems to be saying that it does not need to be fixed. Perhaps he should talk to the NPCC, the College of Policing and those who put that report together to ensure that they are on the same page as him.

12.30 pm

Kit Malthouse: Notwithstanding the hon. Lady's patronising tone, I speak to the National Police Chiefs' Council and senior police officers all the time. In fact, I have lived the stop and search journey for the last 14 years. I have probably spent more time than most talking to people in communities that are affected by violence and where stop and search is regularly utilised about its challenges and its efficacy in protecting people.

I repeat what I have said in the House: I have often been challenged during those 14 years on the disproportionality in the use of stop and search, but I have never been challenged on the disproportionality in the people who are killed with knives. No one has ever said to me that it is a total disgrace that the vast majority of those people are young black men. I would welcome that challenge and a proper set of solutions to that problem.

Sarah Jones: That is a completely unreasonable distinction to make. I have challenged the number of young black men who have been murdered in my constituency many, many times. Indeed, that is why I set up the all-party parliamentary group on knife crime and why I have worked on that exact issue ever since I entered Parliament. The two things are not comparable. Just because most victims of knife crime murders happen to be young black men in London, that does not mean that the majority of black people are criminals.

Kit Malthouse: No one said that!

Sarah Jones: No, but I am saying that the two are not connected, and we cannot connect them. The victims are often young black people—I find that as awful as anybody else would, and I have campaigned to do something about it—but that is not the point. The point is that stop and search is disproportionate not because of the nature of crimes, and not because of the victims of crimes, but because it is disproportionate.

Kit Malthouse: I understand what the hon. Lady is saying, but there are complicated reasons why stop and search is disproportionate. Some of them are to do with geography, some with offence types, and some with the way that section 60 is used. I do not think that it is entirely cultural within the police.

There are other disproportionalities of concern. On cannabis possession in London, for example, which the hon. Lady mentioned, there is a strange disproportionality that does not, in my experience, reflect the pattern of cannabis use in London. We need to pay some attention to that. Having said that, I do not necessarily think that that problem and the solutions to it should be a barrier to using the stop-and-search power.

We heard clearly from the National Police Chiefs' Council's lead for public order that the use of stop and search—both suspicion-led and, in a fast-moving protest situation, suspicion-less—would be useful and enable police to get ahead of and prevent some of those offences. Indeed, I think I remember him saying that if police had those powers, it would result in less of an infringement on the rights of protestors. We therefore believe that the case has been made.

Sarah Jones: I will spend a bit of time of clauses 6 and 7 as they are the two important chunks that address suspicion-led and suspicion-less stop and search. The further stop-and-search clauses contain additional but less significant provisions.

Clause 7 addresses peaceful protest as if it were a social ill akin to knife crime, terrorism, serious organised crime or other situations in which people are stopped and searched. Section 1 of the Police and Criminal Evidence Act already allows officers to stop and search those whom they have reasonable grounds to suspect possess stolen or prohibited articles. For the purposes of section 1, prohibited articles include any item that has been made or adapted to be used to cause criminal damage. That would cover most of the scenarios that the Government are worried about.

The issue is that lock-ons, which we have debated and agreed have caused significant problems, are infrequent compared with protests as a whole. There might be a very large protest of 100,000 people, with 10 people or fewer trying to do something disruptive or illegal. That does not make the entire protest illegal; it makes those protestors unlawful. Our concern about the even broader extension of the powers, and the Bill more widely, is that we are not criminalising the criminals; we risk criminalising the vast majority of the people who want to protest and have their say on the issues of the day.

I am sure Matt Parr must be pleased, because we talk about him so much in Committee. The Minister is absolutely right that he agreed that the power could be a useful tool, but he listed a lot of concern in his report about how it would be implemented:

“Current suspicion-less stop and search powers for weapons...are intended to be used by the police to combat serious violence and the carriage of ‘dangerous instruments or offensive weapons’. Using a similar suspicion-less power to target peaceful protesters, who may cause serious (but non-violent) disruption, is a significantly different proposition. Given the potential ‘chilling effect’ on freedom of assembly and expression in terms of discouraging people from attending protests where they may be stopped and searched, we would expect any new suspicion-less powers to be subject to very careful scrutiny by the courts.

Such powers could have a disproportionate impact on people from black, Asian and other minority ethnic groups. We have repeatedly raised concerns about the police's disproportionate use of stop and search in previous inspection reports...If and when contemplating the use of such powers in future, forces will need to carefully consider the demographic composition of the protest groups concerned. The importance of this issue should not be underestimated.

We would wish to see appropriate legal thresholds and authority levels set for authorising the use of the power, and the use of such powers monitored in a similar way to existing stop and search powers...When a person is stopped and searched, they may make an application for a written statement that they were searched. We would also wish to see high standards of training, vigilance and caution in the use of such a power”.

It is a well-used expression, but this is using a hammer to crack a nut. We do not want all the peaceful protesters to be hammered by the legislation when they are not doing anything unlawful.

Marco Longhi: The hon. Lady made a point moments ago that she has the unfortunate situation of BAME members of her community being killed because of knife crime. We are ignoring an important statistic, which is the fact that very often, people who come to harm or die because of knife crime do so as a result of the knife they have brought themselves. I hear what she is saying, but the measure is about saving lives and saving people from harm. I come back to the point that we are trying to have a common-sense approach that will save lives. If that has such a chilling effect on people attending so-called protests, then I wonder whether there is a balance that we need to consider. Which is more important, the saving of lives or the potential disruption to people's willingness or want to participate in demonstrations or protests?

Sarah Jones: I do not think that anyone is arguing that we should not have stop-and-search powers for knife crime. Absolutely, in a lot of knife crime cases, who the victim or the perpetrator is depends on whoever happens to win the fight at the time. That is very difficult to deal with, but it is not relevant to this argument, which is about giving the police disproportionate powers to deal with a situation that they already have powers to deal with, in the meantime potentially criminalising people who would not have been, and should not be, criminalised.

The concerns about disproportionality exist for suspicion-less stop and search far more than for suspicion-led stop and search. The more ambiguity and the greater lack of evidence there is for who should be stopped, the more the disproportionality increases. This is something that the former Prime Minister, the right hon. Member for Maidenhead (Mrs May), was very interested in when she was Home Secretary. She insisted that stop and search be intelligence-led, and there was an improvement on her watch in the proportion of people who were found to be carrying something illegal. I think the figure at the moment is that one in 100 stop and searches for knives under section 60 leads to the discovery of a knife. We absolutely want to find that knife, but 99 stop and searches is a lot of police time and resources, and there are other ways to gather intelligence and solve crime.

I want to stress how many organisations are concerned about the powers. We have been very lucky to have people give evidence and write to us about their concerns. Organisations believe that the powers are incompatible with article 11 of the ECHR and article 21 of the international covenant on civil and political rights, as they relate to freedom of peaceful assembly. During the debate on the Police, Crime, Sentencing and Courts Bill in the Lords, Lord Carlile compared the powers with the use of stop-and-search powers under the Terrorism Act. He noted that:

“The Terrorism Act stop and search power is there for the prevention of actual acts of actual terrorism which kill actual people.

The dilution of without-suspicion stop and search powers is a menacing and dangerous measure.”—[*Official Report, House of Lords*, 17 January 2022; Vol. 817, c. 1435.]

In a similar way, Liberty has noted that stop and search without suspicion has normally been used

“in the context of crimes that will potentially kill many, many people.”—[*Official Report, Public Order Public Bill Committee*, 9 June 2022; c. 75, Q145.]

Lord Carlile concluded that the power

“is disproportionate, and the Government should think twice about it.”—[*Official Report, House of Lords*, 17 January 2022; Vol. 817, c. 1435.]

In its oral evidence, Amnesty noted that

“the proposal fails the test of lawfulness...the confiscation powers that go behind the stop-and-search powers around the locking-on offence capture an enormously broad range of items that an officer could argue might be capable of causing an offence. You have so many caveats that you will get into a situation where an ordinary person could have no idea why they were stopped, or why somebody might be taking an item off them that was completely lawful—everything from string to a bit of glue. It fails on that basic principle of lawfulness, which I think is incredibly problematic.”—[*Official Report, Public Order Public Bill Committee*, 9 June 2022; c. 75-76, Q145.]

The list of bodies and individuals—including HMICFRS, the College of Policing, former police chiefs and the right hon. Member for Maidenhead—have highlighted issues and broad concerns about suspicion-less stop and search. I say to the Minister that a whole raft of work is being done by the NSPCC and the College of Policing, and that should be done before we try to extend such extreme powers to the police without putting in place any measures to stop the disproportionality.

I will leave it there. We have the same view on clause 7 as we did on clause 6: we do not think it is necessary or proportionate. We think that it will criminalise potentially innocent protesters and that the Government should think again.

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

The Committee divided: Ayes 10, Noes 6.

Division No. 3]

AYES

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

NOES

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

Question accordingly agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clause 8

FURTHER PROVISIONS ABOUT AUTHORISATIONS AND DIRECTIONS UNDER SECTION 7

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

Kit Malthouse: The clause makes further provision as to how police officers should authorise the aforementioned stop and search. It extends to the British Transport Police. It is self-explanatory.

Sarah Jones: Amendment 8, tabled by the hon. Member for Glasgow North East, is supported by me and the shadow Home Secretary, my right hon. Friend the Member for Normanton, Pontefract and Castleford (Yvette Cooper), and we believe the clause should be struck from the Bill.

Question put and agreed to.

Clause 8 accordingly ordered to stand part of the Bill.

Clause 9

FURTHER PROVISIONS ABOUT SEARCHES UNDER SECTION 7

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

Kit Malthouse: The clause provides that anyone searched or who has their vehicle searched under the new suspicion-less stop-and-search powers is entitled to apply for a written statement from the police confirming that they have been searched. That is in line with the existing stop-and-search powers, and a number of forces will allow a person to do that electronically. It also allows the Home Secretary to make regulations, subject to the negative resolution procedure, governing the retention, keeping and disposal of prohibited objects seized by the police under these powers.

Sarah Jones: We agree with amendment 9, tabled by the hon. Member for Glasgow North East, and we would leave out the clause.

Question put and agreed to.

Clause 9 accordingly ordered to stand part of the Bill.

Clause 10

OFFENCE RELATING TO SECTION 7

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

Kit Malthouse: Anyone who intentionally obstructs a constable exercising suspicion-less stop-and-search powers under clause 7 commits an offence, with a maximum penalty of one month's imprisonment or a level 3 fine. That is in line with other stop-and-search powers.

Sarah Jones: We support amendment 10, tabled by the hon. Member for Glasgow North East, and we would leave out the clause. We do not support the measure. Liberty has suggested that a consequence of the offence is that it could be used to target legal observers who may be stopped and searched on their way to a protest for carrying items such as bus cards or for wearing an identifiable yellow bib. There are legitimate concerns that should be considered, so we do not support the clause.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clause 11

PROCESSIONS, ASSEMBLIES AND ONE-PERSON PROTESTS: DELEGATION OF FUNCTIONS

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

Kit Malthouse: The clause reflects a request from the Metropolitan Police to reflect the differential rank structure with regard to the delegation of powers of authorisation such that an assistant commissioner in the Metropolitan Police can delegate the authorisation powers to a commander, which would be different from other forces in the rest of the UK, but it seems a sensible and proportionate measure, given the differential rank structure.

Sarah Jones: We have no issues with the clause. To quote Matt Parr in the evidence session:

“That strikes me as entirely pragmatic. If you look at the Met, the real expertise in public order tends to be at commander rank, rather than above, where people get a bit more generalist. The deep professional experts in London, in my experience, are the commanders. That strikes me as perfectly sensible.”—[*Official Report, Public Order Public Bill Committee*, 13 June 2022; c. 56-57, Q117.]

We agree.

Question put and agreed to.

Clause 11 accordingly ordered to stand part of the Bill.

Clause 12

SERIOUS DISRUPTION PREVENTION ORDER MADE ON CONVICTION

Wendy Chamberlain: I beg to move amendment 38, in clause 12, page 12, line 16, leave out

“on the balance of probabilities”

and insert “beyond reasonable doubt”.

This amendment would raise the burden of proof for imposing a serious disruption prevention order to the criminal standard.

The Chair: With this it will be convenient to discuss amendment 39, in clause 12, page 12, line 21, leave out “on the balance of probabilities”

and insert “beyond reasonable doubt”.

This amendment would raise the burden of proof for imposing a serious disruption prevention order to the criminal standard.

Wendy Chamberlain: The purpose of these amendments is to raise the burden of proof in relation to SDPOs to the criminal standard, rather than the balance of probabilities. Simply put, there is a reason why we use a higher bar for crimes that result in people being fined or losing their liberty, and the risks are the same here. One condition of an SDPO could be that someone has to wear an electronic monitor and have their every movement tracked. Given the impact on day-to-life, it is not acceptable that that could be imposed just because the evidence suggests that the offence is more likely than not to have been committed. Justice requires that people are given due process, and it is vastly inappropriate for a low standard of proof to be used when we are, effectively, taking away someone's rights and restricting their movements. I think this measure shows that we are

slipping into a concerning state of affairs, and that is why my amendments suggest that the situation should be rectified.

I also want to talk about keeping trust with the public, and I am thinking of Peter Fahy's comments last week about the challenges of dealing with protests. Our concern with the legislation is that when the police fail to deal with things effectively, they are seen as incompetent, and that risks public trust. For the public to have trust, they must feel that punishments are fairly applied. We heard a lot in the evidence sessions last week about the importance of policing by consent. That is something that I am passionate about as a former police officer, and it is what makes British policing unique. It is a fundamental principle enshrined in our justice system, and to maintain this consent and to further trust, people must know that sanctions are applied fairly.

Sarah Jones: I do not wish to add to what the hon. Lady has said, other than to say that we agree with the amendments.

Kit Malthouse: The amendments, I am afraid, are a deliberate attempt to water down the courts' ability to place an SDPO on those who are intent on repeatedly disrupting the lives of others, as we have talked about a lot during our consideration of the Bill. Amendments 38 and 39 attempt to raise the burden of proof required for SDPOs from

“on the balance of probabilities”

to “beyond reasonable doubt”, in effect requiring the criminal rather than the civil standard of proof. Amendment 38 raises the burden of proof required when considering whether an offence constitutes a protest-related offence for the purpose of making a serious disruption prevention order. Amendment 39 does the same when a court considers whether a person has engaged, in the last five years, in previous behaviour that would qualify them for an SDPO.

The amendments would make it more challenging for a court to place an SDPO on prolific activists who engage in criminal or unjustifiable behaviour. As this is a court order, I see no issue with requiring the civil burden of proof. The Opposition have shown much enthusiasm for injunctions, which operate to a civil burden of proof, and the same burden would be required here. For the avoidance of doubt, for someone to be convicted for breaching an SDPO, the criminal burden of proof would apply.

Kerry McCarthy: I want to query the Minister's use of the phrase “unjustifiable behaviour”. What would that cover?

Kit Malthouse: We have discussed the range of offences that offenders commit. In presenting the requirement for this order to a court, the police would have to make a case that a series of offences had occurred, or indeed that serious disruption had been caused by the individuals' behaviour, to warrant this order. We will come on to the substance of those matters, and we can debate it at that point. For the reasons I have given, we do not agree with the amendment, and we hope that the hon. Member will withdraw it.

Wendy Chamberlain: This is a probing amendment to get the Government's view on the matter. The Minister has made it clear that he thinks the civil burden is appropriate at this time, so I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

12.54 pm

Adjourned till this day at Two o'clock.

