PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL

Ninth Sitting

Tuesday 2 July 2013

CONTENTS

CLAUSES 40 to 80 agreed to.
Adjourned till Thursday 4 July at half-past Eleven o'clock.
Written evidence reported to the House.

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£6·00

PBC (Bill 007) 2013 - 2014

Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest 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

Saturday 6 July 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

© Parliamentary Copyright House of Commons 2013
This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chairs: Jim Dobbin, † Sir Roger Gale

† Barclay, Stephen *(North East Cambridgeshire)* (Con)
Browne, Mr Jeremy *(Minister of State, Home Department)*
† Champion, Sarah *(Rotherham)* (Lab)
Cooper, Rosie *(West Lancashire)* (Lab)
† Crouch, Tracey *(Chatham and Aylesford)* (Con)
† Danczuk, Simon *(Rochdale)* (Lab)
† De Piero, Gloria *(Ashfield)* (Lab)
† Fuller, Richard *(Bedford)* (Con)
† Green, Damian *(Minister for Policing and Criminal Justice)*
† Hanson, Mr David *(Delyn)* (Lab)
† Lewell-Buck, Mrs Emma *(South Shields)* (Lab)
† Maynard, Paul *(Blackpool North and Cleveleys)* (Con)
† Mosley, Stephen *(City of Chester)* (Con)
Paisley, Ian *(North Antrim)* (DUP)
† Phillips, Stephen *(Sleaford and North Hykeham)* (Con)
† Phillipson, Bridget *(Houghton and Sunderland South)* (Lab)
† Rutley, David *(Macclesfield)* (Con)
† Skidmore, Chris *(Kingswood)* (Con)
† Syms, Mr Robert *(Poole)* (Con)
† Wilson, Phil *(Sedgefield)* (Lab)
† Wright, Simon *(Norwich South)* (LD)

Steven Mark and Georgina Holmes-Skelton, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 2 July 2013

[Sir Roger Gale *in the Chair*]

Anti-social Behaviour, Crime and Policing Bill

2 pm

The Chair: Good afternoon, ladies and gentlemen. I understand that this morning's sitting had to be cancelled for wholly comprehensible reasons. In order to ensure that the Committee does not suffer as a result and that we do not disrupt any plans that Members may have made, I would like to suggest that we sit to a reasonable time this evening, and if it becomes necessary, I am more than willing to take the Chair and extend the sitting next Tuesday. Of course, that is entirely up to the usual channels and not really in my gift, apart from a bit of it, and only should it become necessary; it may be that you make such rapid progress in the course of the afternoon that it will not.

Clause 40

Power to issue notices

Gloria De Piero (Ashfield) (Lab): I beg to move amendment 78, in clause 40, page 22, leave out line 27.

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

Amendment 79, in clause 40, page 22, line 34, leave out subsection (5).

Amendment 80, in clause 40, page 23, line 8, leave out 'may' and insert 'must'.

Gloria De Piero: The first part of our debate will be concerned with the community protection notice, which is essentially a rebrand. It replaces litter clearing notices, street litter control notices and defacement removal notices. Although it is essentially a rebrand, it comes at the cost of significant time and money. Indeed, the impact assessment referred to the fact that police and community support officers will have to engage in 152,000 hours of training in how to use the new power. The Opposition would therefore not introduce such a measure.

We have a number of questions related to the amendments. Amendment 78 seeks to draw out some guidance. As currently drafted, the Bill states that if someone is, for example, caught fly-posting and issued with a community protection notice, they will be asked to

"take reasonable steps to achieve specified results."

In my example, I assume that would be to clear the surface of all the posters, which would of course be absolutely right. I would like some clarification on what reasonable steps might be, as we do not want a loophole to emerge.

Amendment 79 is based on representations that we have received from the Social Landlords Crime and Nuisance Group and the National Housing Federation, which referred to the distinction between statutory nuisance and nuisance. The National Housing Federation raised the point that there could be confusion because of a legal definition in deciding whether a community protection notice could be issued. The federation referred specifically to noise nuisance, as did the Social Landlords Crime and Nuisance Group. Because of the representations made on that issue, will the Minister reassure me and those housing specialists?

Amendment 80 relates to the use of the word "may". The Bill reads:

"A community protection notice may specify periods within which, or times by which, requirements…are to be complied with."

Why has the Minister chosen to use the word "may" and not something more definitive, such as "shall"?

The Minister for Policing and Criminal Justice (Damian Green): I am grateful to the hon. Member for Ashfield for the issues she raised and for asking legitimate questions. I will take each amendment in turn.

On amendment 78, I do not think that removing the ability of professionals to use the community protection notice to deal with future reoffending would be sensible. The ability to include a requirement to take reasonable steps to achieve specified results is important. Let me explain why. I note that the right hon. Member for Delyn has proposed a new clause that would introduce dog control notices. We will eventually come to the reasons why we believe that that is unnecessary, but one of the reasons is that clause 40 allows requirements to be included in a community protection notice that can address the underlying causes of irresponsible dog ownership. For instance, a requirement to attend dog training classes would ensure that the owner was more responsible in future and able to keep proper control of their dog. That is the kind of thing that subsection (3)(c), which the hon. Member for Ashfield is seeking to remove from the Bill, would allow. If she wants another example, the subsection could be used to ensure that a fast food outlet provided and maintained litter bins outside its premises to address a long-term littering problem. I hope she will see that there are practical examples that are easy to envisage when the provision would be useful.

On amendment 79, I am conscious that a number of groups have expressed concern about the inclusion of the exception in subsection (5) on statutory nuisances. Local authorities, however, are under a statutory duty to serve an abatement notice where behaviour constitutes a statutory nuisance. As such, we have made it clear in the legislation that that needs to be considered. The main concern of police officers and social landlords, and, I assume, the National Housing Federation, is that they will be reluctant to issue community protection notices, especially for noise complaints, in case they are statutory nuisances. I accept the validity of that concern, which is why we have established a technical working group, which includes representatives from the police, the Chartered Institute of Environmental Health and the Chartered Institute of Housing, to draft clear guidance to help ensure that the concerns are addressed.

For the most part, community protection notices will be issued when complaints have been ongoing for some time and informal interventions have failed. In those circumstances, there will be more than enough time for a professional to speak to their local authority and consider whether the exception applies. Where that is not possible, guidance will help to identify likely statutory nuisances to avoid confusion.

Gloria De Piero: Is there a time scale for the working group to report back on looking at the definition of statutory nuisance?

Damian Green: We have asked the working group to report by autumn, when the Bill will still be under consideration. I hope that is an appropriate time for the working group to be allowed to operate.

Conscious of your remarks about time, Sir Roger, I will resist the temptation to go into a great philosophical disquisition about amendment 80, which would

"leave out 'may' and insert 'must'."

In many ways, that kind of amendment is why the hon. Member for Ashfield and I are sitting on opposite sides of the Committee. The Government say that people may do something, but the hon. Lady and her hon. Friends say that people must do something. That is the essential difference between those on the right and those on the left of politics, whatever else we may agree on.

Gloria De Piero: Will the Minister give way?

Damian Green: I am happy to give way on that philosophical point.

Gloria De Piero: I would argue that it is more than a philosophical point, because it is about the time scale when the requirements "may" be complied with. We want to ensure that there is a specific time limit that is fair to both the offending person and the rest of the community.

Damian Green: I can see that the hon. Lady is not tempted down that line of discourse.

Amendment 80 would fetter the discretion of front-line professionals. In most cases, the period within which requirements were to be completed would be included in the notice. In practical terms, that would be sensible in most cases. There may, however, be situations where that would not be appropriate, and front-line professionals have welcomed that flexibility in the workshops we have held with them. We should listen to those in the field. I appreciate the thought behind the amendments, but I hope I have assured the hon. Lady that they are unnecessary.

Gloria De Piero: Because of the questions asked by social landlords, I thank the Minister for outlining the time scale for the working group to report back. We shall monitor the position to see whether there are loopholes because of the use of "may" rather than "shall" but, for now, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 40 ordered to stand part of the Bill.

Clause 41

Occupiers of premises etc

Gloria De Piero: I beg to move amendment 81, in clause 41, page 23, line 23, leave out subsection (3).

We want to test the provision under which a person's conduct cannot be treated as that of another, if the person cannot be reasonably expected to control it. Let us consider, for example, a kebab shop. If there were overflowing bins outside the property, the new community protection notice could be issued to the owner of the kebab shop. If the owner said, "I told my members of staff that they shouldn't leave overflowing bins outside, but they continued to do so", we would be worried whether that was a valid reason not to allow the kebab shop owner take full responsibility.

Damian Green: Again, I appreciate the thinking behind the probing amendment. As the hon. Lady explained, the intention is to ensure that the owner or occupier of premises can be held responsible for the actions of those who commit antisocial behaviour on that property. I sympathise with the intention, and agree that when someone can reasonably be expected to control or affect behaviour, they should take responsibility, which is in line with subsection (3). That would apply squarely to the hon. Lady's valid example of a shop owner whose employees were not doing enough to clear up its litter. Courts and members of the Committee would agree that such circumstances would be covered by subsection (3).

There are counter-examples of circumstances when such action would be unfair. Let us imagine a farmer whose barn has been used more than once for illegal raves. If the farmer had put up barriers and worked with the police to stop the raves, he is a victim of antisocial behaviour and should not penalised by the issue of a community protection notice. If he does not work with the police or do anything to stop the illegal raves or, indeed hinders the efforts of the police to deal with them—as I have known to happen—he would be held responsible under subsection (3). If that provision were removed, as the amendment seeks, the farmer could be served with a community protection notice in both scenarios, which I am sure the Committee accepts would be unfair. As I said, I appreciate the intention behind the amendment, but I hope that I have satisfied the hon. Lady with that explanation.

Gloria De Piero: The Minister has reassured me, and has provided a good example of why the clause is worded as it is. Obviously, we shall monitor its effect to find out whether it contains loopholes that would prevent antisocial behaviour from being dealt with because someone claimed that it was not reasonable to expect them to do it. In light of what the right hon. Gentleman said, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 41 ordered to stand part of the Bill.

Clause 42

Occupier or owner unascertainable

2.15 pm

Gloria De Piero: I beg to move amendment 82, in clause 42, page 23, line 31, leave out 'reasonable'.

[Gloria De Piero]

I want to test the meaning of reasonable inquiries. A case was brought to my attention at a coffee morning in my constituency on Saturday, when people told me about a property that has been vacant for many years. It is rat-infested, and as there are houses on either side, it causes considerable distress to neighbours and the community.

The Bill states that the authorities should make reasonable inquiries to find out who owns a property that has lain vacant for some years, so we want to test what reasonable inquiries are. The property in my constituency has lain vacant for several years, so I want something that would force the authorities to make determined inquiries to find out who the owner is and determine what they must do to stop the vacant property causing misery to people in my community. Indeed, I have written to the council to make that point.

Perhaps the Minister could provide a step-by-step procedure of how reasonable inquiries might be made to determine the occupier or owner of a property that is giving rise to antisocial behaviour.

Damian Green: The purpose of clause 42 is to ensure that local agencies can still take action even if they cannot identify the owner or occupier of a particular area. The hon. Lady will be pleased to hear that my speaking note then goes on to say that I am sure everyone in the Committee can point to examples from their own constituency where an area or premises has become a dumping ground in exactly the way she has described. Indeed, she is right; there are places like that. However, I reassure the Committee that the purpose of the clause is to allow the local authority to act in such cases. It may feel impeded at the moment, because no one can identify the owner.

Under the Bill, the local agency would have to make reasonable inquiries to find out who owned or occupied the premises. If the amendment were passed—removing the reasonableness element—it could lead to agencies feeling that they have to take all steps possible, which would delay action and prolong misery for the community most affected. Reasonableness is a test that the courts or local authorities can apply. We all know about land searches.

Stephen Phillips (Sleaford and North Hykeham) (Con): Is it the Government's intention that a local authority should consult the Land Registry to find out who the owner is and then attempt to contact the owner to find out who the occupier is, if there is one, and would that constitute reasonable inquiries for the purposes of subsection (1)(c)?

Damian Green: My hon. and learned Friend anticipates what I was about to say, which is that the local authority would have to take account of all the circumstances of the case. The police or local authority could make inquiries with the Land Registry to find the name of the owner, and they could look at council records in respect of the payment of business rates. There are a number of tools available to local authorities. I suspect we would all agree that if they had done that and still failed to identify an owner, and the nuisance persisted, they would have fulfilled the duty under the subsection. Removing the word "reasonable" might act as a dampener if they were worried that they had not taken every possible step. It might actually delay the remedial action that we want taken in such circumstances. I hope that the hon. Lady is reassured.

Gloria De Piero: I should like further clarification. As constituency MPs, we know that agencies do not always act as quickly as they might, and it might be appropriate at this point to put on the record some guidance about reasonable inquiries. Can they take six weeks, six months or six years? What is the Minister's view?

Damian Green: Given the examples I cited—looking at the Land Registry and council tax records—it should be a matter of weeks rather than months. We could all envisage circumstances when, for some reason, Land Registry records were not available, but in the modern age, when electronic searching is possible and routine, it should not take months and years to conduct searches.

Gloria De Piero: I thank the Minister for that reply. It is important for the House to send strong messages about the failure of agencies to act as quickly as they might in cases of antisocial behaviour. It is important that the Minister has given some guidance on the record. It will certainly help many Members when they are pushing cases for their constituents that the Minister believes that action or reasonable inquiries should be made in a matter of weeks rather than months. We will monitor that. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 42 ordered to stand part of the Bill.

Clause 43

Appeals against notices

Gloria De Piero: I beg to move amendment 83, in clause 43, page 24, line 25, leave out subsection (3).

Subsection (3) reads:

> "A notice against which an appeal is made is of no effect until the appeal is finally determined".

Let us again take the example of fly-posting. Someone has been given a community protection notice because they were fly-posting but they have 21 days to appeal. There are five grounds on which they might appeal: the conduct did not take place; it has not had a detrimental effect on the quality of life of those in the locality; it has not been persistent or continuing; it is not unreasonable; or they cannot reasonably expected to control or affect it. The community protection notice would require the person to remove the posters but as they have 21 days to appeal, is that an extra 21 days for a shop window to be covered in posters? Is there not a danger in the way the clause is worded that local people will have to put up with the behaviour for an extra three weeks until an appeal is heard?

Damian Green: I hope the hon. Lady will be pleased to hear that I think she makes a good point that I want to take away and consider. As she said, the amendment relates to the suspension of a community protection

notice pending the outcome of an appeal. I understand the concerns raised about that, especially if the notice includes actions that would alleviate the detrimental impact on a community of the antisocial conduct in question. However, I ask her to pause before we leap too readily to remove subsection (3). We need to consider a number of interdependencies related to the decision to allow a notice to continue to have effect during an appeal process. This includes how breach would be dealt with and whether compensation would be available for works undertaken if an appeal was ultimately successful.

However, I am sympathetic to the broad thrust of the hon. Lady's argument and will consider the matter further before Report. There is a balance to be struck between the considerations I have just described and the point she made. It is a fair point and I will happily take it away to look at it again. On that basis, I invite her to withdraw the amendment.

Gloria De Piero: I am grateful to the Minister. Can we assume that he intends to bring forward his own amendment on Report?

Damian Green: As I said, if we decide that is the appropriate way to do it, that would be the mechanism. It is a question of striking the right balance. I give her the assurance, which I hope she will accept in good faith, that she has a point and I would like to take it away and look at it.

Gloria De Piero: In the spirit of harmony I will take the Minister's words and I hope that he is sincere when he says—*[Interruption.]* Forgive me, but my scepticism was based on the fact that the Minister refused to give me a commitment that he would bring forward his own amendment on Report. It is easy to say that I raised a good point if he has no intention of doing anything about it, but I take him at his word. If he says I have raised a good point I am sure he will take steps to rectify a loophole that could allow antisocial behaviour to continue for a further 21 days, which would be unreasonable. I therefore beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 43 ordered to stand part of the Bill.

Clauses 44, 45 and 46 ordered to stand part of the Bill.

Clause 47

Forfeiture of item used in commission of offence

Gloria De Piero: I beg to move amendment 84, in clause 47, page 27, line 16, leave out 'as soon as reasonably practicable'.

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

Clause stand part.

Amendment 85, in clause 48, page 27, line 37, leave out 'may' and insert 'shall'.

Clause 48 stand part.

Gloria De Piero: The amendments relate to forfeiting or seizing items used in antisocial behaviour. That might be spray paint or alcohol, for example. I have a couple of questions. Will the Minister explain the process by which someone has to hand over an item that has been used to commit the antisocial behaviour

"as soon as reasonably practicable"?

Again, I think it is important to put time scales on the record, because we must send a clear message from this House that speed is important when dealing with antisocial behaviour.

On amendment 85, clause 48(3) states:

"A constable who has seized an item under a warrant under this section—

(a) may retain the item until any relevant criminal proceedings have been finally determined".

That could be for a period of 28 days. One might assume that the offending item should be retained until any relevant criminal proceedings have been determined. I would like to ask the Minister why he has chosen the word "may" instead of the word "shall".

Damian Green: As drafted, clause 47 will allow the court to require someone convicted of breaching a community protection notice to forfeit specific items that were used in the antisocial behaviour. That could be any item, for example audio equipment.

Amendment 84 would remove the words

"as soon as reasonably practicable"

from subsection (2), with the effect that the person will have to hand over the item immediately, as the hon. Lady said. The qualification in that subsection is not unreasonable, as much depends on the nature of the item. To answer her question specifically, if the item is small and portable I would expect the reference to handing the item over as soon as "reasonably practicable" to mean immediately when the order is served.

If the item is bulky or heavy, such as some audio equipment, it would not be practicable for it to be moved at the time. Time would be needed to arrange for the item to be handed over. The term does not imply that there is any room for foot-dragging and delay, but it allows flexibility where needed.

Gloria De Piero: Was any thought given to stating specifically, as the Minister said, that if the item is small and portable it should be handed over immediately?

Damian Green: The phrase used is

"as soon as reasonably practicable".

If the item is a spray can, the example we keep using, it is clearly reasonably practicable to say, "Give that to me now." I hope that answers the hon. Lady's point. If it is small and portable and can be handed over at the time, that fulfils the requirement.

2.30 pm

Stephen Phillips: I wonder whether the debate on this amendment is proceeding on a misapprehension. Clause 47 is concerned with an order made by a court, as is made clear in subsection (1). If an offender has been convicted of an offence by a court and a court makes an order under subsection (1), it is most unlikely that the offender will have about their person in court the item that was used for the purposes of the antisocial behaviour. The Minister is entirely right to defend the words

"as soon as reasonably practicable"

[Stephen Phillips]

irrespective of the size of the thing to be handed over, for the simple reason that the offender will not have it with them in court.

Damian Green: My hon. and learned Friend makes a good point. I suppose that an offender might have the item on them—one could imagine the item being in court if it was an item of evidence—but he is right to say that the offender may not have the item with them. If the individual does not forfeit the item, they would then be in breach of the court's order, which carries a fine of up to £5,000 and/or custody of up to two months, so the court does have some teeth in enforcing such orders.

Clause 48 allows the court to issue a warrant for the seizure of any item used in antisocial behaviour. Once the item has been seized, a constable can retain it for up to 28 days before returning it. In cases where criminal proceedings for breach commence within the 28-day limit, the constable can hold the item until completion of the case.

Amendment 85 would fetter the constable's discretion in determining whether it is appropriate to retain a seized item for the whole 28-day period. In most cases, I expect that the item will be retained until the conclusion of criminal proceedings, but it may be appropriate to return the item before that time. For instance, the antisocial behaviour could relate to a specific event, such as loud noise-making equipment being used on purpose to interfere with some other event, and the constable may believe that once the other event is over, the risk posed by the individual has dissipated sufficiently to return the equipment pending the conclusion of criminal proceedings. There are also practical considerations. There is a cost to the police of storing items, so it is right that we build in some flexibility, so that the police can make a judgment as to whether it is appropriate to retain a seized item on a case by case basis.

The hon. Member for Ashfield has asked perfectly reasonable questions and I hope that I have reassured her that there is method behind the drafting of this section of the Bill.

Gloria De Piero: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 47 ordered to stand part of the Bill.

Clause 48 ordered to stand part of the Bill.

Clauses 49 to 54 ordered to stand part of the Bill.

Clause 55

POWER TO MAKE ORDERS

Gloria De Piero: I beg to move amendment 86, in clause 55, page 32, line 40, at end insert—

'(7A) The Secretary of State must carry out an assessment of the consultation processes under subsection (7), and must lay a copy of this assessment before Parliament within 12 months of this section coming into force.'.

The Chair: With this it will be convenient to discuss amendment 87, in clause 55, page 32, line 40, at end insert—

'(7A) Before consulting community representatives under subsection (7)(b), a local authority must publish a notice describing the proposed order in a local newspaper circulating in the same area as the land to which the order would apply, and inviting representations on the proposal.'.

Gloria De Piero: We move to public spaces protection orders. The powers introduced under the Labour Government are replicated here, but we would not be making such changes, because they seem to introduce change for change's sake, which often comes with a price tag, as detailed in the impact assessment. We also prefer our measures, because they do what is said on the tin. A gating order is pretty clear. Dog control orders are incredibly clear. I want to spend a little time discussing dog control orders in particular, because several representations have been made and a number of Committee members have discussed the increasing problem of dangerous dogs.

Amendment 86 states that the

"Secretary of State must carry out an assessment of the consultation processes",

and it was based on representations from Battersea Dogs and Cats Home. The Bill states that before issuing a public spaces protection order, a local authority must consult

"whatever community representatives the local authority thinks it appropriate to consult."

We think that is a very broad provision.

That is why we think it would be a good thing for the Secretary of State to

"lay a copy of this assessment before Parliament within 12 months of this section coming into force."

Amendment 87 would require an authority to

"publish a notice describing the proposed order in a local newspaper".

Authorities are required to do so under the existing power, but that will no longer be guaranteed. I would like the Minister's thoughts on the amendments.

The Ramblers said it would be good to have an assessment within a year of the clause's introduction to ensure that everything was working well; amendment 86 therefore relates to the consultation process. After the Minister has spoken about that, I want to talk specifically about dog control orders, because I have received representations on that issue. First, though, will the Minister respond to my point about the consultation process and tell us why the Bill contains no requirement for the local authority to detail the proposed public spaces protection order in the local paper?

The Chair: Before we proceed, I caution the hon. Lady about pursuing the issue of dog control orders at this point. The reason is, as my eagle-eyed friend to my left has pointed out, when we reach clause 98—in about 10 minutes' time—new clause 4 has been selected, which deals with dog control orders. If the hon. Lady chooses to have the debate now, which she is quite entitled to do, it might make it impossible for us to debate new clause 4 at that time. The judgment is hers.

Damian Green: I am grateful, Sir Roger. I will not deal in detail with dog control orders. I suspect the hon. Member for Ashfield will decide to have that debate on new clause 4. That is the sense I get from Opposition Members' faces.

Let me answer directly the hon. Lady's general questions. She asked why we are introducing public spaces protection orders when there are numerous existing powers under the legislation passed by the previous Government for tackling antisocial behaviour in public places. The existing powers are quite specific, and, in a number of cases, more than one order is needed, such as for the banning of dogs off leashes—that is the last reference to dogs I will make—and of drinking in public. Often, that can be confusing for those who enforce the orders and for the victims they are designed to protect. Public spaces protection orders will consolidate those powers and give practitioners clarity and flexibility to respond to a wider range of local problems. As we know, there is seldom one problem; there is usually a collection of problems.

The hon. Lady asked about the consultation process. We are prepared to review the consultation process before the standard three to five-year time frame for post-legislative scrutiny that the last Government introduced. If it is necessary to review the consultation process earlier, I am happy to promise her that that will be done. The Home Affairs Committee is, of course, free to conduct an inquiry at any time and in a manner of its choosing. I hope that reassures her.

Let me deal with the hon. Lady's amendments. Amendment 86 would require the Secretary of State to

"carry out an assessment of the consultation processes under subsection (7), and...lay a copy of this assessment before Parliament"

We all agree that public spaces are there for the enjoyment of the whole community, and we all know that there is too often a minority who spoil it for the majority. Local authorities need effective powers to tackle that minority, and we want to give them the right powers to protect communities' enjoyment of their public spaces.

Tracey Crouch (Chatham and Aylesford) (Con): Will my hon. Friend confirm whether the reference to representatives of the local community who are considered appropriate would include individuals? We talk about community groups, but would Mr and Mrs Miggins at No. 44 be included? They may well consider that their lives are being blighted but not be part of any residents' group.

Damian Green: Certainly. That is a fair example. If somebody is living on the edge of a particular amenity and their life is being made particularly miserable by the sort of minority I am talking about, then yes, they should have a valid ability to represent themselves.

Public spaces protection orders are a powerful tool and should be used only following consultation with the local community. The Bill provides for just that. We can trust local authorities to be able to undertake such consultation in an appropriate manner, without looking over their shoulder. Indeed, in an example such as that raised by my hon. Friend, the first act of an individual household may well be to go to the local authority. It would be normal to go either to the local authority or to the police.

I am happy to agree with the hon. Member for Ashfield that we should assess the effectiveness of the powers. However, as I said in response to similar amendments that were tabled to part 1 of the Bill, I do not think it is necessary or appropriate to clutter up the Bill with statutory duties to review the operation of the new powers.

Gloria De Piero: How confident is the Minister that there will not be widely differing methods of consulting the local community, depending on where a person lives in the country?

Damian Green: I cannot be confident of that, because I cannot control how local authorities operate, but I think that we should trust them on this issue. The new measure will be of enormous import to a relatively small number of people. That is why it is appropriate to allow local authorities to do different things. The councillors at local authorities will be responsible to their communities; they have to stand for election as well, so it will be up to them. If they are behaving in a negligent way and allowing antisocial behaviour to continue when they now have the power to do something about it, I would suggest that the normal democratic process would act as a spur for them to get their act together in such circumstances.

Gloria De Piero: The measures that are being replaced by public spaces protection orders required local authorities to advertise in the local newspaper, notifying more representatives from the community that they were able to provide feedback. Now that that requirement has been removed, the worry is that fewer members of the local community will feel engaged in a consultation because fewer will be aware that it is happening.

Damian Green: Let me move directly to amendment 87, which deals with the issue of publication. We want the powers to be effective in tackling antisocial behaviour quickly, so the consultation required in the Bill should not be protracted and unnecessarily bureaucratic. In keeping with the Government's general desire to devolve powers to local areas, we want to provide more scope for local discretion for those who will use the powers.

Both the hon. Lady and I used to be journalists. I do not know whether she ever worked on a local paper, but I certainly did in my early days in the profession. Sadly, local newspapers in some areas of the country are not nowadays the best way to reach a wide local audience. Many of us regret this—I certainly do—but it is an observable fact that fewer people buy local newspapers than used to.

Gloria De Piero: Will the Minister give way?

Damian Green: The hon. Lady is going to tell me that that is not true in Ashfield.

Gloria De Piero: Quite literally, every single week that I am out and about in my constituency, someone will say to me, "I read it in your column in the local newspaper."

Damian Green: I too write a column for my local newspaper. We are both ex-journalists; there are times when one likes to use one's old skills. I absolutely agree that it is a way of getting in touch with the local community. However, I was making the practical point that I am sure she will find that, regrettably, her local newspaper's circulation is lower than it was 10 years ago. It may be more effective to publicise the intention to make an order on the council's website or in local libraries. Again, we should not prescribe in the Bill how local authorities should get in touch with as wide a range of their public as possible, as they will want to do. It may well be that they partly want to communicate through local papers, but I think we should leave it to the good sense of local authorities.

2.45 pm

Gloria De Piero: Can the Minister think of any other vehicle apart from the local media by which a council can get feedback on a particular matter?

Damian Green: The obvious answer is websites. Every year my own council in Ashford gets a huge amount of feedback through its website. We are hopefully passing a Bill now that will sit on the statute book for a number of years to come. It seems to me almost unarguable that the use of new forms of communication between local authorities and the public will continue to change very rapidly. I said websites, but that is rather backward-looking. Councils will use Facebook, Twitter and all other kinds of social media. I am sure that in five years' time Facebook and Twitter will look slightly quaint and old fashioned. They may still be very powerful, as websites are and as local newspapers still are, but technology moves on.

I have two basic points. First, we should not try to anticipate the ways in which people communicate in years to come. Secondly, we should not second guess local authorities about the best way to do it in their area. Therefore we should leave maximum discretion rather than try to fetter it in the way the amendment seeks to do.

Bridget Phillipson (Houghton and Sunderland South) (Lab): Surely the Minister understands that there is a disparity in access to the internet. Older residents are often unable to use the internet, and many people in my constituency do not have access to it. There is a divide across the country and within communities between those who do and do not have access to the internet. We need to ensure that we do not exclude people because we move towards new technologies that are not accessible to all.

Damian Green: I entirely agree. The hon. Lady makes my point for me. In different parts of the country it is important to allow local authorities to know how best to contact their local public. It may well not be the same in her constituency as in mine. In that case, it should be for each local authority to decide how best to do it. I would say that that is an argument for the more permissive regime in the Bill rather than the more directional regime proposed in amendment 87.

Bridget Phillipson: The difficulty is that councils such as mine in Sunderland face disproportionate levels of spending reductions. The Minister may disagree on that point, but there are real pressures facing councils at the moment. Obviously a cost can be attached to some of these measures for councils. Given the difficult decisions that councils such as mine are having to take at the moment, is there not a risk that we will see a reduction in notices and consultation because of the costs associated with them?

Damian Green: I will resist the temptation to enter a debate with the hon. Lady about relative local authority funding. I hear you say, "Good", Sir Roger. But again, if she is right it is an even stronger argument that we should not try to decide in the Bill how a council should be forced to make contact. Clearly it would cost council tax payers' money to put an advert in a local paper. If the council is already running a website, the marginal cost of putting a consultation there or asking for information is much smaller. As I say, all the arguments being put forward reinforce my belief that we should not be too prescriptive here. I therefore invite the hon. Member for Ashfield to withdraw the amendment.

Gloria De Piero: The powers are significant. We introduced them, albeit with a different name, so obviously we think they are a good thing. But when such powers are introduced, it is important that they have the support of the local community. We may return to various aspects of consultation on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

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

Gloria De Piero: I started my earlier remarks by saying that there is a price tag when Ministers choose to change the name of things. There is a cost for agencies in getting used to new powers, and newer powers are therefore often not used at the same rate as previous powers until agencies are used to them.

On changing the names, I draw the Minister's attention to the impact assessment. The community protection notices, which we discussed earlier, the public spaces protection orders, which we are discussing now, and the community trigger, which we will discuss later in our scrutiny of the Bill, are lumped together in the impact assessment, which states that for new orders, such as PSPOs:

> "Half a day's training should suffice and, assuming that this would cost approximately £75, would cost £2.8 million. There will also be the cost of the time spent at the training, which will be realised in the form of an opportunity cost for police forces. This amounts to an opportunity cost of approximately £5.5 million."

In these difficult times when our police forces are stretched and resources are tight, it is important for the Minister to tell us in this stand part debate whether it is the best use of police time to introduce something that is effectively a name change. It will cost millions of pounds and take our police officers off the beat for training in the new powers.

Damian Green: To address the hon. Lady's point directly, it is more than a name change; it is a creation of powers that, as I have explained, are more flexible than the existing ones. They will be more effective in countering antisocial behaviour and will give the police and local authorities a useful tool to combat problematic manifestations of behaviour. The argument that the

police or other people will have to be trained to enforce the notices properly is a truism; every time a new piece of technology, a new police technique or a new law arrives, the police have to adjust. That is part of their core activity and they do it very well. The hon. Lady makes the point that police budgets are stretched, but she will know that crime has been falling for several years in these difficult conditions.

Stephen Phillips: Does the Minister agree that there will be a saving associated with the provisions, assuming that they become law in due course? They replace three existing sets of different orders that may be made. The mere fact that there are three means that there are costs associated with their administration and with local authorities deciding which they will use.

Damian Green: My hon. and learned Friend makes a good point. In the end, the greater cost, in terms of both money and less tangible things to society, is antisocial behaviour and all its effects. Things that reduce antisocial behaviour will be extremely welcome to the police, as they would be to anyone else.

On the more general point of the clause stand part debate, I said that public spaces are there for the enjoyment of all. We have to stop minorities reducing or preventing that enjoyment. The orders replace designated public places orders, gating orders and dog control orders, but they can cover a much wider array of behaviours.

Gloria De Piero: Sometimes we call particular pieces of legislation particular things, and by the time they get down to our communities, they do not make much sense and do not do what they say on the tin. I do not want to go into dog control orders in detail, but a gating order is clearly when someone closes their gate in an alley where people may convene to commit acts of antisocial behaviour. A dog control order does what it says on the tin. I fear that because a public spaces protection notice will not have those specific words, it may degrade those powers somehow. The notice might force the powers down the agenda. It is important when dealing with antisocial behaviour that such things are not hidden away in the small print, but are big, shiny, gleaming and in black and white. There are particular issues that blight communities, such as dog control or antisocial behaviour down an alley or gitty, as they are called in some parts of the country. Does the Minister accept that a public spaces protection order does not do what it says on the tin?

Damian Green: I don't really, no. Public spaces protection order is a perfectly clear phrase. I do not understand the hon. Lady's point about small print. If she looks at the Bill it is in large print in chapter 2. The whole chapter is about public spaces protection orders. Fifteen years ago, nobody had heard of antisocial behaviour orders and now everyone refers to them by the acronym. It is inevitable when a new power is introduced that nobody has heard of it at the time, but in a few years everyone will have heard of it.

Gloria De Piero: It is not simply a case of whether someone has heard of a power. That brings me to the other point about training—enabling agencies to get used to the new powers will have much more of an effect than a half-hour or half-day training session. To take the example of the ASBO, of course everyone now uses that terminology. However, there were around 104 in the first year they were introduced. I believe there are now 14 times more a year, about 1,400. There are perverse consequences.

Paul Maynard (Blackpool North and Cleveleys) (Con): The hon. Lady quoted the number 104 on multiple occasions. Will she confirm that it is only 104 because it was introduced in early April?

The Chair: Order. The hon. Gentleman cannot intervene on an intervention.

Paul Maynard: My apologies.

The Chair: My apologies; I should have spotted it sooner. Gloria De Piero has the floor, and then the Minister. Then if the hon. Gentleman wishes to intervene he may do so.

Damian Green: I think it may be to the advantage of the Committee if I give way to my hon. Friend.

Paul Maynard: I apologise for any confusion. Does the Minister agree that the figure of 104 is artificially low because it represents only one calendar month—April?

Damian Green: Yes. Now that my hon. Friend has found the right place to make it, he makes an extremely good point, which I share. I will not be tempted into a debate with the hon. Member for Ashfield about the efficacy of ASBOs, because we have had that in many other places at many other times. The fact that a new power is introduced and over time becomes more used is to be expected. It is intuitively extremely likely. I suspect that is what will happen with public spaces protection orders as well. The underlying point I emphasise is that they are more flexible and cover a wider range of behaviours than the existing specific orders. Very specifically in cases where there may be more than one different type of antisocial behaviour in a particular public space, which is quite likely—we have all seen it happen—the orders will be much easier for local authorities and the police to justify and enforce than the range of specific orders currently on the statute book.

Gloria De Piero: The logic of the Minister's argument is that we will see an increase in the use of public spaces protection orders over those currently used under existing names.

Damian Green: I do not think that is the logic of what I am saying. As with all legislation on antisocial behaviour or crime generally, in an ideal world it would never be used, because there would not be any antisocial behaviour. I shall not measure the success of this order or any other effort at controlling antisocial behaviour by the number of times it is used. We should measure the success of our efforts against antisocial behaviour by the amount of antisocial behaviour. As I have just said, crime is falling and we must ensure that continues.

[Damian Green]

I have made the point about flexibility several times, so will not do so again. I think the orders will be practical. The amount of training to ensure that they are used effectively is not huge or disproportionate. I therefore call for the clause to stand part of the Bill.

Question put and agreed to.

Clause 55 accordingly ordered to stand part of the Bill.

Clause 56

Duration of orders

The Chair: Amendment 88 was not selected, because it is effectively a negative on the clause. Under a clause stand part debate, the hon. Member for Ashfield has the opportunity to argue that a clause should not stand part of the Bill, which has precisely the same effect, so I assume that the hon. Lady may want a stand part debate on clause 56.

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

3 pm

Gloria De Piero: Representations have been made by two organisations. They make different points, but it is important when scrutinising legislation that such points are heard and responded to by the Ministers. Public spaces protection orders can last a maximum of three years and require a review to be renewed. Battersea Dogs Home, for example, says that the fact that local authorities will have to extend powers after three years could cause it an added administrative burden at a time when resources are being cut. The Ramblers actually make the opposite argument, but it is important that such issues are considered. They stated:

> "This is too long a period for the closure of any route of which everyday use is being made."

The point is that the order should last for six months only.

Stephen Phillips: The hon. Lady is participating in a stand part debate on clause 56. I understand what the Ramblers say and I understand what Battersea Dogs Home says, but does she, on behalf of the Opposition, think that clause 56 should be part of the Bill? At the moment, she is advancing two inconsistent arguments.

Gloria De Piero: Yes, I do. I believe that although our sittings are for scrutinising legislation, we should not operate in a bubble. When people make representations to us, they have the right to be heard. That is how a democracy operates. It would be a sad day if such arguments were not heard just because we cannot see their validity.

Paul Maynard: The hon. Lady will be aware that every member of the Committee has received written briefings from the various organisations, so we have already had the chance to read them. Does she not think that her role as an Opposition Front-Bench spokeswoman is actually to explain her position and not just to act as a mouthpiece?

The Chair: Order. Forgive me, but the Chairman will decide whether something is in order. At the moment, the hon. Lady is in order, and I think it would behove the hon. and learned Member for Sleaford and North Hykeham and the hon. Member for Blackpool North and Cleveleys to understand that.

Gloria De Piero: I ask the Minister, in the interests of democracy, of people having their voice heard and of our being the public's representatives, to respond to the points I outlined.

Damian Green: I will address the issue that the maximum duration of the protection orders is both too long and too short. I am happy to assure the hon. Lady that I have both heard and possibly made speeches that were less coherent than that.

Gloria De Piero: I genuinely believe that it is important that people's fears are allayed when they make representations to us. They have chosen the Committee as a vehicle to express those fears. Nobody else on the Committee has raised the issues. The concerns are genuine. The organisations have taken the time and trouble to write to us and although Government Members do not deem those concerns worth repeating or worthy of a response from the Minister, the Opposition do. They have taken the trouble to submit their views and we would like the Minister to respond.

The Chair: Order. We are in grave danger of straying into lobbying territory. Nevertheless, the hon. Lady has made her points and the Minister can respond if he so chooses.

Damian Green: I am entirely happy to respond and explain why the clause is neither too long nor too short, but has achieved a Goldilocks level of perfection.

It is important that local authorities review decisions to put prohibitions on the use of public spaces on a regular basis. The existing orders do not require a formal review, but, in practice, many local authorities undertake informal reviews to ensure that prohibitions or requirements still meet the needs of the community. I hope that will address the issue the hon. Lady raised and that the Ramblers, for whom I have a great regard, brought up. A public spaces protection order is valid for up to three years from the moment it is issued, unless the local authority decides that a shorter period is more appropriate. I hope that addresses the points made by the Ramblers and Battersea Dogs Home.

At any stage before the order expires, the local authority can extend it if they reasonably believe that it is necessary to prevent antisocial behaviour from recurring. The extension can be for no more than three years, at which point another review is required. There is no limit on the number of times an order can be renewed. In making the decision to renew, the local authority must consult the chief officer of police, the police and crime commissioner and any representatives of the local community they consider appropriate. That could involve people living nearby or regular users of the space. When an order is renewed, it must be published in accordance with regulations made by the Secretary of State. That

will ensure that they are published in a way that is transparent and clear for everyone to understand. On that basis, I ask that the clause stand part of the Bill.

Question put and agreed to.

Clause 56 accordingly ordered to stand part of the Bill.

Clause 57 ordered to stand part of the Bill.

Clause 58

PREMISES ETC TO WHICH ALCOHOL PROHIBITION DOES NOT APPLY

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

The Chair: With this it will be convenient to consider new clause 8—*Requirement for review of alcohol licences where public spaces protection order is made—*

'Where a local authority has made a public spaces protection order which prohibits the consumption of alcohol, it must—

(a) inform all premises licensed to sell alcohol within the restricted area that such an order has been issued;

(b) carry out a formal review of all licenses issued under the Licensing Act 2003 to those premises, in order to ensure that the licensing conditions are appropriate for minimising the detrimental effects of alcohol in the local area; and

(c) where a premises has been identified by the police or local authority as a particular cause of nuisance or anti-social behaviour, revoke that premises' alcohol licence or review the conditions imposed by it.'

Tracey Crouch: I do not wish to detain the Committee for long; I merely wish to ask a few questions. I thoroughly approve of the clause and what it seeks to do. The Minister will be aware that I am chair of the all-party group on alcohol misuse. This seems a good opportunity to mention minimum pricing and the availability and affordability of alcohol.

Will the Minister confirm whether clause 58 will complement or contradict measures that already exist in alcohol control zones, which apply to areas within local communities? Does the clause relate to the consumption of all alcohol within the premises or only to individuals drinking alcohol there? For example, if a protection order is put on a park because youths have been drinking alcohol there, will it apply to everybody in the park, including individuals having a picnic, or simply be intended for specific individuals?

Damian Green: I am grateful to my hon. Friend for those questions. They are good questions, so let me clear them up. Clause 58 provides that a public spaces protection order cannot be used to ban alcohol consumption at licensed premises, because, as she suggests, the licensing system already includes safeguards against premises becoming centres for antisocial behaviour. It would create confusion and duplication if public spaces protection orders were introduced there. That is why that particular point is made in the clause.

New clause 8 would require a local authority to make a public spaces protection order that prohibits the consumption of alcohol and to review all premises licensed within the area it covers. It would then compel the authority to revoke the licences of premises considered to be the source of alcohol-related, antisocial behaviour or to change their licence conditions.

Although we all agree that alcohol-related, antisocial behaviour is a serious problem—I commend the work of my hon. Friend in such matters—we consider that the effect of the new clause would be burdensome and likely to make the exercise of the power prohibitively difficult and expensive.

The additional burden would fall first on local authorities and the police. Attaching a new requirement to the order would make that tool much less flexible to use and less easy to administer. It would also be extremely burdensome for businesses. Licensed premises within the area of a public spaces protection order would be forced to go through a review, regardless of whether they were responsibly run.

Local authorities have told us that they might want to use public spaces protection orders to restrict drinking in town centres. On the face of it, that seems a sensible way to reduce the problems that we see too often in towns and cities on Friday and Saturday nights. It is a decision that local authorities should be able to make. However, the new clause would mean that they would have to review the licences of each licensed premises in the area—pubs, bars, restaurants and clubs. In most cases, that is likely to be a wholly disproportionate and costly exercise.

Stephen Phillips: Does my right hon. Friend agree that the new clause would not only add such a burden, but deter local authorities from using such powers? There would be a huge administrative burden in deploying the powers if authorities had to go through the hoops that the Opposition think they ought to go through.

Damian Green: That is a valid point. If the climate were too burdensome, such a power would not be used so the practical benefits that we want would not be achieved. On top of that, the new clause is unnecessary. The closure power that we shall be considering soon will allow the police and local authorities to close premises, including licensed premises, when they are causing antisocial behaviour. Licensing authorities can, and do, already review licences when there is good reason. The current licensing regime requires that reviews are triggered by, and conducted using, evidence relevant to specific premises.

Licensing authorities must make their decisions based on what is appropriate to stop crime and disorder, and public nuisance; and to promote public safety and protect children from harm. When problems are identified, that process will allow the authority to decide on a case-by-case basis, in conjunction with the police—an appropriate response, instead of mandating a specific course of action as the new clause suggests.

A blanket duty to review all licences indiscriminately is at odds with the fundamental principles of licensing law. The new clause is misguided. It would take power and discretion away from local people and their representatives. The Government do not agree that local people and their representatives are incapable of making such decisions. Indeed, we believe that they are often far better placed to make decisions that affect

[Damian Green]

local communities than central Government. For that and various other reasons, I hope that the new clause will not be pressed further.

Gloria De Piero: I move the new clause—

The Chair: Order. I appreciate that the process is arcane. If it is any consolation, I have been playing this game since 1997, and I still have some trouble with it. The clause stand part debate is taking place now. If the hon. Lady wishes to move new clause 8, she will have to wait until the appropriate point in the Bill. However, she can speak to it now.

Gloria De Piero: Sir Roger, I am grateful for the clarification.

The aims of the Government's alcohol strategy are to reduce the social and individual harm caused by alcohol consumption—in particular, antisocial behaviour. The Government promise to rebalance the Licensing Act 2003 in favour of local communities. Under clause 55, the council can ban the consumption of alcohol and, under clause 59, it can take action against those who are consuming it.

However, there is often an off-licence that sells alcohol not only to under-age people, although that is obviously a problem, but to 18 or 19-year-olds or older people until 2 o'clock in the morning. If people from the community come forward and say, "There is a real problem after 10 o'clock at night. People are congregating and drinking in the nearby park and get their alcohol from that offie", there may be an opportunity for the local authority to say, "Actually, there is a such a lot of antisocial behaviour in this park because the off-licence can sell alcohol until 2 o'clock in the morning that it might be right to say that it cannot sell alcohol after 10 o'clock."

3.15 pm

Damian Green: The hon. Lady is right. We wanted to improve the existing controls on alcohol. That is why we legislated two years ago to overhaul the previous Government's Licensing Act in favour of local communities. Instead of dictating decisions from the centre, as the new clause would do, we reformed the licensing laws to give local communities much greater powers to deal with premises causing problems.

For example, we lowered the evidence threshold required for licensing authorities to make licensing decisions from "necessary" to simply "appropriate", to make revoking licences from problem premises easier. We made licensing authorities responsible authorities in their own right so they can act swiftly to take action against problem premises without having to wait for others to do so first. We have given licensing authorities the power to make early morning alcohol restriction orders to ban the sale of alcohol in problem areas between midnight and 6 am.

The common theme that runs through all these powers—and, indeed, the reforms of antisocial behaviour powers more generally—is that they are discretionary and designed to give maximum flexibility. Local people and agencies should decide what options are best to solve problems in their communities.

In summary, introducing a new blanket requirement would undermine both the public spaces protection order and the existing licensing regime. It would be burdensome for the police, local authorities and businesses and, considering the better alternatives on offer, it is also unnecessary. I hope that the hon. Lady will not press her new clause.

There is one further clarification that I should give my hon. Friend the Member for Chatham and Aylesford, who spoke movingly about the "déjeuner sur l'herbe" culture of picnics in her constituency. She asked whether all alcohol would be prohibited. It would not be an offence to drink alcohol but it would be not to hand it over when challenged, which allows the police officer to use judgment in the case of a picnic. It would be for an individual police officer to decide.

Question put and agreed to.

Clause 58 accordingly ordered to stand part of the Bill.

Clause 59

Consumption of alcohol in breach of prohibition in order

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

Richard Fuller (Bedford) (Con): Is it in order to make a brief comment on the clause? It is quite selfish in that it relates to the part of Bedford where I live and where my office is, which is a no-alcohol zone. I want to speak about the value of our passing laws that never seem to be enforced.

Many of my constituents who live in the no-alcohol zone have made repeated requests, and their concerns known to both the local authority and the local police, about the consumption of alcohol along the River Ouse. It is a lovely river. I encourage everyone to visit Bedford; it is a wonderful town and the River Ouse is perhaps the most beautiful part of it. The lives of many of the residents alongside the river are made much worse by the consumption of alcohol in flagrant disregard of the no-alcohol zone.

For my constituents who live just round from my office on Rutland road, the end of their road is blighted by the six or seven regular drinkers who drink their alcohol openly in a no-alcohol zone. Their frustration has reached a high level, which is perfectly understandable.

The clause talks about the requirements for constables or other authorised persons to deal with the consumption of alcohol in breach of a prohibition order. One member of my staff was recently walking down Midland road, which adjoins Rutland road, as I know you are aware, Sir Roger. She saw a police officer and was aware that there were people drinking. She told the police constable that this breach of the order was taking place. The constable said he was too busy and was moving on to other duties.

My point, if I have one, is that any prudent Government should ensure that when they pass a law, the right guidance goes to those who will enforce it. I ask the Minister, particularly with regard to the Midland road

area, to use his good offices and the great new clause to ensure that what he puts on paper is carried through in practice.

Damian Green: I am indeed familiar with that particularly lovely part of Bedford—I have visited my hon. Friend's office there and have been out campaigning with him. He is right that if we do not enforce the things we set out in legislation, that increases the frustration among the general public. That is a profound point.

One of the things we can and must do in the scrutiny procedure is ensure that what we are doing will have a practical effect. I will give my hon. Friend an example of something that can cause frustration, which illustrates why our changes are preferable to the previous legislation.

At present, if somebody persistently drinks in a no-drink zone, but pours the alcohol away every time they are confronted by a police officer, they are not committing an offence. That is obviously frustrating both for the law enforcement agencies and the individuals who see it happening on a regular basis. Under the reforms, a new civil injunction or community protection notice can be used against that individual to ensure they cease the behaviour that is causing annoyance to those around them.

I am sure the law enforcement agencies in Bedford will be made aware of what my hon. Friend said, and I entirely endorse it. These changes make the legislation a more practical tool for those agencies to use for stopping public problem drinking. I hope that the clause will stand part of the Bill.

Question put and agreed to.

Clause 59 accordingly ordered to stand part of the Bill.

Clause 60

ORDERS RESTRICTING PUBLIC RIGHT OF WAY OVER HIGHWAY

Gloria De Piero: I beg to move amendment 89, in clause 60, page 35, line 37, at end insert—

> '(d) any other measures that have been or could be taken to alleviate the detrimental effect which the activities have had or are likely to have on the quality of life of those in the locality.'.

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

Amendment 90, in clause 60, page 36, line 3, at end insert—

> '(2A) Where a highway is situated within the area of more than one local authority, the power to make a public spaces protection order is only exercisable by a local authority with respect to any part of that highway following prior consultation with the other local authority or authorities in whose area that highway is also situated.'.

Clause stand part.

Amendment 91, in clause 61, page 36, line 31, at end insert—

> '(da) a way shown in a definitive map and statement as a footpath, bridleway, restricted byway or byway open to all traffic;'.

Clause 61 stand part.

Gloria De Piero: When there are orders restricting the public right of way, it is inevitable that people who campaigned to the previous Government will campaign to this Government about their right to roam and the importance of open spaces. It is important that we put those arguments on the record once again to reassure people that the orders will be used proportionately. When the gating of a through route is introduced, we should ensure that there are sufficient protections in the legislation.

I would also like to raise the issue of two-tier authorities. For example, Ashfield district council might want to issue a public spaces protection order to close a route to prevent nuisance and antisocial behaviour, but the path might be under the control of Nottinghamshire county council. The Bill makes no mention of two-tier authorities, so can the Minister reassure us that both authorities would be able to control the potential nuisance or anti-social behaviour?

Damian Green: With your permission, Sir Roger, I will speak to all the amendments and both clause stand part debates. As the hon. Lady indicated, the amendments relate to concerns raised in the written briefing submitted to the Committee by the Ramblers Association.

The point raised by amendment 89 is sound. A restriction on a public right of way, especially one used by many as a means of getting from A to B, should always be considered only as a last resort. However, there will be times when it is necessary to protect communities from antisocial behaviour, crime or disorder. In such situations, some users may have to accept restrictions to prevent harm to those being affected by the behaviour.

In those circumstances, it is only right that the local authority consider alternative means of dealing with the situation before deciding on restricting access—indeed, I have no doubt that most do that. It is our intention to make that clear in guidance, but I am ready to consider whether it would also be appropriate to include an additional safeguard along such lines in the Bill.

Likewise, the principle behind amendment 90 has merit. It is only right that where a highway crosses more than one local authority area, neighbouring local authorities are consulted before restrictions are put in place, not least because of any unintended consequences from simply displacing the antisocial behaviour in question. Again, I am content to consider the principle further before Report.

I am afraid I cannot be so open to the hon. Lady's amendment 91, which seeks to add footpaths, bridleways, restricted byways and byways open to all traffic to the list of highways to which access may not be restricted by a public spaces protection order. Although I note the arguments put forward by the hon. Lady, I do not think that such public rights of way should be exempted.

Other roads exempted by clause 61 are identified by the Highways Act 1980 as public rights of way where the consequences of restricting access would, in all likelihood, be disproportionate compared with any potential antisocial behaviour being committed—as the Ramblers Association itself acknowledges, that is because of their "strategic value". Although the public rights of way covered in amendment 91 are important, I do not believe they carry that same strategic value and, as such, where they are the focus of antisocial behaviour, it should be possible for local authorities to consider restricting access.

[Damian Green]

However, I am keen to ensure that the guidance reflects the important role that rights of way have to those of us who use them and we will work to ensure that the guidance covers that particular point. As I have indicated, I will further consider the principles behind amendments 89 and 90. I hope that the hon. Lady can withdraw them when we reach the end of our debate.

Clause 60 outlines how restrictions can be placed on a public right of way or highway. Clearly, a balance must be struck in such a situation, as I have just described. Some types of highway cannot be restricted, as set out in clause 61, but otherwise restrictions can be imposed under certain circumstances. Before restricting access, the local authority must first consider the effect that that would have on people in the locality and whether alternative routes are available.

Once a decision is made to restrict access, the local authority must notify people who could be affected, informing them of how they can see a copy of the proposed order. It must also allow a reasonable time for people to make representations, which must then be considered. A public spaces protection order cannot be used to restrict access to a right of way that acts as the only reasonable route between dwellings or way of accessing a place of recreation or business. To ensure effective enforcement, a local authority can install, maintain and operate barriers.

Clause 61 lists the categories of highway over which a public right of way may not be restricted. It is designed to ensure that a local authority cannot restrict access to major trunk roads, such as motorways, because of antisocial behaviour. As I have described, the wider implications of any restriction in terms of disruption is likely to outweigh the benefits. The approach is in line with the Highways Act 1980, and there is also provision for the Secretary of State in England and Welsh Ministers in Wales to prescribe further restrictions or regulations.

I commend clauses 60 and 61 to the Committee.

Gloria De Piero: I thank the Minister for giving proper consideration to the points I have made and am grateful for his agreeing to consider some of the issues further. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 60 ordered to stand part of the Bill.

Clause 61 ordered to stand part of the Bill.

Clause 62

Challenging the validity of orders

Gloria De Piero: I beg to move amendment 92, in clause 62, page 37, line 3, leave out ‘interested’.

The Chair: With this it will be convenient to discuss amendment 93, in clause 62, page 37, leave out lines 5 and 6.

3.30 pm

Gloria De Piero: When one first reads the clause, it seems reasonable: the appeal route through the High Court against a public spaces protection order is open only to someone who lives in the area or visits it regularly, and the appeal must be made within six weeks of the application for the public spaces protection order. However, the Ramblers Association has made this point:

> “Our experience with Gating Orders has shown that they are most commonly imposed in areas of high social deprivation, where those who are seriously affected by the loss of a route to local amenities would not be able to consider applying to the High Court to question the validity of a PSPO. In these situations, local people look to organisations such as the Ramblers to defend their interests and, where appropriate, to challenge any injustice through the courts. As the Bill is drafted we would not be able to undertake such a challenge for them. Such challenges are not undertaken lightly”.

Will the Minister respond to that point? It seems fair, and would not be obvious from a first look at the clause, which defines an interested party as someone who lives in an area or visits it regularly—one would automatically assume that those would be the only people with an interest.

Stephen Phillips: The hon. Lady is making an interesting point. Will the Ramblers Association not be able, should it be minded to do so, to take proceedings in the name of a person who is an interested party rather than, as it may at present be able to—I know not—in its own name? Is not the mischief that the association is concerned about non-existent in reality?

Gloria De Piero: I am hoping for clarification from the Minister, which is why I have raised the issue. If the hon. and learned Gentleman is right, my fears will be allayed, but it is important to put the point to the Government.

Damian Green: As the hon. Lady has explained, this group of amendments relates to the question of which parties can challenge the validity of a public spaces protection order, a concern raised by the Ramblers Association in its written evidence.

An application to challenge an order can be made to the High Court by anyone who lives in, works in or visits the restricted area to which the order applies. Those are the “interested persons” as defined in the clause, a definition that captures those who are directly affected by the antisocial behaviour and the consequential decision made by the local authority to make a public spaces protection order to stop the antisocial behaviour. The effect of the amendments would be to give any person the right of appeal to challenge an order in the High Court—not only individuals who do not live in, work in or even regularly visit the restricted area but, conceivably, individuals who have visited the area once, or indeed have never visited it at all, but have somehow learned about the order and decided that they wish to challenge it even though they are not directly affected.

I submit that that would not be a reasonable right of appeal. The individual must have some connection to the restricted area, which is what the clause seeks to ensure by giving the community the power to challenge orders. It is clear that those who live in the restricted area should be able to challenge an order, as should

those who work in the area, because where we work is to some extent as important to us as where we live. The right of appeal also extends to individuals who regularly visit the restricted area.

We should bear in mind that the power to impose an order is about protecting local communities from antisocial behaviour, crime and disorder. Where those who are directly affected by the restrictions wish to appeal, they should have the ability to do so, but those who are not directly affected should not. There is nothing to prevent those directly affected from working with, and getting advice from, campaigning organisations such as the Ramblers Association should they wish to do so, as my hon. and learned Friend the Member for Sleaford and North Hykeham pointed out. However, if the right of appeal were extended to all comers, as the amendments propose, it would become too wide-ranging, would lose its real intent and could give those with no real or genuine interest in the restricted area the ability to challenge an order in the courts.

The amendments could also create a perverse situation in which interested persons had been properly consulted by the local authority, and were content with the order to stop the antisocial behaviour, but then had to endure further antisocial behaviour because the order had been challenged by an individual who was not an interested party and was not affected by the antisocial behaviour at all. My hon. Friend the Member for Bedford has made the point that laws that are not enforced create public discontent and a lack of confidence. If a law meant that the vast majority of a local community was severely affected by antisocial behaviour, but that somebody who had no connection with the area was allowed to make an appeal that at best would ensure that the antisocial behaviour continued for a time before the appeal was heard, that law would be regarded by the community as having had a perverse consequence and not being sensible. In the light of that, I hope the hon. Lady will withdraw the amendment.

Gloria De Piero: The Minister has put forward reasoned arguments. I am happy to beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 62 ordered to stand part of the Bill.

Clauses 63 to 66 ordered to stand part of the Bill.

Clause 67

Interpretation of Chapter 2

Gloria De Piero: I beg to move amendment 94, in clause 67, page 40, line 1, leave out

'for an area for which there is no district council'.

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

Amendment 95, in clause 67, page 40, line 4, at end insert 'or a parish council'.

Amendment 96, in clause 67, page 40, line 6, at end insert 'or a community council'.

Gloria De Piero: We come to the definition of a local authority. Fair representations have been made about parish councils and community councils in Wales not being defined as local authorities, and thus being prohibited from issuing public spaces protection orders. Amendment 97 refers to the definition of public spaces, such as registered commons, village greens and other areas of land normally used for recreational purposes. In the case of that amendment, we simply seek to get the Minister's remarks on record. However, we believe the definition of a local authority requires consideration as a matter of concern.

Damian Green: As the hon. Lady has explained, amendment 94 seeks to allow both county and district councils in two-tier areas to make public spaces protection orders. As drafted, the Bill allows only the lower-tier authority, and any unitary county councils, such as Cornwall, to issue an order. Some parts of the country are of course served by both a county council and a district council or equivalent. In order to avoid the risk of duplication, we believe it is right that only one of those bodies holds the responsibility for public spaces protection orders.

County councils are responsible for large strategic priorities such as education and social services, whereas the district council is more likely to hold responsibility for the kinds of behaviour that could be subject to a new order, such as littering or dog fouling. We therefore believe that responsibility for the order should sit with the district council authority, working where appropriate with the county council.

However, the point that has been raised is important, especially in respect of highways. Although major highways cannot be restricted using the new orders, there will be some overlap between the county council's role as a highway authority and the district council's ability to restrict access to some routes. In those cases, we would expect the district council to consult the county council prior to any order being issued. We feel that is covered sufficiently in clause 55(7)(b).

Amendments 95 and 96 would, as has been explained, allow parish councils in England and community councils in Wales to make public spaces protection orders. I am aware that a number of parish councils have raised concerns about the current wording, as they are currently able to apply for dog control orders, one of the powers being repealed by the Bill.

Simon Danczuk (Rochdale) (Lab): Does the Minister agree that the solution in the medium to long term would be to move to a model of unitary authority status for local authorities?

The Chair: Order. The Minister might, but it is not part of the Bill.

Damian Green: As it happens, I do not. Since we are not allowed to debate it, we will not.

However, the new order is much more powerful than the individual orders it replaces. Public spaces protection orders can be used in a variety of situations, thus allowing areas to respond to local issues as they arise. As a result of that much wider power to deal with place-specific antisocial behaviour, we do not believe

[Damian Green]

that it would be appropriate for parish councils in England, or community councils in Wales, to have access to the new order.

One reason cited by some parish councils for their taking the lead on dog control orders is to save the local authority from needless additional bureaucracy. We have listened to that and scaled back the consultation process so that applications for an order need not take months, as they do now. That should ease any burden on local authorities. Ultimately, there is nothing preventing the local authority and parish council from working together on the application process where that represents the best way forward. I hope that the hon. Member for Ashfield is reassured and will withdraw her amendments.

Gloria De Piero: A number of parish councils in my area operate, as the Minister will know, right down to local neighbourhood level. As we have discussed throughout the scrutiny of the Bill, antisocial behaviour is one of the biggest problems that can affect a particular neighbourhood. Since parish councils have such a home in the heart of their neighbourhoods, what does the Minister see as their role in combating antisocial behaviour?

Damian Green: It is an important role because, as the hon. Lady says, as we go down through the local authority hierarchy, we get to the people who have the most intense interest in, and knowledge of, a particular area where antisocial behaviour may be happening. There are street corners where people congregate to do antisocial things in peaceful villages as well as in town and city centres, but, as I explained, these powers are powerful, which is why we think that they should be operated at the level we suggest.

I can only repeat what I said at the end of my previous remarks: it would be sensible for parish councils and district councils to work together to deal with antisocial behaviour, as many of them do now. I hope that the powers made available by the Bill will enable parish councils to play an even more effective role in fighting antisocial behaviour in future.

Gloria De Piero: Perhaps some further work could be done, in the spirit of co-operation and appreciation for the work that parish councils do, to give them a more formal role in combating antisocial behaviour. They really speak for their neighbourhoods, and more could be done to recognise the work they do at neighbourhood level. With that in mind, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Gloria De Piero: I beg to move amendment 97, in clause 67, page 40, line 18, at end add—

‘and

(c) does not include access land as defined in section 1 of the Countryside and Rights of Way Act 2000, or registered commons, or registered town and village greens.’.

The amendment is about the definition of public land. We seek to probe the Minister and test the definition of “public place”, which some organisations have said is too broad.

Damian Green: Amendment 97 would address another concern raised by the Ramblers Association, which, quite properly, wants to protect access to land and other public space, such as commons and village greens, from restrictions under a public spaces protection order.

I make clear again that the new order is designed to safeguard public places so that they are available to all; it is not designed simply to restrict access. Where behaviour is antisocial and affecting those in the locality, it is right that the local authority can act to protect the community that it serves. Indeed, a failure to act would deny access, in its broadest sense, to the local community, as it would be deterred by the antisocial behaviour from using the affected area. That is just as valid for commons and village greens as it is for parks and town centres. If the amendment were accepted, it would make village greens and commons the focus of the antisocial behaviour no longer tolerated elsewhere.

To give a real life example, we can all imagine a small town where there is a lot of skateboarding. Although there are facilities for skateboarders to use in a local park, the skateboarders may decide that those facilities are inadequate and start using the market square and other public spaces instead, causing nuisance and annoyance. As currently drafted, the Bill will allow the local authority to prohibit that behaviour, protecting the residents of the town. If the amendment were accepted, the local authority could place restrictions only on certain areas, so the skateboarders may decide to congregate on a common, village green or any other piece of access land as a result. There are therefore grave dangers in the amendment.

3.45 pm

However, I accept the principle that the new order should be used to make public spaces more available to local communities. As drafted, there is both an opportunity for local people to be consulted and an opportunity to appeal against an order to the High Court. We need to ensure that local authorities make the right decisions to begin with. In most cases they will, but we will ensure that the guidance makes clear the importance of protecting access to public spaces for communities to enjoy. We will work with the professionals to ensure that the guidance helps local authorities to strike the right balance between protecting the community from antisocial behaviour and upholding rights of access for the wider public. As I stated last Tuesday, I aim to have a draft of the guidance available for consideration before Report in the autumn. I hope, therefore, that I have reassured the hon. Lady.

Gloria De Piero: I accept those arguments and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 67 ordered to stand part of the Bill.

Clause 68

Saving and transitional provision

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

Gloria De Piero: My point is about transitional provision. I seek guidance from the Chair and stress that I am referring to the transitional arrangement,

not the dog control orders, about which we will have a further debate in about two minutes.

Preston city council has made the point that it would like to maintain existing dog control orders, even if the legislation is changed, and to be able to make amendments to them. It would not like the extra effort and cost of reintroducing such orders to be incurred, and it would not like that work to be undone. I think that that is a fair point.

Damian Green: I will deal with that point very directly. Where one of these orders is in place before the commencement of this chapter, it remains valid for three years from the day of commencement. Breaches are tackled in accordance with the legislation used to make the initial order. After the three years, any remaining designated public places orders, gating orders or dog control orders will be treated as public spaces protection orders. Breaches will then be dealt with using the proposed legislation.

Gloria De Piero: Will the Minister reassure those councils who are concerned that they will not have to go through a process of reapplying for the same order in the same place with additional costs?

Damian Green: It is up to them. During the transitional three year period, local authorities may wish to review existing orders and begin the process of transferring them to public spaces protection orders in advance. If they choose not to do so, the orders will stay in place for three years, ensuring the continuing protection of the public.

Gloria De Piero: It is the three-year limit that Preston council has made the representation about. It does not want it to expire in three years, and it does not want to go through the additional cost and time of reapplying for the same order or prohibition in that area under a different name. Does the Minister accept that point?

Damian Green: I understand that point. As I said, after a period of three years, any remaining dog control orders will be treated as public spaces protection orders, and breaches can be dealt with using this legislation. I hope that that does not place a great burden on Preston or any other council.

Question put and agreed to.

Clause 68 accordingly ordered to stand part of the Bill.

Clause 69

Power to issue closure notices

Mr David Hanson (Delyn) (Lab): I beg to move amendment 56, in clause 69, page 41, line 6, leave out 'on reasonable grounds'.

Good afternoon, Sir Roger. I hope that the Minister and colleagues in Committee will look at this amendment with some interest. We have had a speedy afternoon, and while I do not anticipate that the amendment will take the Committee too long to consider, I hope the Minister will give some explanation of the issues it raises.

It is important to clarify the notices that the Opposition support. I put on record my support for the powers under the clause, which allow for a police officer of at least the rank of inspector, or a local authority, to issue a closure notice if premises are likely to cause nuisance to members of the public or if there is or is likely to be disorder near premises associated with their use.

Subsection (1) states that a police officer or the local authority

"may issue a closure notice if satisfied on reasonable grounds"

that a nuisance has occurred or will occur. We have tabled the amendment to get two things from the Minister.

First, we want some clarity on what he thinks "reasonable grounds" are. Paragraph 157 of the helpful explanatory notes gives but one example of reasonable grounds:

"For example, closing a nightclub where police have intelligence to suggest that disorder is likely in the immediate vicinity on a specific night or over a specific period."

I suspect that we would all accept that those are reasonable grounds, but the amendment was tabled to tease from the Minister what other circumstances he regards as reasonable. I do so not to provide get-out clauses for those premises that require closure—my intention is exactly the opposite. I can see a circumstance whereby, if I was concerned about the closure of my premises because of the powers under clause 69, I could argue, unless the Minister clarifies it in much more detail, that the police or the local authority were not acting reasonably.

Secondly, I want clarification of what "reasonable" means. If those words were deleted, the clause would say:

"A police officer of at least the rank of inspector, or the local authority, may issue a closure notice."

They can do that if the conditions under subsection (1)(a) and (b) are met. Those conditions are

"that the use of particular premises has resulted, or…is likely soon to result, in nuisance to members of the public, or that there has been, or…is likely soon to be, disorder near those premises associated with the use of those premises".

The words

"if satisfied on reasonable grounds"

give potential for a debate about what is reasonable and what is not. I tend—naive as I may be in my old age—to believe that a police officer or a local authority would not use the power if they did not think the grounds were reasonable. By putting it in those words, if my premises were being closed, I could argue in a magistrates court that the police's actions were not reasonable. I could simply refer to the one example in the explanatory notes and say, "Only one example was given, and my circumstances do not match those of the example. The policeman's actions were therefore not reasonable."

I might be over-egging the pudding, but if we have the words

"if satisfied on reasonable grounds"

in the Bill, the Minister should clarify what the reasonable grounds are, so that there is no confusion and so that the people causing nuisance and mischief associated with the premises are not given a get-out-of-closure card by being able to argue that "reasonable grounds" were not given. It is worth the Minister's clarifying the matter, and that is the only reason I tabled the amendment. The matter should not detain the Committee much longer.

Damian Green: Let me try to address the right hon. Gentleman's points. As he said, one example is given in the explanatory notes. Before I give other examples, I merely observe that it is not an exhaustive list. He said that someone might pray in aid the explanatory notes in a magistrates court. Obviously, the more examples given, the more likely they are to do that, so let me go on the record and say that they are merely examples rather than the full range of ways in which the power to issue closure notices could be invoked. He has already mentioned one: closing a nightclub where the police have intelligence to suggest that disorder is likely in the immediate vicinity on a specific Friday night. There are others: closing a property where loud music is consistently being played at unsociable hours in a residential area, where negotiation had failed to resolve the issue. I am sure the Committee would accept that that would pass any reasonableness test.

Let me give some examples of where the extended closure order might be sought. It could be a premises used for drug dealing that is associated with serious antisocial behaviour in the immediate vicinity, or premises where the persistent behaviour of the residents—for example, visitors coming and going at all hours; frequent loud parties; and harassment and intimidation of neighbours—is associated with serious antisocial behaviour in the immediate vicinity. I am sure that none of those examples will come as a surprise to the Committee. Those are clearly circumstances in which we would expect the authorities to operate, and it is those sorts of activities that we think would pass the reasonableness test.

Mr Hanson: My purpose is to test the Minister on why we have the words

"if satisfied on reasonable grounds"

in the Bill. The police are accountable, through the chief constable, to the police and crime commissioner. The local authority is accountable to local councillors. If people felt they were being unreasonable, they have double recourse—to both bodies—to make a complaint. If the phrase "on reasonable grounds" were not included, it would simply be a matter for the judgment of the inspector or the local authority on the grounds in subsection (1)(a) and (b).

Damian Green: The answer, as the right hon. Gentleman knows, is that the drafting approach mirrors that in, inter alia, the Anti-social Behaviour Act 2003, which provides for the precursor antisocial behaviour premises closure orders. That in itself is in accordance with the usual practice. The reasonable grounds test is often applied to the police, particularly in relation to the exercise of a number of their functions, notably the power of arrest. That provides the police, and in this case the local authority, with a framework for exercising the power.

In relation to judicial decisions, the practice is for the courts to interpret what level of evidence is required to satisfy a statutory test. For example, in clause 73, which is a civil matter, all factual matters must be proven to the civil standard, which is on the balance of probabilities.

Simon Danczuk: Will the Minister provide examples of what would be unreasonable grounds?

Damian Green: I suppose one could argue that a one-off party held by teenagers in the absence of parents, which was then closed down, might cause significant antisocial behaviour, but if it was genuinely a one-off, an extended closure order would not be sensible. The police would have other powers to stop it.

Stephen Phillips: Does the Minister agree that that might be going a little too far? In such circumstances, where, for example, there was going to be what was obviously a very large party—it had been advertised on Facebook; it had gone viral and very large numbers of teenagers were going to turn up in an area—the police might be satisfied on reasonable grounds that nuisance was likely soon to result, and that would fall within subsection (1)(a). Indeed, that is one of the mischiefs with which, as I understand it—I am grateful for the Minister's confirmation—this power was designed to deal.

Damian Green: There is clearly a range of powers that the police can use in such circumstances. For example, a breach of the peace power can be used. I have set out a range of positive examples. I do not think it is sensible to set out an exhaustive list, as I have said before, not least because, some way down the line, that might be used in court to try to avoid the use of the orders, when everyone would agree that they ought to be used.

To revert to the main point made by the right hon. Member for Delyn, the reasonableness test is often used in legislation. The police are used to using to it; local authorities perhaps less so, although they need to use it as well.

Stephen Phillips: The Minister is being generous in letting me in for a second time. In the context of the power described in the clause, does he agree that a police officer could not be satisfied on reasonable grounds that a nuisance was soon to occur purely on the say-so of one individual? That example may answer the question of the hon. Member for Rochdale, but there would no doubt be others and I am sure that the Minister does not want to circumscribe how the legislation might be interpreted in due course. The words are necessary and I am sure that the Minister will agree.

4 pm

Damian Green: I agree. There is nothing new in the words, which have been used in many similar pieces of legislation. The police are extremely accustomed to operating effectively, knowing that the reasonableness test will be applied. On that basis, I invite the right hon. Gentleman to withdraw the amendment.

Mr Hanson: The amendment's purpose was to tease out the issues that we have teased out. It was purely meant to help the debate, so following the Minister's comments, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr Hanson: I beg to move amendment 57, in clause 69, page 41, line 35, at end insert—

'(h) give details of who has been consulted under subsection (7).'.

The Chair: With this it will be convenient to discuss amendment 58, in clause 69, page 42, line 3, at end insert—

'(7A) A local authority must inform the chief officer of police, and a police officer must inform the local authority, when issuing a closure notice.'.

Mr Hanson: Amendments 57 and 58 relate to consultation. The power to close premises is important and I support it. The amendments deal with consultation issues arising from subsection (7) and my reason for tabling them is twofold.

First, I want to tease out from the Minister whether the power in subsection (7) is as wide as it seems or whether there will be people who should or should not be consulted before it is exercised. Secondly, I want to test whether we should publish the names of those who have been consulted, so that those who feel aggrieved by a closure can at least see who has been consulted.

As the Bill stands, a police officer or local authority could issue closure proceedings, but they do not have to consult each other. There is no requirement for the police to talk to the local authority or vice versa. In practice, I am sure that they will, but we ask through amendment 58 whether it would be better to have that duty in the Bill. If the words used are not the most appropriate, I am happy for the Minister to take them away and think about them and bring something back on Report. Amendment 58 would formalise the standard practice of police and local authorities liaising with each other over the closure of particular premises. My worry is that, as the Bill is currently drafted, a police officer or local authority can consult whomever they think appropriate, but that might not include each other. This small amendment 58 would require them to talk to each other and I cannot see why any member of the Committee would think that an unreasonable request.

Amendment 57 would ensure that the details of those who have been consulted on a closure under subsection (7) are recorded. I tabled amendment 57 to test the Minister, but if I may, I will start by arguing against myself. It has been argued that listing who has been consulted might lead to intimidation, further grudges and other issues in future. Clause 69 would give the power to a police officer or the local council to close premises as a result of nuisance or associated disorder. Subsection (5) gives a list of matters the order must consider, including identifying the premises, explaining the effect of the notice, stating what failure to apply is, giving names and contacts and so on—a whole range of things in paragraphs (a) (b) (c) (d) (e) (f) and (g). What it does not say is who is being consulted as part of the closure.

Subsection (7) says,

"Before issuing a closure notice the police officer or local authority must ensure that any body or individual the officer or authority thinks appropriate has been consulted."

I believe it is important, as a debating point on the legislation, though I am willing to be persuaded it is not for the reasons I have outlined, to note that it might be helpful to list who has been consulted as part of the closure notice. Again, it could be that the local authority has been consulted by the police. It could be that the Serious Organised Crime Agency or the fire service has been consulted. The neighbours or residents of Acacia avenue might have been consulted as part of the closure notice, without naming them.

Stephen Phillips: Does the right hon. Gentleman see a potential danger in identifying in the closure notice the names of individuals who have been consulted by the police or local authority? It might result in criminal activity being directed at them. In those circumstances, even if the amendment is a good idea, does it need to leave out individuals?

Mr Hanson: As I said, Sir Roger, and I hope the hon. and learned Gentleman was listening, I started by arguing against myself about why this provision should be included. I proposed it because we are giving a power, as we are under clause 69, to the local council or inspector to issue a closure notice, on reasonable grounds. We are also stating in subsection (7) that

"Before issuing a closure notice the police officer or local authority must ensure that any body or individual the officer or authority thinks appropriate has been consulted."

That gives carte blanche to consult nobody, or to consult a range of people. I simply want to test the Minister. I do not know if he will accept amendment 57; I have some doubts about it myself. I have put it forward for discussion. I do not know if he will accept amendment 58.

Who should be consulted under the closure notice under subsection (7)? How does anyone know that the appropriate people have been consulted? How do those wishing to hold the police and local authority to account for the closure notice know what they have done and whom they have consulted? How does that operate in the world of the police and crime commissioner and/or the local authority? How do they hold to account those who have taken the decisions?

I am hard line; I am happy for closure notices to be issued. I am happy for premises that are causing nuisance and disorder to be closed. I am simply seeking to discover what the powers under subsection (7) effectively mean. At the moment, to be honest, Sir Roger, they do not mean anything. They can consult; they cannot consult; they can do what they like. That does not mean anything at all. It may as well not be there. If it is not going to be there, why have we got it in? If it is going to be there, will the Minister clarify why?

Damian Green: First, I found the right hon. Gentleman's arguments against amendment 57 completely compelling and far more eloquent than anything I could say about why he should withdraw it.

We believe that a closure notice ought to contain the minimum information required to enable those affected by it to understand the requirements of the notice, the implications of non-compliance, how to appeal against the subsequent closure order and where they might obtain advice. Given that the notice is to be affixed to the premises, it ought not to include any non-essential information, not least for the reasons given by my hon. and learned Friend. I would put the list of persons consulted before the notice was issued as falling into the category of non-essential information. I recognise that such information might be relevant to a challenge against a subsequent making of a closure order, and that it would therefore be open to the owner or occupier of the premises to seek the information from the police or local authority that issued the notice. That could be done either before or at the court hearing to consider the making of a closure notice.

Mr Hanson: Let us suppose that I owned the Red Lion, and I was closed. If I requested that information, is the Minister saying that it would be publicly available to me as the owner of the premises that was closed?

Damian Green: As I have said, that would happen before or at the court hearing.

Amendment 58 would introduce a requirement for the police, when issuing a closure notice, to notify the relevant local authority, which would be under a reciprocal duty when it was issuing a notice. I can see the argument for a duty, but the duty to consult in subsection (7) will achieve much the same end. Indeed, a duty to consult is more meaningful than a duty to inform.

As the right hon. Gentleman said, the subsection does not specify any particular consultees but, as he also said, we all know that, in practice, the police would consult the local authority and vice versa—unless there were a good reason not to do so. It would be possible to imagine circumstances in which, for example, the chief officer was not available. As ever, that is the argument for not being as specific in the Bill as the right hon. Gentleman would wish. Subsection (7) is as wide as the circumstances dictate. There is a duty to consult, but the list of consultees is to be determined by the police or local authority, as the case may be, and that will vary from case by case.

Mr Hanson: This is the whole reason why I tabled the amendment. If it turns out downstream that the police have not consulted anyone or one or two organisations only, will the Minister say whether that is grounds for challenges to the closure? Subsection (7) is meaningless. It states:

> "Before issuing a closure notice the police officer or local authority must ensure that any body or individual the officer or authority thinks appropriate has been consulted".

Well, if they think that nobody is appropriate, is that in itself grounds for challenge?

Damian Green: We just disagree about whether or not we can trust the relevant police officers or local authorities to consult sensibly. I think that we can. If the right hon. Gentleman thinks that such a process is meaningless, he clearly thinks that we cannot. They are experienced people. There will be different circumstances in any imaginable case. They will clearly all fall within a range of experiences, but each case will have its individual elements. I am happy to allow the discretion that is in subsection (7). I am not sure whether I can say anything that will convince the right hon. Gentleman of that view; it is a straightforward disagreement about how much we trust people who deal with such matters day to day.

Mr Hanson: I trust the police and local authorities implicitly. I am not trying to undermine the clause; I want to find out from the Minister what such provisions will mean in practice. Will he remind me why he does not consider that amendment 58 is worth while, under which the local authority and the police would have a duty to consult each other, whoever else they choose to consult?

Damian Green: As I have already said and, indeed, as the right hon. Gentleman has already said, the local authority and the police will consult. That will be an habitual part of the operation.

Mr Hanson: They do not have to do so.

Damian Green: The fact that such a process is not specified in the Bill, when we all agree that, in all circumstances, people will behave sensibly is not a reason for putting common-sense, habitual behaviour into law.

Stephen Phillips: Does my right hon. Friend agree that amendment 58 has nothing whatever to do with consultation because it uses the word "inform"? It seems to be directed at the situation in which either the local authority or the chief officer of police must tell the chief officer of police or the local authority when the closure notice has been issued. The right hon. Gentleman is referring to consultation, but the amendment deals with notification.

Damian Green: My hon. and learned Friend echoes and amplifies a point that I have already made. There is a difference between consultation and informing. In this instance, if we are seeking to ensure that these powers are used in a reasonable way, consultation is the key. Given that we all agree that that is what would happen between the two bodies, I still argue that the amendment is unnecessary.

4.15 pm

Mr Hanson: I will not press the amendment to a Division. In answer to the hon. and learned Member for Sleaford and North Hykeham, I know the amendment uses the word "inform". I wanted an assurance from the Minister that the local council and the police will work together under these proposals. I look forward to the day when the police in a local authority area do not know that the council has shut a premises or the council does not know that the police have shut a premises. All the amendment would do is tie down consultation, discussion and partnership in a legislative fashion. I wanted to test the Minister on the consultation point, because the bottom line is that subsection (7) does not really say anything. I therefore wanted to hear why he has included it in the Bill, and he has explained. Therefore, the Committee will be glad to know, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Stephen Phillips: I beg to move amendment 64, in clause 69, page 42, line 4, after 'specify', insert '(a)'.

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

Amendment 63, in clause 69, page 42, line 4, leave out 'descriptions' and insert 'types'.

Amendment 65, in clause 69, page 42, line 5, at end insert—

> '(b) geographical areas within which a closure notice in relation to premises there located may not be issued.'.

Stephen Phillips: It is a pleasure to serve under your chairmanship this afternoon, Sir Roger.

The amendments are concerned with the reserve power in subsection (8). Let me make it clear at the outset that they are probing amendments and that I seek clarification from the Minister on the record.

The situation I have in mind is the following. Westminster city council has gone mad, and decided—no doubt on the application of someone who is also one sandwich short of one of the picnics of my hon. Friend the Member for Chatham and Aylesford—that the changing of the guard is causing a noise nuisance. It therefore wishes to close down the forecourt of Buckingham palace and to issue a closure notice. At the moment, subsection (8) states:

"The Secretary of State may by regulations specify premises or descriptions of premises in relation to which a closure notice may not be issued."

The question for the Minister in relation to this example and one other, which I will give shortly, is whether the definition of premises under clause 84 is sufficiently broad to enable the reserve power to prevent the sort of circumstances I outlined.

Let me give the Minister one other example. Live firing, of course, causes a great deal of noise. What, therefore, might happen if Wiltshire county council went mad—again, on the application of someone no doubt equally mad—and decided to close down Salisbury plain by using the powers in the Bill. Is the Minister satisfied that the definition of premises is sufficiently broad that the Secretary of State could by regulations prevent such foolish acts, given that we are giving local authorities, in particular, very wide-ranging powers? We all know of examples where such powers have been used in a way that many of us—certainly those of us who read the red tops—think is inappropriate.

Damian Green: As my hon. and learned Friend set out, the amendments relate to the power conferred on the Home Secretary to make regulations specifying particular premises or descriptions of premises in relation to which a closure notice cannot be issued. I should stress at the outset that this is intended as a reserve power; there is an equivalent power in the Anti-social Behaviour Act 2003 in relation to existing closure orders, and it has never been exercised.

Amendment 63 would make a rather subtle change to that regulation-making power, replacing the reference to descriptions of premises with one to types of premises. I am not sure whether there is much between those terms. If anything, I am concerned that the reference to types of premises may limit some of the flexibility inherent in the existing terminology, which my hon. and learned Friend described in his—I hope—fanciful examples. He is concerned that in those circumstances local authorities might, as he put it, go mad. The ability to specify a description of premises provides more room for manoeuvre. For that reason, it would be sensible to retain the current wording.

The purpose of amendments 64 and 65 appears to be to extend the Secretary of State's power to specify in regulations places in respect of which a closure notice may not be made, including geographical areas; the power could cover more than just properties. However, the definition of premises in clause 84 (1) covers

"land or other place (whether enclosed or not)"—

a key point that I hope will reassure my hon. and learned Friend; therefore, it would cover Buckingham palace, Salisbury plain and the other examples he gave.

The powers in the Bill provide the police and local authorities with fast, flexible and more effective powers so that they can take action quickly and prevent problems from recurring. As I have said throughout the afternoon, some decisions are best made locally and, that being the case, I cannot think of a circumstance when it would be appropriate to impose a blanket ban on the making of closure notices within a specified geographical area. I hope that I have reassured my hon. and learned Friend about the practical extent of the application of the wording as it currently stands and, in the spirit of localism, I hope that he will be prepared to withdraw his amendment.

Stephen Phillips: I have heard everything that the Minister said and he is plainly satisfied—no doubt, based on competent advice—that the Home Secretary's reserve powers in subsection (8) are sufficiently broad. In those circumstances, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 69 ordered to stand part of the Bill.

Clause 70

Duration of closure notices

Stephen Phillips: I beg to move amendment 66, in clause 70, page 42, line 8, leave out '24' and insert '48'.

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

Amendment 67, in clause 70, page 42, line 9, leave out '48' and insert '96'.

Amendment 68, in clause 70, page 42, line 16, leave out '24' and insert '48'.

Amendment 70, in clause 74, page 44, line 41, leave out '48' and insert '96'.

Stephen Phillips: Again these are probing amendments, but the Minister and his team may want to think about them when the Bill is reported to the House.

The amendments look somewhat dry, since they merely change numbers in the Bill, but they are concerned with whether the periods for which a closure notice can last are sufficient to enable an application to be made to a court, which, under clause 73, has to be made within 48 hours of the closure notice having been issued either by the police officer or the local authority.

The problem is that, for example, if the closure notice is issued on a Friday afternoon, a magistrates court will need to be convened by Sunday to consider whether the closure notice should continue, or it will expire. One could give even more difficult and extreme examples, such as when a closure notice is issued on Maundy Thursday and the courts will be closed until the following Tuesday, or a period over Christmas, or something of that nature.

I accept that, in one sense, a closure notice is a draconian power, but the time limits contained in clauses 70 and 74 are maximum periods. The Minister may wish to consider indicating that those time limits are insufficient at present, and that an application should be made as soon as possible, but then extend the time limits to those I propose so that there is a maximum of four days—96 hours—within which an application must be made to the court.

These are probing amendments, but they seem sensible. The Minister may wish to consider them on Report in due course.

Mr Hanson: I hope that the hon. and learned Gentleman will accept this comment in the spirit it is intended: I pay tribute to him as he beat me to it with the amendments, for which he has my full support.

I can envisage a circumstance where, at times of stress, such as Christmas eve or new year's eve or Maundy Thursday, 48 hours would not be sufficient without convening a court in special circumstances. That would add to the cost of bureaucracy and the burden of the Bill. The provisions need to be more flexible.

I understand that the amendment is probing, but if it helps the hon. and learned Gentleman—I am sure it will not—I offer him my support. If the Minister wishes to revisit the proposal on Report in a proactive and responsive way, I, for one, will not crow about the fact that he has to change the Bill. I will simply say, "Well done, Minister. You have made a change that has been identified by both sides of the Committee as being a positive one."

Damian Green: First, I should say that I am overwhelmed by the generosity of spirit shown by the right hon. Gentleman.

Mr Hanson: I am here to help.

Damian Green: I am grateful to my hon. and learned Friend the Member for Sleaford and North Hykeham for initiating an entirely legitimate practical debate about how to make the measures effective. As he said, the amendments seek to extend the maximum duration of a closure notice from 48 hours to 96 hours, and to extend from 24 hours to 48 hours the initial period for which a closure notice can be issued on the authority of a police inspector or an employee of the local authority. The provisions that we are discussing in chapter 3 of part 4 of the Bill bring together four existing closure powers. In doing so the Bill seeks to draw on the best parts of the existing statutory procedures that it will replace.

The existing premises closure orders and crack house closure orders can both be put in place for up to 48 hours pending consideration of an application to the magistrates court for a closure order. The closure power in respect of licensed premises in section 161 of the Licensing Act 2003 and the noisy premises closure order made under sections 40 and 41 of the Anti-social Behaviour Act 2003 both have a maximum duration of only 24 hours. Unlike the powers it replaces, the new closure power in the Bill is not directed at particular types of antisocial behaviour. In applying the new power to any premises that meet the test in clause 69 we are, in effect, strengthening the powers available to the police and local authorities. This is therefore a significant new power, so it is right that it is accompanied by appropriate safeguards.

One such safeguard is that the initial closure notice can be in place for only a relatively short period before it is subject to judicial scrutiny in the form of a magistrates court considering an application for a closure order. As I say, it is perfectly reasonable to argue whether 24 hours, 48 hours or, in the wider circumstances, 48 hours or 96 hours are appropriate. My hon. and learned Friend made it clear that he wants to allow more leeway for the police and local authorities because of the potential difficulties of bringing an application for a closure order before a magistrates court at short notice, and possibly over a weekend, particularly a bank holiday weekend or Christmas or Easter. Those are all valid points.

I hope I can reassure my hon. and learned Friend that the time scales provided in the Bill have not in practice proved an impediment to the exercise of the existing closure powers. As he knows, courts are used to sitting at weekends and on bank holidays when necessary. Indeed, as part of the general court reform that we are carrying out, we are trying to have courts sitting more often outside the traditional court times, particularly in areas where that might prove sensible. As he also knows, special weekend courts are set up when particular events are taking place. I point him to clause 74, which makes provision for a court to adjourn a hearing for up to 14 days, within which period the court can order a closure notice to remain in place or, alternatively, order a closure notice to remain in place for up to 48 hours where the court does not make a closure order.

That provision would still require the court to sit to consider the application but it could mean that further consideration of the application is deferred to a later date when it might be easier for the courts to do so. The underlying point, which my hon. and learned Friend rightly brought up in his speech, is that a closure notice has a significant impact on the occupier of the premises. It may make a commercial operation unviable and force it to close for ever. He rightly mentioned Christmas, Easter and bank holidays, which are often the most profitable periods for places of entertainment. To close them down during those holidays for longer periods because we are waiting for courts to sit might have severely damaging effects.

4.30 pm

It is right that closure notices are subject to judicial sanction at the earliest opportunity. However, on balance, I would argue for a 48-hour limit, rather than a 96-hour limit. Having come to that conclusion, I hope my hon. and learned Friend will accept the honest difference of agreement about the practicality of his amendments and agree to withdraw them.

Stephen Phillips: I have already indicated that I shall not press the amendments at this stage. However, I require further persuasion that courts can always be found to sit at weekends. Other solutions suggest themselves. The powers could be exercised by a single justice of the peace on paper without the need to convene a court hearing.

Another point, which I have not addressed and the Minister has not dealt with—we do not need to grapple with it now—is that it is expensive to get a court to convene at a weekend. These are times when court budgets and the budgets administered by court staff are under extreme pressure. To bring staff in at a weekend, particularly on a Sunday, is an extremely expensive way of proceeding when there is an alternative, which is simply that we extend the time limits.

The guidance states that they are maximum time limits, and one should not run up against their edge without a very good reason—for example, if it is a holiday period—and applications should be made as soon as possible. That would deal with all the points we have made in this debate. The closure notice would remain in place when it is issued, but at the same time we would save money and we would prevent closure notices from continuing without judicial oversight for any significant period.

I ask the Minister to consider the amendments carefully with his team before Report. If at that stage no further reassurance is forthcoming along the lines that I have indicated, he may well face amendments either from me or the right hon. Member for Delyn. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 70 ordered to stand part of the Bill.

Clauses 71 and 72 ordered to stand apart of the Bill.

Clause 73

Power of court to make closure orders

Stephen Phillips: I beg to move amendment 69, in clause 73, page 44, line 9, at end insert—

'(2A) An application for a closure order may not be made unless a closure notice has been issued.'.

Subsection (4) at present states:

"The court may make a closure order".

This is a probing amendment. It is not clear from the clause, although it is clearly the Government's intention in this part of the Bill, that an application for a closure order cannot be made to a magistrates court unless a closure notice has first been issued.

The difficulty is twofold. First, nowhere in the Bill is that intention expressly set out. Secondly, subsection (4) is framed in such a way that a resourceful and intelligent lawyer might say, when the police or a local authority had turned down the suggestion that a closure notice should be issued, that someone—no doubt the client of that clever, overpaid lawyer—could make an application to the court without a closure notice having first been issued.

What I am seeking from the Minister is reassurance that what I have suggested is not the Government's intention and perhaps confirmation that the issue will be included in the guidance notes, so that it will be clear to those who have to consider this legislation in due course—it is not clear at the moment—that an application for a closure order cannot be made to a court unless a closure notice has first been issued by a local authority or a chief of police.

Damian Green: As my hon. and learned Friend has explained, his amendment is designed to remove any ambiguity in the Bill that the closure order may only be made where a closure notice has already been issued in respect of the relevant premises. I understand the point that he is trying to make. I do not believe there is any ambiguity, and I hope to put on the record what the Bill means and therefore to remove the doubt in his mind.

It is clear from these provisions that an application for a closure order cannot be made to a court unless a closure notice has already been issued. In support of that, I draw the attention of my hon. and learned Friend to subsections (1) and (2) of clause 73 in particular. It is evident from these provisions that the closure notice and the closure order are inextricably linked, and that there is no separate power to apply for a closure order; they are simply two stages of a single closure power.

My hon. and learned Friend has suggested that subsection (4), when read in isolation, could be read as permitting a court to make a closure order without a closure notice having been made. However, let me make it clear that that subsection should not and cannot be read in isolation; it must be read in the context of clause 73 and chapter 3 of part 4 as a whole.

To illustrate the point, I draw the Committee's attention to clauses 76 and 77, which set out the persons entitled to make an application for the discharge of an order or appeal against a decision to make or extend an order. Both clauses confer such rights on a person, as clause 76(2)(b) says,

"on whom the closure notice was served".

I hope that my hon. and learned Friend accepts that explanation. I hear what he says about avoiding doubt in all circumstances. He also makes the helpful suggestion that we should make the point explicitly clear when we republish the explanatory notes to the Bill before it is next considered. I hope that will provide the clarity that he rightly seeks. I ask him to withdraw his amendment.

Stephen Phillips: I am very grateful to the Minister. Having received that assurance, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 73 ordered to stand part of the Bill.

Clauses 74 and 75 ordered to stand part of the Bill.

Clause 76

Discharge of closure orders

Stephen Phillips: I beg to move amendment 71, in clause 76, page 46, line 19, at end insert—

'(e) any other person who appears to the justice of the peace to have an interest in or to be affected by the closure notice.'.

The Chair: With this, it will be convenient to discuss amendment 72, in clause 77, page 47, line 10, at end insert—

'(c) any other person having an interest in or affected by the closure notice.'.

Stephen Phillips: At the moment, clause 76 is concerned with the discharge of closure orders, and details the circumstances in which an application can be made to a magistrate by complaint for the order to be discharged.

Subsection (2) specifically sets out those, and only those, who are entitled to make an application. Paragraphs (a) and (b) of the subsection sets out those who have applied for it; either "the constable", where

the closure order was made on his application, or "the authority", where it was made on the application of a local authority. Paragraph (c) makes it clear that

"a person on whom the closure notice was served under section 72"

can also make the application. In paragraph (d), there are these words, which are important:

"anyone else who has an interest in the premises but on whom the closure notice was not served."

They can also make an application.

I must say to the Minister that that leaves a huge hole as to who can apply for these closure notices. I give him two examples. The first is of someone who has a chattel—a thing—that has been left on the premises affected by the closure notice. Picture, for example, someone who needs oncology medication that has been left on the premises. They do not have, and it cannot respectively be suggested that they have, an interest in the premises; they have an interest in a thing situated on the premises. If a closure notice or order is made for premises where that vital thing is, and it cannot be obtained from any other source, they have no ability whatever to apply to enter those premises. That is a serious defect in the enumerated list of who can apply to discharge a closure order.

The other example is where a closure order is issued for one set of premises but significantly affects, or perhaps even prevents others from entering, premises that can be entered only through those premises. Other provisions in the Bill are designed to deal with that to some extent, but we are concerned with those who can apply to discharge a closure order. Someone who gets to their house through premises that are subject to a closure order might well want the ability to apply to the court to discharge the closure order on the premises that they need to go through to get to their house. At the moment, they cannot do so, because it cannot respectively be suggested that they have an interest in the premises on which the closure notice has been served.

For that reason, I will listen carefully to what the Minister says, but I must tell him that amendment 71 is a good amendment. Essentially, it would give the justice of the peace or the magistrate the ability to say that someone who is currently not enumerated in subsection (2) has locus, or the ability to make an application. That cannot but be a good thing. In those circumstances, the Government ought to accept the amendment.

Amendment 72, which I have temporarily lost, is a similar amendment to clause 77, and the same points arise. I hope that the Minister will take these sensible amendments in the spirit in which they are suggested. They deal with bad drafting in the Bill that needs to be put right before the Bill returns to the Floor of the House. For those reasons, I hope that he will accept the amendments.

Damian Green: I am grateful to my hon. and learned Friend for explaining the thinking behind his two amendments and for his constant efforts to improve the drafting. The amendments seek to extend the opportunity to apply for the discharge of or appeal a closure order to all those who may have a link to the property. Clause 76(2)(d) and clause 77(1)(b) confer such rights on anyone else who has an interest in the premises but on whom the closure notice was not served. The amendments would also confer the relevant rights on persons affected by the closure notice.

My hon. and learned Friend complained about the drafting. I think that the point of issue is the concept of any other person with an interest in the premises. That is intended to be a very broad phrase; it is not intended to be limited to those with a financial interest in the premises, nor should it be construed as such. I do not believe that the wording justifies such an interpretation.

Stephen Phillips: Can the Minister possibly be right, given the definition of "premises" to which he drew attention in clause 84? I gave the example of oncology medication. An interest in premises under the definition in clause 84 is an interest in

"land or other place"

or

"any outbuildings that are, or are used as, part of premises".

That plainly does not include something simply situated on the premises. When I moved the amendment, I said that it cannot be suggested that it does. At the moment, the Minister is simply not grappling with that point.

Damian Green: I think we are grappling with different words. My hon. and learned Friend is grappling with "premises"; I am grappling with "interest". That is where I think the confusion may lie. I point out that the narrow definition of "interest" would have required different wording to express such a narrow reading. I am entirely happy to clarify in the explanatory notes that the use of the word "interest" in the area is not intended to be limited to those having a financial interest.

4.45 pm

The example raised by my hon. and learned Friend was about someone who has a chattel that they need to retrieve from a particular premises. Taking the most serious potential example, where someone needs to retrieve medicine from premises subject to a closure notice, in practical terms, if they require medication left on the property that they were not able to obtain before leaving, one would expect them first to communicate with the police or local authority that issued the closure notice.

An officer or employee of the local authority could allow access to the premises to the individual or go to the property themselves to obtain the medication or any other property that my hon. and learned Friend referred to. That is already a common occurrence when a person who is excluded from their home under, for example, the Family Law Act 1996, needs to retrieve personal items. The police regularly go to the person's home on their behalf, or accompany them to the home from which they have been excluded, to oversee the retrieval of property.

Even if, for some reason, the police or local authority does not take such action, or if the individual does not communicate with them, clause 79(1) provides that it is an offence to enter property subject to a closure notice only if there is no reasonable excuse. Ultimately, it will be for the courts to take a view on whether the retrieval of medicines, in my example, represents a reasonable excuse. In the circumstances I am predicating, it is easy to imagine that one could make a good case before a court that a person had a reasonable excuse to go to the property to retrieve medicine that might be essential to their health.

Existing law suggests that the wider interpretation that I take of the word "interest" is the correct one. However, as I said, I am more than happy to clarify that in the explanatory notes. Looking at the application of the law in other Acts, I think that the effects that my hon. and learned Friend is rightly worried about will not come about. I cannot agree with his full analysis and hope that he withdraws the amendment.

4.47 pm

Sitting suspended for a Division in the House.

5.2 pm

On resuming—

Stephen Phillips: I listened intently to what the Minister had to say. He gave me some comfort on one of the examples I raised—namely, someone who needs to go to premises to retrieve a chattel that is essential and does not give them an interest in those premises. It can be argued that they have a reasonable excuse to go there, depending on the chattel's importance.

The Minister did not, however, deal at all with my second example, which is where a closure notice has been issued over premises that prevents access to other premises, such as where an easement through the premises has been closed. That said, I ask him—he has come close to saying this—to say that the Government will look at the matter on Report. If he is prepared to confirm that, I will withdraw the amendment.

Damian Green: Let me say two things. First, on his specific point, the courts will consider the impact of the closure order on all those affected. In some cases, it may not become apparent that access is restricted to other premises or for other members of the community. Circumstances can change during the course of an order's being in force, so the clause allows for anyone whose access is restricted to apply to the court to reconsider the terms of the order.

In some cases, the court may consider that the effect of the order's not being in place in its current form outweighs the need of others to access surrounding premises. The court has the power under the provisions to decide that in any circumstances. As my hon. and learned Friend asked, I will look closely at the arguments that he has made. I hope he will withdraw his amendment.

Stephen Phillips: I will withdraw the amendment, but what the Minister just said worries me even more. He said it may not be apparent to someone whose access to their premises is impeded or prevented that a closure notice has been issued.

If that is the case, that person has no right to apply to discharge the closure notice under this legislation. They will not have been served with the closure notice and it will not be apparent to anyone who applied for it, or the court that granted it, that access to their premises is impeded or prevented, but the legislation prevents them from applying to the court to have that closure notice discharged or varied. That cannot possibly be right, so I ask the Minister to look very carefully at the situation and ensure that it is dealt with appropriately. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 76 ordered to stand part of the Bill.

Clauses 77 to 80 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Mr Syms.)*

5.5 pm

Adjourned till Thursday 4 July at half-past Eleven o'clock.

Written evidence reported to the House

ASB 22 Association of Police and Crime Commissioners

ASB 23 Right hon. Damian Green MP

ASB 24 Fair Trials International

ASB 25 Social Landlords Crime and Nuisance Group