HEALTH AND SOCIAL CARE (RE-COMMITTED) BILL

Third Sitting
Thursday 30 June 2011
(Morning)

CONTENTS

Written evidence reported to the House.
Clause 1 under consideration when the Committee adjourned till this day at One o’clock.
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.

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not later than

Monday 4 July 2011

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES
The Committee consisted of the following Members:

*Chairs:* †MR ROGER GALE, MR JIM HOOD, MR MIKE HANCOCK, DR WILLIAM MCCREA

† Abrahams, Debbie *(Oldham East and Saddleworth)* (Lab)
† Barron, Mr Kevin *(Rother Valley)* (Lab)
† Blenkinsop, Tom *(Middlesbrough South and East Cleveland)* (Lab)
† Brine, Mr Steve *(Winchester)* (Con)
† Burns, Mr Simon *(Minister of State, Department of Health)*
† Burstow, Paul *(Minister of State, Department of Health)*
† Byles, Dan *(North Warwickshire)* (Con)
† Crabb, Stephen *(Preseli Pembrokeshire)* (Con)
† de Bois, Nick *(Enfield North)* (Con)
† James, Margot *(Stourbridge)* (Con)
† Kendall, Liz *(Leicester West)* (Lab)
† Lefroy, Jeremy *(Stafford)* (Con)
† Morgan, Nicky *(Loughborough)* (Con)
† Morris, Grahame M. *(Easington)* (Lab)
† O’Donnell, Fiona *(East Lothian)* (Lab)
† Poulter, Dr Daniel *(Central Suffolk and North Ipswich)* (Con)
† Pugh, John *(Southport)* (LD)
† Shannon, Jim *(Strangford)* (DUP)
† Smith, Owen *(Pontypridd)* (Lab)
† Soubry, Anna *(Broxtowe)* (Con)
† Sturdy, Julian *(York Outer)* (Con)
† Thornberry, Emily *(Islington South and Finsbury)* (Lab)
† Turner, Karl *(Kingston upon Hull East)* (Lab)
† Wilson, Phil *(Sedgefield)* (Lab)

Sarah Davies, Mark Etherton, Committee Clerks

† attended the Committee
Public Bill Committee

Thursday 30 June 2011

(Morning)

[Mr Roger Gale in the Chair]

Health and Social Care
(Re-committed) Bill

Written evidence to be reported to the House

HSR 13 Action on Hearing Loss

9 am

The Chair: Good morning. I have to make some housekeeping announcements first. Hon. Members who have not already done so without the leave of the Chair may remove their jackets if they wish.

We have important business before us, and I find it tedious to start with rulings on minutiae, but I have to. There appears to have been a misunderstanding about the agreement on coffee in Committees. The Chairman of the Administration Committee has made an agreement with Mr Speaker, and Mr Speaker has agreed to issue a notice, which I understand has not yet been issued, that will allow hon. Members to have coffee in Select Committees sitting in private. That does not include sessions such as the evidence sessions that this Committee had the other day and it most certainly does not include Public Bill Committees sitting in public, such as this one. That is the ruling, so if hon. Members want to have a coffee, they will have to nip outside and have it; they can sit outside in the corridor for a minute or two.

I also have to point out that the Procedure Committee report on the use of electronic devices has been neither adopted nor debated by the House. As the rule stands, therefore, although it is perfectly reasonable for hon. Members to receive e-mails—for example, on BlackBerrys—laptops are completely out; tablets are in order so long as they are not obtrusive or intrusive; and no messages may be sent from the Committee while it is sitting. I must make that clear. It may change if the situation, if you think that that would be helpful.

Another point has been raised concerning the groupings. For those hon. Members who are serving on their first Committee, or are not fully experienced in the procedures, I point out that custom and practice in Committee is to take themes and debate them. That is why they will find groupings of items that are not necessarily related.

For example, we are about to start on clause 1. Some of the grouped items do not relate to clause 1; they relate certainly to clause 5 and possibly to other clauses as well. They are debated together and later moved formally and voted on. They are not moved or voted on now. I hope that that is clear. It may be a good idea for those outside the Committee who are taking an interest in the proceedings and providing advice to be aware of that as well. Without further ado—

The Minister of State, Department of Health (Mr Simon Burns): On a point of order, Mr Gale. I should be grateful if you advised me on whether it would be appropriate at this stage, for the benefit of the Committee, to give an explanation regarding changes to the names of some statutory bodies, particularly the clinical commissioning groups, because we will not reach them in the Bill until a bit later, although of course in the Bill in front of us, they retain their old names. With your leave, I will read out a short statement to explain the situation, if you think that that would be helpful.

The Chair: I am not in the habit of accepting ministerial statements, or indeed any statements, at the start of a Committee sitting. You will have to convince me, but if it seems that this would be for the convenience of the Committee rather than of Government Front Benchers, try me and see. I will stop you if it is out of order.

Mr Burns: This is not for the convenience of Government Front Benchers because we are fully familiar with the change. Clause 6 inserts a new section 1E into the National Health Service Act 2006. It provides that there will be new statutory bodies, to be known as commissioning consortia, and that they will commission services for the purposes of the health service in England in accordance with the 2006 Act. As right hon. and hon. Members will be aware, in our response to the NHS Future Forum we announced our intention to change the name of commissioning consortia to “clinical commissioning groups” better to reflect the changes to their role and membership, which our proposed amendments to the Bill are intended to introduce.

It was a particular concern of many professional stakeholder organisations, voiced during the listening exercise, that commissioning consortia as proposed, led by local GPs, would be dominated by a single professional group. Changing the name to “clinical commissioning groups”, and through amendments that we will come to later, we propose to strengthen the involvement of other professions in the commissioning groups. We intend to introduce the necessary amendments on Report to bring into effect the change of name.

Changing the name of these bodies will involve technical and drafting amendments, and we intend to introduce them as a single batch covering the whole Bill, as they will simply replace references to the plural terms “consortia” and “commissioning consortia” with references to “clinical commissioning groups”, “commissioning groups” or...
“groups”, and replace references to the singular terms “consortium” and “commissioning consortium” with references to “clinical commissioning group” or “commissioning group”, as appropriate. There will be no change in the effect of the relevant clauses.

To avoid confusion during our proceedings now, and to ensure that our discussions in this Public Bill Committee are consistent with our response to the NHS Future Forum, in which we first set out our proposed changes to the Bill, rather than referring to commissioning consortia or to GP consortia, as they were becoming known, we intend to refer hereafter to clinical commissioning groups, even though the text of the Bill still refers to the original terms, as do the amendments that we have tabled for consideration by the Committee.

As the purpose of this Public Bill Committee is to consider the substantive changes to the legislation relating to clinical commissioning groups, and subject them to detailed scrutiny, I hope that the Committee will agree that it is therefore wholly appropriate to defer consideration of these numerous but routine technical changes to the names until a later stage of our proceedings—that is, on Report.

The Chair: Thank you. It is clearly for the Committee’s information and to its advantage that it should understand in advance that some of the terms in the Bill are likely to be changed. Hon. Members will have heard the statement, and it will appear in the Official Report, so those with an interest in the subject will wish to address it in the usual way.

Grahame M. Morris (Easington) (Lab): On a point of order, Mr Gale. On the Minister’s statement and the nomenclature in the Bill, will you rule amendments out of order if they are not using the correct description of the commissioning groups? The Minister referred to technical amendments and amendments relating to the recommendation for the NHS Future Forum, but there will be confusion if we do not use the same terminology.

The Chair: The Clerk will ensure that other Chairmen are fully aware that nothing will be ruled out of order if it refers to the language used in the Bill as drafted at present. If the Government are minded to change the terminology later, that is for later, but if hon. Members wish to move amendments now or during the Bill’s passage through Committee, the language used will be the language in the Bill. I hope that the hon. Gentleman will not have any difficulty with that. If he does seek the advice of the Chair again, we will rule in his favour.

Grahame M. Morris: On a second point of order, Mr Gale. This is completely unrelated. Forgive me if the matter was addressed earlier, but it is about the declaration of interests. The question arose in the original Bill Committee, and the advice that I received, based on precedent in “Erskine May”, is that if Members on either side of the Committee have a direct financial interest in aspects covered by the Bill—I think in particular of private health care companies or related advocacy arrangements—they should declare it. Would this be an appropriate time to make such a declaration?

The Chair: My personal view is that it is a matter for individual Members, who are responsible for their own integrity, probity and public statements. It has always been—

Debbie Abrahams (Oldham East and Saddleworth) (Lab) rose—

The Chair: One moment, please. I can take only one point of order at a time. I promise that everyone will get their say.

It is clearly understood that all Members’ interests must and should be declared in the Register of Members’ Financial Interests. It has been custom and practice in Committee that when Members first rise to speak in a Bill Committee, they should declare any interests then, so that it is doubly on the record. However, I do not encourage a chapter of declarations of interest at the start of every Bill Committee. As long as Members make it plain when they rise to speak that they have an interest, their declaration is then in the Official Report. I hope that that is okay. I now call the next victim.

Debbie Abrahams: On a point of order, Mr Gale. I apologise for being too eager. My point of order is about comments made by the Minister on Tuesday about amendments that the Government were proposing to table after the sitting. I would appreciate your ruling on that.

The Chair: I am sorry, but I am not conversant with the Minister’s statement. If the hon. Lady enlightens me, I shall try to give a ruling.

Debbie Abrahams: Yes, Mr Gale. It will be recorded that on Tuesday, it was suggested that amendments would be tabled after the sitting. That is definitely not in the interests of democracy.

The Chair: Members should not ask the Chair to rule on the interests of democracy. However, as a matter of procedure any Member may table amendments at any appropriate time—I mean any Member, including those who are not members of the Committee, although those amendments would have to be picked up by a member of the Committee to be debated. Any Member of the House may table amendments on Report—any Member, up to and including members of the Government. That is entirely proper. It is up to the individual Member—or Ministers for the Government and shadow Front Benchers for the Opposition—to determine the political timing of the tabling of amendments. Once we get to that point, however, it is no longer a matter for the Chair. I hope that that is clear.

Owen Smith (Pontypridd) (Lab): Further to that point of order, Mr Gale. Before making it, I declare an interest—I am a proud member of Unite.

Given that the Minister was so helpful a moment ago in giving us foresight of the technical amendments in respect of nomenclature, is there any prospect that he might enlighten us as to whether we can anticipate further amendments of a non-technical nature? As my hon. Friend the Member for Oldham East and Saddleworth said a moment ago, we learned during Tuesday’s evidence
sittings that there are to be further substantial amendments. As the Minister is in such a helpful mood, I wonder whether he might—

The Chair: I understand the thrust of the hon. Gentleman’s request, but he will appreciate that that is not a matter for the Chair. The nature and tabling of amendments is a matter for the Member—any Member. I now ask the Committee to move on, as we have quite a lot to discuss. We should make progress without further ado.

Clause 1

The Secretary of State and the Comprehensive Health Service

9.15 am

Liz Kendall (Leicester West) (Lab): I beg to move amendment 1, in clause 1, page 2, line 4, leave out from ‘(b)’ to ‘in’ in line 6 and insert ‘must provide or secure the provision of services’.

The Chair: With this it will be convenient to discuss the following:
Clause stand part.
Amendment 227, in clause 3, page 3, line 5, leave out from ‘must’ to ‘reduce’.
Government amendments 55 and 56
Government new clause 1—Secretary of State’s duty to promote comprehensive health service.
Government new clause 2—Secretary of State’s duty to keep health service functions under review.

Liz Kendall: It is a pleasure to serve under your chairmanship, Mr Gale.

I am sure that Members on both sides of the Committee will be sorry that my hon. Friend the Member for Halton (Derek Twigg) is not with us in Committee. He still is.

Mr Burns: He still is.

Liz Kendall: He is, and his spirit, values and forensic analysis of the Bill remain with us. I hope that all Members wish him well, and if they are happy for me to do so I shall pass on the Committee’s best wishes.

Mr Burns: I am extremely grateful to the hon. Lady for giving way. It will come as no surprise that I wholeheartedly share her views, as do my hon. Friends. When she passes on her best wishes to the hon. Gentleman for a swift and speedy recovery, will she also add ours?

Liz Kendall: I will. I thank the Minister for his kind comments and I will certainly pass them on.

I welcome my hon. Friend the Member for Pontypridd, who will speak from the Front Bench in this Committee. He continues to be a stalwart member of the team, and this time we shall mount an even more forensic challenge to the legislation. I also welcome my hon. Friend the Member for East Lothian, who is new to the Committee.

The Chair: I understand and sympathise with the hon. Lady’s difficulties; it is clearly not an easy day outside the House. However, what I cannot do now that an amendment has been moved is adjourn or even suspend the Committee, so we have to proceed. If it helps the hon. Lady to get her papers together and if the Minister is in an obliging mood, he might wish to speak to some of the Government amendments at this stage.

She did not share in the joys of the initial Committee stage, but I am sure that we will initiate her into them. At this point, I want to hand over to my hon. Friend. Friend the Member for Islington South and Finsbury—

Emily Thornberry (Islington South and Finsbury) (Lab) rose—

The Chair: Order. I am afraid that it does not quite work like that.

Liz Kendall: I am so sorry.

The Chair: It is all right. If the hon. Lady has completed her opening remarks and Ms Thornberry is ready to rise and wishes to speak, I will be happy to call her.

Liz Kendall: I am sorry. We work in a comradely way on this side of the Committee, and I was stepping in and shall continue to do so. On a point of order, Mr Gale. If I speak to amendment 1, will it then be possible for my hon. Friend to continue with the clause stand part debate?

The Chair: Let me try to make this easy for everyone, although some Members might choose to make it difficult again. The only amendment that is moved at this stage is amendment 1. There are others in the group, but they are not moved, so technically it is simply a question of moving amendment 1 and then debating the issues. Any Member, on either side of the Committee, who wishes to speak to the amendment may do so, if they catch my eye.

Emily Thornberry: May I ask for a two-minute adjournment? It is extraordinary how the—

Mr Burns: No! The hon. Lady turns up late and wants an adjournment—

The Chair: Order.

Emily Thornberry: I do apologise. I undertake never to be late again. I presume that my lateness may have had something to do with the strike that happened this morning. The traffic on the Embankment, Horse Guards and Whitehall was static—I was parked outside No. 10 for at least 10 minutes. Normally, it takes me 20 minutes to drive in from Islington. This morning, it took me an hour and 10 minutes. If I may have two minutes, Mr Gale, I can gather the correct papers in front of me. In that way, I will save the Committee time.

Mr Burns: No.

The Chair: I understand and sympathise with the hon. Lady’s difficulties; it is clearly not an easy day outside the House. However, what I cannot do now that an amendment has been moved is adjourn or even suspend the Committee, so we have to proceed. If it helps the hon. Lady to get her papers together and if the Minister is in an obliging mood, he might wish to speak to some of the Government amendments at this stage.
Emily Thornberry: Mr Gale, I now have the correct piece of paper and that is what I was concerned about.

Our amendment is designed to ensure that we put back into the clause the provision that the Secretary of State has an obligation to secure and provide. That seems to us to be a core point. Why do the Government want to take away the Secretary of State’s obligation to provide and secure health services in this country? Is it that it makes absolutely no difference, which was the heart of the Minister of State’s argument promoting the original clause? He said:

“The Secretary of State’s accountability to Parliament is already integral to the Bill. Including it explicitly in this clause would do nothing to add to the powers, responsibilities and the duties that the Secretary of State already has.”—[Official Report, Health and Social Care Public Bill Committee, 15 February 2011; c. 182.]

That was his position on 15 February, when he believed that the amendment we had proposed to the original clause I was unnecessary.

We now find ourselves in the odd position whereby the Secretary of State, the Minister and the Prime Minister seem to have accepted that the original clause is simply not sufficient in terms of accountability and of ensuring that the Secretary of State fulfils what we, the public and the national health service believe should be his full role. As a result, they propose partially to amend the clause, but the problem is it still remains weasel words. They are essentially talking about restoring the powers that were available in the original Act, but they would only partially re-establish it by way of new clause I(1); crucially, they are not dealing with the duty to provide and secure. If the amendment is passed and we do not have a Secretary of State with an obligation to secure and provide, who has responsibility?

If one looks further into the Bill, one sees that there is an attempt to amend the national commissioning board’s role to echo the changes to the Secretary of State’s responsibility. That means that the national commissioning board and the Secretary of State will not have an obligation to provide. Crucially, if something went wrong, who would the public sue? Would the Secretary of State have responsibility for a failure of provision, or would it be the national commissioning board? It would not be the NCB because it now has the same obligation as the Secretary of State. The amendment, as I understand it, extends responsibility to the consortium, but they will be the ones that are providing the services, or will actions continue to be against the Secretary of State or the national commissioning board? The Minister seems to be looking for some assistance on this important matter.

On 17 February, the Minister said:

“The Secretary of State cannot be held personally, directly responsible for quality levels.”—[Official Report, Health and Social Care Public Bill Committee, 17 February 2011; c. 272.]

The Secretary of State cannot be responsible for the provision of services, so presumably he no longer has legal responsibility. More importantly—never mind the lawyers or the individuals who may have suffered from a catastrophic failure of the national health service and need some relief—where is the political accountability? It is all very well for this new clause to say that the Secretary of State will have some overarching responsibility to ensure that a health service is provided nationally, which is the major thrust of the change that they now want to make.

However, if the Secretary of State is not to be held responsible for the provision and securing of health services, that raises the same questions as last time and throughout the pause. What is the Secretary of State’s responsibility? Could the Secretary of State be held personally responsible for anything that happens in the NHS? At a time when we are looking at £20 billion of efficiency savings, when there will be a reconfiguration of services, is not the real agenda that this clause continues to include the weasel words that have been challenged throughout the Bill’s development?

We continue to have the problem that the Secretary of State is ducking the big questions. If, for example, the Secretary of State during the election campaign had stood outside a particular hospital—I will not name one, as there were many—with a banner saying, “Save Hospital X”, and a decision was made to close that hospital, could the Secretary of State be held liable for that? Could the Secretary of State be brought before the House and be questioned about it? If he is no longer responsible for securing and providing health services in the way that the law has always said, what are we doing?

My central point is that the changes either answer the questions raised by the public and health service about the Secretary of State’s central role regarding responsibility for the NHS, or they do not. If they do ensure that the Secretary of State continues to have that central responsibility, what is the problem? Why do they need to change the original legislation? If there is a difference, will the Minister spell out in words of one syllable, so that we all understand, what the changes are and what the purpose is behind them?

John Pugh (Southport) (LD): Does the hon. Lady recognise that many of us asked a raft of questions in the previous Parliament, in which she was a Member, about why particular wards or facilities were being closed in our areas? Labour Secretary of State after Labour Secretary of State said that those were matters for local decision making, and not their responsibility. That lack of clarity, if it is such in this legislation, is already there.

The Chair: Order. Before the hon. Lady resumes, I should say that I am aware that there are one or two members who have not served on Committees before. It is important that we understand the nature of the proceedings in which we are engaged.

When I announced the business to be debated on clause 1, I indicated that that was to include the stand part debate. Some hon. Members might not yet understand that a clause stand part debate is that the clause stand part of the Bill; in other words, it is a bit like a Third Reading. That creates the opportunity to have a rather broader debate than might ordinarily take place on a specific and clearly defined amendment. That is why what the hon. Lady has said and is saying is in order under the terms of clause 1 and the responsibility of the Secretary of State, and that is why I am allowing this line of debate to continue. I hope that that is clear.

Emily Thornberry: The point raised by the hon. Member for Southport is important. It again shows the great disadvantage of having only a partial re-committal of the Bill. It is important to look at the provision of the NHS in the round, particularly when considering the responsibilities of the Secretary of State.
I remain concerned and am yet to be reassured, for example, about the remarkable power that used to be available to local authority overview and scrutiny committees to refer a decision on a reconfiguration to the Secretary of State, which the Bill originally sought to remove. I do not understand whether there has been an amendment to give back the power to overview and scrutiny committees to refer a decision about the reconfiguration of services to the Secretary of State. I presume that that change has not been made; otherwise, it would have been trumpeted by the Government.

In the time that we have had available, we have not been able to find any changes of that nature. I appreciate the criticism that the hon. Member for Southport made, but at the very least overview and scrutiny committees used to be able to refer a reconfiguration of services to the Secretary of State. If that power is being taken away, the changes being made to clause 1 are even more concerning.

9.30 am

Owen Smith: Was my hon. Friend, like me, surprised to see that the amendment to clause 1 differed from clause 1 of the National Health Service Act 2006? The reason why I was surprised, and I presume that she may have been as well, was that when the Secretary of State spoke in the House after the publication of the Future Forum report, we got the distinct impression that he was effectively going to revert to the 2006 provisions. When we saw that proposed new section 1(2) of the 2006 Act would be fundamentally different, I presumed that my hon. Friend was as surprised as I was.

Emily Thornberry: Absolutely. We also understood the Prime Minister to be reassuring the country that the original provisions in section 1 of the 2006 Act would be reinstated, most importantly section 1(2):

“The Secretary of State must for that purpose provide or secure the provision of services in accordance with this Act.”

That is the central point. Why is that being taken away? Why is “provide” being taken away?

During the evidence sessions, I asked the Secretary of State for a little more clarity about proposed new section 1(2) of the 2006 Act, given that under the Bill he will not be directly providing or securing the provision of services. I asked him what additional powers it would give him. Surprisingly, given that he is responsible for the Bill, he was unable to give a full answer. He has since written to me with an answer, for which I am grateful. It contained 235 pages of delegated powers and was sent to me, in classic fashion, seven minutes before the end of the traditional working day yesterday, so I have to confess that I have only skim-read it. Nevertheless, in the 15 hours available I have done my best.

Mr Burns: I sent it.

Emily Thornberry: I understand from the heckling that the Minister may have sent it, and I am grateful to him for doing his boss’s job. It is a shame that his boss was not able to give us a fuller answer when he was giving evidence, which brings us back to one of our central charges about the re-committal of the Bill. Not only do the Government want to re-commit only the bits that they want to talk about, but they want to do it at such dazzling speed that not even the Secretary of State understands the Bill, and not even he is able to answer questions about it properly.

I would be grateful to hear from the Minister why new section 1(2) of the 2006 Act has been proposed. It seems to go against the reassurances that were given to the public and the national health service, and it seems to go against the understanding of the Future Forum, which felt that it had re-established the Secretary of State’s responsibility properly. As I said, either the difference in wording means nothing—in which case let us have the original clause back, as in the 2006 Act—or it means something. If it means something, please spell it out.

John Pugh: I suspect that this is likely to be a mirror image of the debate that we will have about competition, in which the Government will allege that the change in wording makes very little real difference. When we get on to presenting anti-competitive procedures as opposed to promoting competition, the Opposition will allege that the wording, although it seems a minor change—

[Interruption.] I am sorry; I will get it right eventually. We will allege—we will allege, quite honestly—that the difference in wording is of enormous importance, and the Opposition will argue that it is not.

Liz Kendall: I want to stick to this clause, but the hon. Gentleman will be aware that regulators stick closely to the words in the legislation. Nobody wants to get involved in a semantic discussion about words; we want to know what the effect will be, and that is particularly important for regulators. Does the hon. Gentleman agree?

John Pugh: Absolutely, and I will be concentrating on the words specifically.

The issue of legal accountability is being raised, and I briefly want to deal with that. Legal accountability in the NHS can mean a range of different things. I assume that we are discussing the legal accountability for securing a comprehensive health service. The legislation makes it absolutely clear that the buck stops with the Secretary of State. If it is not secured, he is legally responsible for that.

Other sorts of legal accountability, such as the failures of services from individual providers or commissioners, will presumably depend on the circumstances and whether the Secretary of State has any part in influencing their particular behaviour or whether that decision was up to the providers. Legal accountability is not exactly a red herring, but it is not the meat of the issue.

Political accountability has always been problematic. As was suggested earlier, any Secretary of State in the world would like to row away from tough decisions on health service configuration and put the responsibility somewhere else. Ultimately, though, however a Secretary of State phrases legislation, he never escapes accountability of one sort or another because he is the guy who holds all the controls over the health service and its legislation.

Owen Smith: Is that not the heart of what we are discussing? In this part of the legislation, the Secretary of State is trying to get away from being accountable
and to put the duty to secure and provide the NHS at one stage removed from him, via the national commissioning board. That is why the words are important. That is why new clause 1 states “so as to secure that services are provided” as opposed to “secure and provide” originally. The actual meaning has not changed. The words have changed, but the meaning—to hand it off to a quango—is exactly the same.

John Pugh: If the hon. Gentleman allows me to continue, I will deal with his problem. When we had this debate in the first round, I thought that it was slightly synthetic. I was not clear about where people were coming from—even after the hon. Member for Islington South and Finsbury has spoken, I am still not entirely clear about that.

In answer to my question on Tuesday, the Secretary of State said that he did not want to get into a theological debate. This has the air of a theological debate, because we are arguing about words in a way that the public do not understand. All the objections to a particular clause will not fit on a banner.

Despite what I think was the original nature of the debate and despite the fact that, at first blush, I did not think that it was big issue, it is clear that it has been made an issue. It did not initially become an issue because of the Labour party, but rather because of Lord Owen’s and Baroness Williams’s raising the function of the Secretary of State specifically in an ordered and coherent fashion. Subsequently—we can trace this—people started to raise the issue themselves, and organisations that had not mentioned the issue, such as the British Medical Association, started to.

Fiona O’Donnell (East Lothian) (Lab): It is perhaps unsurprising that the Liberal Democrats should again try to steal the credit for challenging what is in the Bill. My hon. Friends raised the issue long before it seemed to appear. I pleased to hear the hon. Gentleman express concern for the ordinary patient on the street, their understanding of words and how important they think that they are. Will the hon. Gentleman help us by saying what difference the changes in the re-committed Bill will make to the ordinary patient?

John Pugh: There are many changes in the Bill, and I cannot talk—without being out of order, Mr Gale—about all of them. I will discuss clause 1 specifically, which has been the subject of a variety of e-mails that I have received. The e-mails have been surprisingly learned. An awful lot of people out there have legal counsel at their beck and call, and they present me with words that are scholarly in form and nature. I respond to every one of them. I will discuss clause 1 specifically in an ordered and coherent fashion. Subsequently—we can trace this—people started to raise the issue themselves, and organisations that had not mentioned the issue, such as the British Medical Association, started to.

Liz Kendall: I respectfully suggest that as we are discussing themes, as our Chair made clear at the beginning, we should be talking about the duty not only on the Secretary of State, but on the NHS commissioning boards. The point is that we are looking at the changes in all their responsibilities, not only the Secretary of State’s. People are concerned that what was the Secretary of State’s duty is worded for the commissioning board in the same way, and that will then go down to commissioning groups, which is the real concern. There will no longer be a national responsibility for comprehensive services; it will be up to individual commissioning groups.

I ask the hon. Gentleman to look at a GP on a board for the Leicester commissioning group, who has said that he wants to set out an explicit list of services that would be excluded from the NHS; I note that he was a former Conservative candidate for Bradford North. That is people’s real concern.

John Pugh: If that has the net effect that, in that area, a comprehensive health service is not secured, it is simply the job of the Secretary of State to ensure, by whatever means he can, that there is one. Usefully, I have been sent a list of the Secretary of State’s functions. I have not had the time to absorb them all yet, but I notice, rather reassuringly, that on the first page of the printout we were sent yesterday by the Secretary of State, there is the power “to do anything calculated to facilitate or to be conducive or incidental to the discharge of a function under the Act.”

The Secretary of State, therefore, has the duty to secure a comprehensive health service in a particular area. If that does not happen, he can be asked to discharge that duty, and it says here that he has the power to do so.

I will seek a bit of common ground, if I may, because it is a consensual Committee and I am delighted not merely to serve under your chairmanship again, Mr Gale, but to see so many friendly faces around me.

Phil Wilson (Sedgefield) (Lab): Familiar faces, anyway. Don’t get too comfortable. [Laughter.]

John Pugh: Everyone accepted after the first iteration of the Bill that it was not sufficient to say that the Secretary of State had a duty to promote a comprehensive health service. That was simply too weak an assertion, whatever it was intended to imply, because we do not want to run the risk of the Government turning around and saying, “We’ve done our best.” We actually want the Government to deliver what they say they will, which is a comprehensive health service.

That can be done in two ways. We could either have a clause that says to “provide or secure” a comprehensive health service, or we could have a clause that says “to secure” one. Those are the stark alternatives in front of
us. I have seen all sorts of lawyers expound endlessly on that point, but there are dangers in listening to lawyers for too long because they can overcomplicate things.

There are two very clear, logical—not legal—points, which are absolutely beyond challenge. First, “secure” does not exclude “provide”. Secondly, if one fulfills the second variation of the Secretary of State’s duty—bar the one preferred by the Secretary of State “to secure”—it is a logical fact that one necessarily secures the first intention, of to “provide” or “secure”. It is not possible to do what the Secretary of State says, without also doing what the Government are asking him to do.

Emily Thornberry: If the hon. Gentleman’s analysis is right—

John Pugh: Oh, it is.

Emily Thornberry: I suggest that it is not. If it is right, why are the Government changing it? Section 1(2) of the 2006 Act states that the Secretary of State must “provide or secure the provision of services in accordance with this Act.”

If the change means nothing, why are the Minister and the Secretary of State so tenaciously holding on to their new alternative? Why not just go back the 2006 Act, which has worked perfectly well? That is the question.

9.45 am

John Pugh: It is a question that I shall endeavour to answer explicitly. It is reasonable to ask what difference either assertion makes, and the subsequent question is why does one want to change the original assertion. There is a school of philosophy called pragmatism; I am not deviating altogether, here, Mr Gale.

The Chair: Or at all, I hope.

John Pugh: The school says that, to differentiate between the meaning of one statement and another, the best thing to do is look at their operational differences and the practical effects that they would have. The Americans would ask, “Where’s the beef?” Why would substituting one wording for another change things, and why is one wording preferred to another? To some extent, an element in me asks why the Secretary of State does not go for a quiet life, agree a wording that people might not be so comfortable with and why is one wording preferred to another? To some extent, an element in me asks why the Secretary of State does not go for a quiet life, agree a wording that makes what everybody thinks is suggested by their favourite form of wording, and include as many appropriate nouns and verbs as possible.

I think that there are two answers. There is a good answer, which I prefer, and there is another answer, which people might not be so comfortable with and which we need to talk about. The Secretary of State appears to be saying—and I can see why he is saying it—that “secure” better reflects what he will be doing. His preference and operational principle is that he wants to use a number of potent levers in managing the NHS, rather than directly provide everything within the NHS, because there is a dislike of micro-management. I can understand that. For about six or seven years, everybody in my constituency has been saying that they want a minor injuries unit for children. What we actually have, at the behest of the previous Secretary of State, are two Darzi clinics, one of which is a complete white elephant.

Emily Thornberry: The Secretary of State for Defence is not specifically responsible for deciding how many boots the Army should have; he is not supposed to make sure that they all fit and he does not put them on people’s feet. However, if the Army was sent to war without any boots, that would be his responsibility. It is not micro-management to expect him to be responsible for that.

John Pugh: I honestly do not think that Committees debating defence issues would argue for long about whether the Ministry of Defence should “secure” or “provide” that troops have boots, because they would not see any hope or significance in it. There is a legitimate debate about whether the Health Secretary’s role is described more appropriately by “provide” or “secure”. There is another debate to be had about the mechanics laid out by the Secretary of State and whether they are good enough.

The hon. Member for Pontypridd has raised the issue of whether the new regime gives the Secretary of State all the necessary levers to be able to secure a comprehensive health service. We can debate the mechanics and how likely they are to be successful.

Liz Kendall: The point is that the Prime Minister and Deputy Prime Minister seemed to give a clear promise that they would replace the Bill’s original wording with the current duties of the Secretary of State under the 2006 Act, but they have not done that. People felt that they were going to get something that we now see is not going to happen, so they are asking why the Government are doing that. It is an issue of trust.

Perhaps I did not express this eloquently last time, but people believe that this is an attempt to push responsibility down to groups of people who will then seek to exclude groups of patients, because they want to balance the budgets and make sure that their practices make a sufficient amount of money. That is what Dr Teck Khong in Leicester has said that he wants to do. He wants explicitly to exclude services from NHS patients.

The Chair: Order. Chairmen normally allow slightly longer interventions in Committee than are allowed on the Floor of the House, but there is a difference between an intervention and a speech. We had better set the precedent now and try to keep the interventions reasonably short.

Liz Kendall: I shall ask a very quick question. Does the hon. Gentleman back the commitment to return to the 2006 duties for the Secretary of State?

John Pugh: As long as the legal reality remains the same, I do not get tortured by particular forms of semantics. Can I illustrate the serious muddle that we have got into over this? It is not just us; it is people outside. On Tuesday, the British Medical Association passed a motion calling for the withdrawal of the Bill. The issue for the BMA was a change in the role of the...
Secretary of State—meaning, I suppose, that it wants the Secretary of State to have a more hands-on approach. Is that what hon. Members understand the BMA to want?

**Tom Blenkinsop** (Middlesbrough South and East Cleveland) (Lab): It was not just the BMA saying that. It was responding to a report written by the hon. Gentleman’s former colleague, Dr Evan Harris, which concluded:

> “it appears that the new Bill will continue to propose abolition of the Secretary of State’s duty to provide health services in accordance with the Act”.

**John Pugh:** I do not want to go into the details of what my former colleague said. We have a difference of opinion about what the Bill does. He has acknowledged, quite fairly, that the BMA is concerned that the Secretary of State does not appear to have enough hands-on control and responsibility, but on page 3 of its representations on the original Bill, under the heading “Key areas of concern”, it stated:

> “The BMA believes that the Secretary of State will have too much control over the NHS Commissioning Board; he/she will be able to make changes without consultation; he/she will be able to dictate how and which treatments and services consortia provide”.

To some extent, that answers the point made by the hon. Member for Leicester West. She said that that is precisely what would not happen, whereas the BMA says that it is precisely what would. We have to make our mind up on where the critique is coming from, and to make it in as fair a way as possible.

**Liz Kendall:** There is a difference between who is responsible for providing a comprehensive service, and the BMA’s concerns—and mine—that the board gets the power to tell commissioning groups how often they have to meet.

**John Pugh:** I genuinely do not want to get into a battle with the BMA—I have a most congenial relationship with it—but I would like to see an element of intellectual consistency in its critique. According to an article published on 26 March headlined, “BMA presses for health changes”, the BMA was pressing for more independence of the NHS commissioning board. It was sceptical about the rhetoric to do with giving clinicians greater involvement with commissioning decisions, and feared the Bill would give sweeping powers over consortia, and give the Health Secretary too much control over the board. One might say that what the Secretary of State desires is an element of control without accountability. None the less, that was its accusation. It is on the record and it is indisputable.

**Owen Smith:** The hon. Gentleman cannot have his cake and eat it. A moment ago he was telling us that he was not persuaded that our original discussion on clause 1 was anything other than synthetic, and then he acknowledged that people were right to be concerned that the word “promote” was insufficient, and that it should be changed. He has therefore conceded that it was not synthetic, but a real debate. In this instance, irrespective of what the BMA has to say, and irrespective of any inconsistencies in its statements, we are not being inconsistent. Our concern is that the clause moves the Secretary of State’s duty to secure and provide a comprehensive service one step further away. That is why we are debating the point. The situation has not changed in this iteration of the clause; it has not changed with the words. It still passes things off to a quango.

**John Pugh:** There is quite a legitimate debate about how and to what extent the health service should be micro-managed, and we can have that debate when we come to other parts of the Bill. We are not debating that specifically; we are debating what the words in the Bill actually do, and the intent behind changing the wording. I am suggesting that the rationale for the change is to reflect better the operational principles of the NHS, and we can look at how far that involves micro-management, but it might not be that. To sketch a worst-case scenario, the change could reflect the view—I shall be absolutely honest about it—favoured by some right-wing think-tanks that the state simply should not provide health care. The view that the state should simply concentrate on funding and arranging it is a perfectly clear ideological view. If one wanted to, one could look at this legislation as preparatory to such a scenario, but I have to say that one could look at every previous health Bill produced by the Labour party as equally preparatory to that, so we cannot pursue that argument too far without difficulty. [Interruption.]

**The Chair:** Order. I am sorry to interrupt the hon. Gentleman. There are two Ministers on the Front Bench in addition to the Minister of State; if the Minister of State wants to have private conversations, I am afraid that even he must go out into the corridor with his officials.

**John Pugh:** I do not buy unnecessarily into conspiracy theories, but in a Commons debate I sketched the scenario that the Bill may have had two authors—a pragmatic Minister whom I call Dr Jekyll, and a right-wing ideologue whom I call Mr Hyde. Mr Hyde’s view of the world is perfectly coherent. It is not the right view, however; it is a deeply unpopular view and is unlikely to satisfy their Lordships—[Interruption.] If people think that it is popular, they should stand up and speak on its behalf. I do not think that that is the rationale behind the Bill—at least I hope not—because it would be opposed, and not only by people like myself, who believe that the state should continue to provide health care, if only because we cannot “secure” unless we retain and have that option.

**Liz Kendall:** I am sure that the hon. Gentleman’s coalition partners are grateful that one of those partners is the Jekyll and one the Hyde, but with the greatest respect, this is his Government, too. He is not a bystander to decisions made by his Government about the future of our NHS.

**John Pugh:** That is exactly why I am here scrutinising the Bill and speaking as frankly and as openly as I can. The Government have a clear opportunity, which I hope they will take in future weeks, explicitly to point out that the state’s function as a provider of health care, as well as a funder and arranger of health care, is something they would endorse, first because we cannot genuinely “secure” unless we can also, to some extent, provide, and do so in collaboration and partnership.
with the private sector, and secondly because if that is the subtext—it certainly ought not to be, and I do not think it is—I do not think the Bill will survive the Lords.

**Emily Thornberry:** I am still uncertain whether the hon. Gentleman is minded to support the amendment. I hear what he says about the Secretary of State having an obligation to secure and to some extent provide, but that seems to be sitting on the fence. Our amendment says that the Secretary of State “must provide” and must “secure”. That is a difference, but the hon. Gentleman will not do the NHS or anyone else any good by sitting on the fence, so I am asking him to jump one way or the other.

**John Pugh:** I do not see any logical difference—any difference in effect—between one form of wording and the other. We can play an obstinate game of “Who has the best wording?”, but if Members sat down and thought about it, they would find it very difficult to pick out the practical difference between one form of wording and the other. I could provide a little further analysis if required. There is a practical difference in operational terms in setting the NHS up with an NHS commissioning board.

**Emily Thornberry:** To a certain extent, we are in agreement, because if there is no difference, why not go back to the National Health Service Act 2006? The Bill has become—more than anything else, possibly—about trust.

10 am

**John Pugh:** In effect, I have already answered that, and the Secretary of State has already answered it in about five different formats, basically saying that the provision as phrased at the moment does the job and adequately reflects the difference in structure in the NHS—not the difference in responsibility, but the difference in the operating framework of the NHS, which is encompassed in the legislation.

Hon. Members can decide that they do not want an NHS commissioning board and want to do things differently. There is an argument to be had about that, but once there is an NHS commissioning board, that necessarily leads us to re-examine the phrasing that we use when talking about the Secretary of State and to choose the most apt form. That is what has happened in this case.

I do think, though, that there is a distinction—it is not one that I have drawn myself so far, or, indeed, that I find myself capable of drawing—between what the state can provide and what the Secretary of State can provide. The Secretary of State may view himself as the state, but unless he is Louis XIV, he is not. For the benefit certainly of Liberal Democrat colleagues, the Government need to make it clear that the state continues with a provider role, or some sort of function.

That in some ways is implied by the legislation, because the Secretary of State has wide intervention powers, which is a provision function. He has a role in public health, which is a provision function. He has command over the capital programme and will continue to have it, as far as I know. That is a provision function. He does not therefore just continue, in a sort of half-life, to act as a back-stop in the case of failed provider functions. Theoretically, it is still possible under this legislation—the Secretary of State can correct me if I am wrong—for the Secretary of State to create another provider arm, one that is not in existence at the moment. We are talking about various functions. There is a whole pile of them in the information sent to me yesterday by the Secretary of State. Unfortunately, I have not had a chance to read that, but I will be sending him my photocopying bill. It is a huge 300-page document. If we look through it—I am sure that hon. Members will have studied it—we see that he has various functions apropos of the provision of health care, as well as arranging for health care to happen.

In consequence, there is very little difference, or rather there is no difference—I put it as strongly as that—between the logical implication of one wording and the logical implication of the other. It would be great if there could be a consensual view on which is the most elegant phrasing, but that is what we are talking about now, not an issue of profound and important substance.

**Emily Thornberry:** On a point of order, Mr Gale. May I seek your guidance? I appreciate that we are debating by theme, but I wish to speak to amendment 227 to clause 3, and to new clause 2. Should I speak now, or after the Minister has responded to clause 1 stand part?

**The Chair:** Let me try to clarify the situation again for the benefit of everyone concerned. We are at the moment debating amendment 1 to clause 1, with which we are taking the stand part debate, the debate on amendment 227 and the debate on the Government amendments and new clauses on the amendment paper. As I am on my feet, and without wishing to give hon. Members a master-class in procedure, let me say this. A clause stand part debate is in the gift of the man or woman in the Chair. Ordinarily, if it takes place at all, it takes place at the end of the debate on the amendments. It is like a Third Reading debate, in which one asks, “Is this still a good idea in principle, and should it remain in the Bill?”

If the Chairman feels that the matters arising from the clause have been sufficiently debated in the course of dealing with everything else, he has an absolute right to say, “I am not having a clause stand part debate,” and to put the clause before the Committee for a decision, and a vote if necessary. Some Chairmen—I am one of them—take a slightly more relaxed view and say, “You can have a clause stand part debate at the beginning or at the end, but you can’t have both,” so it is up to the Committee to decide what it wants to debate and when.

The reason why we have included the clause stand part debate in this grouping is that it is the first opportunity that all members of the Committee have had to have an initial skirmish around what we are going to do over the next few days and weeks. It seemed to me—I hope that the Committee agrees—that it was right to create an opportunity to have a slightly broader debate than might otherwise be permitted. I make that point because I would not want hon. Members to think that they will get away with this every day of our remaining sittings. When Dr Pugh has finished his comments—
John Pugh: I have finished, Mr Gale.

The Chair: Then the hon. Member for Islington South and Finsbury and other hon. Members will now have the opportunity to rise and be called, and may speak properly and in order to any of the matters currently under discussion. The hon. Lady has already spoken once; do any other hon. Members want to rise before I call her?

Debbie Abrahams: I want to reiterate many of the points that my hon. Friends have made. The issue is definitely one of trust, and has probably been the biggest source of concern among the public. There were 300,000 signatories to the 38 Degrees survey. During this re-committed Public Bill Committee I am still receiving correspondence asking particularly for scrutiny of the clauses relating to the founding principles of the NHS. I understand what the hon. Member for Southport said about semantics and words. The issue is about trust, and if there is no difference, why change the words? The response to the Future Forum report is absolutely clear, so why allow ambiguity and concerns to be raised?

The Government may argue that they are changing the words because they want some distance between delivery and politics, but that is not a significant argument. The Secretary of State will still have responsibility for appointing members to different boards, and will continue to have political control, so the argument does not stand up. The way in which it has been couched does not reassure me or the public that the original principles of the NHS will be restored.

The Minister of State, Department of Health (Paul Burstow): The hon. Lady refers to restoring the principles of the NHS. Does she not accept that as the Committee proceeds with its deliberations we will consider amendments that extend those principles by requiring the NHS commissioning board actively to promote the NHS constitution?

Debbie Abrahams: That is why it is so confusing. It is confusing that the Government are choosing to change the words and leave the language so open, yet in other parts they say that they are strengthening it. Why change the words and let the matter be open to question?

Liz Kendall: Does my hon. Friend agree that it is a pity that the Government did not accept our amendments suggesting that the national commissioning board promote the NHS constitution? It is welcome that they are talking about it now, but they refused to do so earlier, when they said that that was not necessary. Why should we trust them now?

Debbie Abrahams: That is a valid point, and I agree with my hon. Friend. I return to proposed new section 1(3) in new clause 1. There seems to be ambiguity about charging.

Mr Burns: Oh no! That is cheap.

Debbie Abrahams: I am sorry, but there is. Will there be an opportunity for bonus payments to be made to GP clinical commissioning groups?

Mr Burns: May I say that it is the height of irresponsibility to try to set a hare running when it does not exist? There is no intention, and there never has been, for the Government to change their core belief about the NHS—a belief that the hon. Lady and I share—which is that it should be free at the point of use for all who are eligible to use it. All we have done is repeat the language that her Government used in the 2006 Act.

Debbie Abrahams: I thank the Minister for the point, but why open it up for criticism again? It is not clear in this new section of new clause 1 that that is the intention.

Mr Burns: The answer to the hon. Lady’s question is, if we had not included it as per what was in the 2006 Act, she would be making a speech saying that we are about to bring in charges.

Debbie Abrahams: I am sorry. Were you directing those remarks to me?

Mr Burns: Yes, I was.

Debbie Abrahams: I could not tell.

Tom Blenkinsop: As ever, it is a pleasure to serve under your chairmanship, Mr Gale. I have just a few brief comments about elements of clause stand part.

In the previous Bill Committee, Government Members wanted to get rid of strategic health authorities, yet new clause 2 states:

“The Secretary of State must keep under review the effectiveness of the exercise by the bodies mentioned in subsection (2)”.

Subsection (2) refers to the board, Monitor, the Care Quality Commission, the National Institute for Health and Care Excellence, the Health and Social Care Information Centre and special health authorities. What is going on? Will the Minister give us a quick response on that element? There is a partial restoration of the original clause, but it does not stipulate on what the obligation to provide is premised or based.

Mr Burns: I shall seek to answer the first part of the hon. Gentleman’s question, but will he just clarify something? Was he talking about special health authorities or strategic health authorities?

Tom Blenkinsop: What will the substantive difference be between strategic health authorities and special health authorities?

Mr Burns: The difference between a strategic and a special health authority is that strategic health authorities are, under the current structures, the regional health authority bodies that supervise—keep an eye on—PCTs and so on, whereas special health authorities are by their nature special; they include Rampton, Broadmoor and Ashworth near Liverpool. Special health authorities can act as a vehicle for organisations that have a temporary basis within the NHS to perform a specific function, but not a strategic health authority function.

Tom Blenkinsop: I thank the Minister for providing that clarification.
On the clause stand part debate and the obligation to provide—whether that is with the new national commissioning board or the Secretary of State—the Committee is asking where the safety net structure is and for clarification on the safety net. Will it be with the national commissioning board, with the Secretary of State, or with each consortium? In terms of legal culpability, where can the patient go to for a response on the delivery of services?

Labour Members are looking for political accountability. If we consider the Southern Cross situation, the Department of Health is saying that that is a purely commercial matter. The hon. Member for Southport mentioned intent; at the moment, Labour Members believe that the intent is to effect a fundamental shift away from the Secretary of State for Health on such matters. Under other parts of the Bill that implement provisions of the Enterprise Act 2002, the Secretary of State for Business, Innovation and Skills will respond, for example, on the Southern Cross situation, rather than the Secretary of State for Health. That suggests an element of intent.

Paul Burstow: The hon. Gentleman is making some interesting points. Will he confirm that currently no statute places on a Secretary of State, whether for local government or for the health service, an obligation to provide a comprehensive social care system?

Tom Blenkinsop: The Minister is correct, of course, but the Department of Health said that it was purely a commercial matter and that the Secretary of State for Business, Innovation and Skills was to deliver the Government’s response. I would argue that something more than a statement saying that it was purely a commercial matter might have been more appropriate from the Department of Health. I am talking about intent. Government Members are talking about the Government’s intent. This half-usage of the 2006 Act wording suggests intent.

10.15 am

Fiona O’Donnell: It is a pleasure, Mr Gale, to serve on my first Bill Committee under your chairmanship. I appreciate all the guidance that you have given on matters as far ranging as the consumption of hot beverages and the use of electronic devices, and I hope that the busy thumbs that I see on the Government Benches are skimming through messages and reading them and not contravening your direction.

May I make an observation about my first experience of a Bill Committee? I feel as though I am taking part in a not so funny edition of the Radio 4 programme “Just a Minute”, so I shall try to keep my remarks brief, and without repetition, hesitation or deviation. I have waited a Minute, so I shall try to keep my remarks brief, and without repetition, hesitation or deviation. I have waited a Minute, so I shall try to keep my remarks brief, and without repetition, hesitation or deviation.

My other concern is about the words. I have said previously that I am really interested in what the changes mean for patients. I was disappointed to learn from Professor Field that many of the changes make no difference whatever. It worries me that Ministers and Government Members have spent longer looking at the thesaurus than considering the responses from the many organisations, staff and patients that have raised concerns about clause 1.

The hon. Member for Southport spoke about the new provision not making a difference, so I ask again the question that we have asked so many times: in that case, why change it? This is an opportunity for a Government who said that they were pausing, listening and reflecting to give something back to those organisations. They said that it would cost them nothing and that it would make no difference, so why not make that gesture of good will and reassure patients and organisations that the Government are committed to the NHS? The Government love the NHS, as the Prime Minister often says, and he is often helpful in directing his Secretary of State, but he appears not to have been successful in this instance.

Rather than hoping that the Government intend nothing sinister or damaging to the NHS, will the hon. Member for Southport not support our amendment? I am pleased to know that hope is still alive in the coalition; will he not take the safety position but instead vote with the Opposition?

John Pugh: I do not want to be lured into a debate about semantics, but I cannot help noting that the 2006 Act, which was passed by the Labour Government, changed the wording of the National Health Service Act 1946 from “effective provision of services” to “provision of services”. We could have a huge debate about whether the public would be satisfied with ineffective services, but we accepted Labour’s assurance that that was not what they were trying to do. They said that the change in wording did not amount to anything, and asked why should a Secretary of State want to change things? Undeniably, “effective” was removed by the 2006 Act. There could be a conspiracy theory about the Labour party wishing to deliver incompetent services.

Fiona O’Donnell: The hon. Gentleman is perfectly free to table his own amendment if he wishes to insert “effective”. Perhaps the Liberal Democrats, or whatever they were called back then—perhaps they were Whigs; I am not sure—and the Conservatives trusted the founding fathers of the NHS always to have its best interests at heart, but if he wants to leave nothing to chance he should support the amendment. This is a very different Bill—one that creates many layers of quangos, commissioning boards, groups and consortia. That is why we value the amendment.

I have not managed to speak in quite 60 seconds, Mr Gale, but I hope that Members will take the opportunity, even if they see it only as a gesture or semantics, to reassure those organisations and the patients that the NHS is safe in their hands.

Emily Thornberry: I hope that I speak on behalf of the whole Committee when I say that because of the huge talent that is clearly displayed on the Opposition Back Benches we look forward to the next few weeks. If I appreciate that the Minister might find Opposition Members provoking, and that he might find it difficult not to bellow from his seat when he listens to them, but they certainly speak a great deal of sense.
New clause 2 gives the Secretary of State a duty to keep health service functions under review. It mentions various bodies, including the board, Monitor, the Care Quality Commission and the National Institute for Health and Care Excellence. I again refer Members to the evidence from the British Medical Association, which pointed out that under the unamended schedule 1, the Secretary of State will continue to have the power to appoint all non-executive members of the national commissioning board. If the Secretary of State “must keep under review the effectiveness of the exercise by the bodies mentioned in proposed new subsection (2) of functions in relation to the health service in England”, he can presumably keep the board under review very effectively if he is appointing all its members. Given how little time we have had to consider the re-committed Bill, will the Minister give us some information about whether the Secretary of State will also have the power to appoint all board members of the other bodies mentioned in the proposed new subsection? Such a power would have an effect on the role that the Secretary of State was able to play.

I turn to amendment 227, which I have not been able to find in the Public Bill Committee note.

The Chair: It is at the top of page 140.

Emily Thornberry: Thank you. Perhaps the problem is that I do not have a page 140. [Interruption.] I have just been passed one. Thank you. This is a simple amendment. Members might remember that in the previous Bill Committee, there was an extensive debate on clause 3, which is about the Secretary of State’s duty in relation to reducing inequalities. I do not intend to go through the arguments again, but anyone reading today’s proceedings could perhaps do so with column 296 of *Hansard* from 17 February 2011 also open. The amendment would take out “have regard to the need to”, and I shall explain why.

In exercising functions in relation to the health service, the Secretary of State will have to reduce inequalities between the people of England. If the Bill works, if it is everything that the Prime Minister seems to believe it is, if it does everything that the coalition believes that it will, and if the Opposition, the national health service and the public are wrong, there is no problem with agreeing to the amendment. If the Bill works and the health service is improved, we should have greater equality of both access and outcomes within the NHS. Presumably we all want that.

If the Bill will do its job and has been worth the blood, sweat and tears, surely the Government parties must be sufficiently confident to accept that what we need is not for the Secretary of State merely to “have regard to” the need to reduce inequalities, but to know that by passing the Bill he actually will be reducing inequalities. Why not take out the weasel words and go straight for, “the Secretary of State must reduce inequalities between the people of England”? That gives the Secretary of State a clear instruction from us that whether or not the Bill works, his job is to reduce inequalities, which surely is the purpose of the national health service.

10.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at One o’clock.