

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

NATIONAL HEALTH SERVICE (AMENDED DUTIES AND POWERS) BILL

Third Sitting

Tuesday 10 February 2015

(Afternoon)

CONTENTS

CLAUSE 1 under consideration when the Committee adjourned till Tuesday 24 February at twenty-five minutes past Nine o'clock.

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

£6.00

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 14 February 2015

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 2015

*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: † MR PETER BONE, MR JIM HOOD

† Arbuthnot, Mr James (*North East Hampshire*)
(Con)

† Brown, Mr Russell (*Dumfries and Galloway*) (Lab)

† Buck, Ms Karen (*Westminster North*) (Lab)

† Burns, Mr Simon (*Chelmsford*) (Con)

† Durkan, Mark (*Foyle*) (SDLP)

† Efford, Clive (*Eltham*) (Lab)

† George, Andrew (*St Ives*) (LD)

† Gwynne, Andrew (*Denton and Reddish*) (Lab)

† Kirby, Simon (*Brighton, Kemptown*) (Con)

† Knight, Sir Greg (*East Yorkshire*) (Con)

† McInnes, Liz (*Heywood and Middleton*) (Lab)

† Metcalfe, Stephen (*South Basildon and East
Thurrock*) (Con)

† Nuttall, Mr David (*Bury North*) (Con)

† Poulter, Dr Daniel (*Parliamentary Under-Secretary
of State for Health*)

† Rees-Mogg, Jacob (*North East Somerset*) (Con)

† Wilson, Phil (*Sedgefield*) (Lab)

Kate Emms, Fergus Reid, *Committee Clerks*

† **attended the Committee**

Public Bill Committee

Tuesday 10 February 2015

(Afternoon)

[MR PETER BONE *in the Chair*]

National Health Service (Amended Duties and Powers) Bill

2.30 pm

The Chair: Before we resume our consideration of the amendments to clause 1, it might be helpful if I report the reassurance that I have received from the Public Bill Office that our proceedings are not at risk and the Bill does not require the support of a money resolution. In addition, I have notified the House, as there is no specific time at which we must adjourn today—that is at the discretion of the Committee—that we may be sitting through the night.

Clause 1

DUTY ON THE SECRETARY OF STATE TO PROMOTE
COMPREHENSIVE HEALTH SERVICE BASED ON SOCIAL
SOLIDARITY

Amendment moved (this day): 38, in clause 1, page 1, line 10, leave out “social solidarity” and insert “medical necessity”.—(*Jacob Rees-Mogg*)

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 37, in clause 1, page 1, line 12, at end add

“as far as is compatible with the liberties of the people of England and without any additional regulatory burden.”

Amendment 40, in clause 1, page 1, line 15, at end add—

“(c) nothing in this section shall be interpreted as entitling or requiring the Secretary of State to direct people in their personal conduct, nor provide unsolicited advice on diet or behaviour, nor to spend public funds on propaganda, nor to discriminate against specific foodstuffs, nor detrimentally to affect any lawful industry;”.

Amendment 1, in clause 1, page 2, leave out lines 1 to 8.

Amendment 41, in clause 1, page 2, line 2, leave out “general economic interest” and insert “that ensures value for money”.

Amendment 39, in clause 1, page 2, line 3, leave out “social solidarity” and insert “medical necessity”.

Amendment 42, in clause 1, page 2, line 8, at end add “subject to consultation with relevant local government bodies.”

Amendment 49, in clause 1, page 2, line 13, at end add

“or is a charge made to a person who is not entitled to free care by virtue of his immigration status.”

Amendment 50, in clause 2, page 2, line 16, leave out “social solidarity” and insert “medical necessity”.

Amendment 51, in clause 2, page 2, line 18, leave out “mutual cooperation”.

Amendment 52, in clause 2, page 2, line 19, leave out “social solidarity” and insert “medical necessity”.

Jacob Rees-Mogg (North East Somerset) (Con): Mr Bone, what joy you bring into our lives with your announcement that we may be here all night! I have been looking forward to this ever since I was elected to Parliament. We can model ourselves on the late Charles Stewart Parnell, who knew how to keep things going properly. None of that namby-pamby finishing at 7 o'clock and going to the theatre—we will show what proper parliamentarians are about.

I thought that, before resuming my comments—I think that I had just got to considering the social solidarity that Bonaparte experienced and exhibited to his soldiers—I might tell the Committee that, in preparation for this effort, I made sure that I ate fish for lunch, because as members of the Committee will know, fish is very good for the brain, and to have one's brain functioning as fluidly and effectively as possible when debating these important topics is of the highest importance.

Let me talk about Bonaparte, because I have given credit to the Duke of Wellington, the Iron Duke, a former Prime Minister and leader of the Conservative party, who created a great deal of social solidarity with his troops when he went into battle at Waterloo. I am thinking of the formation of the square that made it so difficult for the enemy to attack—that coming together of a body of men in social solidarity to ensure that they could not be defeated.

It was well known that Bonaparte's troops came together in a most effective way because of the feeling of solidarity that he, a self-proclaimed emperor, created among the forces at his disposal. It was said that his leadership was worth having an extra division in a battle. He was that effective a leader, although, it has to be said, a most awful man. None the less, awful though he was, evil though he was and tyrannical though he was, he could inspire his people and his soldiers, through social solidarity, to come together as a body to be more effective in their battles than they would otherwise have been. He showed that in so many of his battles, including the famous battle of Austerlitz, which of course he wins against the Austrians. Indeed, even when he returns from Elba—“Able was I ere I left Elba”. Many members of the Committee may be familiar with the palindrome.

Mr James Arbuthnot (North East Hampshire) (Con): I think it is “I saw Elba”.

Jacob Rees-Mogg: I am so grateful for the correction from my right hon. Friend. Bonaparte left and created social solidarity with the people of France—liberty, fraternity and equality, which they were so keen on as long as Napoleon was emperor, but that is an aside. He created the social solidarity that made him a force to be reckoned with, until he came across the greater social solidarity expressed by the Iron Duke in the form of the square at Waterloo that made it so difficult for Napoleon to win and, indeed, led to his defeat and his exile on St Helena, where he spent the last few years of his life—perhaps he was poisoned with arsenic, or perhaps not. At the heart of it is social solidarity, but how do we legislate for that? How do we legislate for a Bonaparte, of all things? How do we say that we must have this in the national health service—that we must have this model dictator put into our legislation and then made justiciable?

Of course, it is more than that. I have given examples from Agincourt and Waterloo, but social solidarity is not an ancient habit. It is unquestionably more up to

date than the 15th and 19th centuries. If one looks back only 100 years, which is a mere bagatelle in these terms, the first world war is a great example of social solidarity. I am thinking of the troops who came from communities, from villages, from towns, who formed together. They did that before conscription came in: they did not need the state to bring together their social solidarity. They needed to do it because it was in their hearts, as I know it is in the heart of the hon. Member for Eltham.

Social solidarity is not a matter of legislation; it is a matter of feeling, of inner sense, and we have seen it throughout our history. Another example is the battle of Britain, when we had social solidarity in the air. It did not need necessarily to be on the ground. The few who fought the battle of Britain, to whom we owe so much, had a solidarity not just with each other but with the nation as a whole. They had the same coming together, the same spirit, that allowed the nation to stand up against the greatest threat and terror that it had ever faced in its long history. As Winston Churchill said, whose death 50 years ago we commemorate,

“if the British Commonwealth and Empire lasts for a thousand years men will still say, ‘This was their finest hour’”.—[*Official Report*, 18 June 1940; Vol. 362, c. 60.]

It was a very fine example of a coming together of a people with guidance, unquestionably with leadership, with social solidarity, but not a social solidarity that could be legislated for.

That is why I have tabled an amendment against social solidarity. I think that we have it. It is an inner sense. It is not a sense one can put into law.

It occurred to me that it is worth looking at the question of social solidarity in its broader context so that the Committee may come to a fuller understanding of what the term means. My hon. Friend the Member for South Basildon and East Thurrock, who is no longer in his place but who will, no doubt, be here in a matter of moments, raised a philosophical point while I was speaking before the lunch interval. It is noticeable that in the Commons we take a longer lunch interval than they do at Lord’s—I mean Lord’s, not the House of Lords. Before the lunch interval, he made a deeply philosophical point about social solidarity. I thought, therefore, that it was worth examining how social solidarity fits in to the teaching of the Catholic Church, because this must be at the heart of what the hon. Member for Eltham is trying to get at.

Let us start with Boniface VIII and his papal bull, “Unam sanctam”, which sets out a very high level of claim for the authority of the Church in relation to social solidarity and how much its spiritual rights trump those of the temporal authorities. The more modern interpretation of social solidarity really starts with Pope Leo XIII in his encyclical, “Rerum novarum”. That sets out the social solidarity between peoples of different types and how they should work together. It is, I am glad to say, a document that is very against socialism; he thought that socialism was extremely dangerous. It says, in relation to social solidarity, that it was the primary purpose of the state to provide for the common good, that all people have equal dignity, regardless of social class and that a good Government protects the rights and cares for the needs of all its members, both rich and poor. It carries on:

“As regards the State, the interests of all, whether high or low, are equal”.

This is at the heart of social solidarity.

“The members”
of various classes

“are citizens by nature and by the same right as the rich; they are real parts, living the life which makes up, through the family, the body of the commonwealth...Therefore the public administration must duly and solicitously provide for the welfare and the comfort of”
all classes,

“otherwise, that law of justice will be violated which ordains that each man shall have his due”.

Leo XIII also pointed out that everyone is in some way a contributor to social solidarity. Some are leaders and thus more conspicuous. Others are less visible and may seem, individually at least, to contribute less, but everyone’s contribution is important.

Mr Arbuthnot: My hon. Friend is using the words “social solidarity” as though those were the words used in the document. Is he able to tell the Committee when social solidarity as a concept was first brought into being and when it was first used?

Jacob Rees-Mogg: I am grateful for that intervention. I will have to leave the history of the term “social solidarity” to my right hon. Friend to elaborate on. I do not know the first occasion of it being used, but I do know that it is an important underpinning of the modern social teaching of the Catholic Church and must therefore be relevant to the clause under consideration, because we are trying to work out what social solidarity means. I tabled an amendment to take it out, but I do not want to do that if it turns out that it means something that is useful to the Bill and that would be helpful and ensure that the country were better governed. By the description that I am able to give to it, and by the understanding that we are elucidating through this debate, we may understand that it is not a concept that we ought to have in the legislation. [*Interruption.*]

The Chair: Order. I am sorry to interrupt. I remind the Minister that he is not allowed to pass notes to his officials.

Jacob Rees-Mogg: Thank you, Mr Bone. I was momentarily worried when you stood up that there may be some other point of order that you were going to raise—perhaps a concern that the Order Paper mentions that the Committee would meet at 2 o’clock, before we had decided—

The Chair: I thank the hon. Gentleman for bringing that to the Committee’s attention. I am afraid that was an error. It should not have said that.

Jacob Rees-Mogg: I am extremely grateful, Mr Bone, for your characteristic clarity of thought. It is of great assistance to all of us on the Committee who labour to improve the legislation of the House of Commons.

Social solidarity is a concept that comes from the Catholic Church, initially from “Rerum novarum”, but is developed further. It carries on and becomes important in later encyclicals. On the 40th anniversary of “Rerum novarum”, Pius XI developed it in “Quadragesimo anno”, in which he talks of the social order and the social solidarity that comes from that. He says that, because industrialisation resulted in less freedom at the individual and communal level, because numerous free social entities got absorbed by larger ones, a society of individuals became a mass and class society. This was a

[Jacob Rees-Mogg]

matter of concern to him. He felt that this was making things harder and that we needed to see greater solidarity and subsidiarity than are present in capitalism, so it is quite interesting.

“Quadragesimo anno” is moving in a more socialist direction than “Rerum novarum” in its elucidating of social solidarity. This, as a non-socialist, gives me a degree of concern about the trend in the Church to which I am pleased to belong and view myself as an obedient and loyal servant. Fortunately—I thought this might be helpful background—such teachings, although important, do not meet the qualification for infallibility laid down by the first Vatican Council. Although they are worth taking into account, they do not have that fundamental authority that an *ex cathedra* statement would have.

So we see this development in the idea of social solidarity moving in a socialist direction and away from the rather greater clarity that one has with Leo XIII, who is a believer in property rights and thinks that socialism is a particularly dangerous form of political belief, a view which I must confess I share, so I am perhaps a Leo XIII style papist, rather than a Pius XI one. To be perfectly honest, I am more Pius XI. He was nicknamed Pio No No because he said, “No, no” to everything, which is a view that I think could often be well applied to ambitious legislation that tries to upset the Government’s programme.

If we come back to the Church’s teaching on solidarity, away from Pio No No, where does it come from? What is the origin of this idea? It has a very biblical instruction. This may refer to the intervention made by my right hon. Friend the Member for North East Hampshire. Although the term is not used, it is drawn from St Luke’s gospel: do to others as you would have them do to you. That is the basis of social solidarity and understanding—going back to Genesis—that we are our brother’s keeper to some extent. We must have a consideration for those who are within society but are not immediately connected to us.

2.45 pm

It has been said that solidarity is one of the most embracing of the central teachings of the Church. It essentially means—and I am very pleased by this—that we are all in it together. Is it very interesting that the Chancellor of the Exchequer is doing little more than quoting St Luke’s gospel when he tells us that we are all in it together? I had not previously realised our great Chancellor’s divine inspiration in his understanding of social solidarity.

To quote the late St John Paul II in “*Sollicitudo rei socialis*”—“socialis” is not, in this context, anything to do with socialism—

“We are all one family in the world. Building a community that empowers”—

I am sorry, but “empowers” is a ghastly word. As the encyclical would have been written in Latin, His Holiness would not have used such an ugly word; it is merely the way it has been translated.

“Building a community that empowers everyone to attain their full potential through each of us respecting each other’s dignity, rights and responsibilities makes the world a better place to live.” That is a more up-to-date view from a most distinguished Holy Father.

Solidarity is the concept that we are connected with our neighbours in our towns and villages, across the country and around the world. It is about thinking not just about ourselves. It actually ties in with overseas aid, because we have social solidarity not just nationally but internationally. However, in the context of a Bill on the national health service, I am afraid that that concerns me. Although, in a social and spiritual sense, the concept of social solidarity is important, do we really want inadvertently to put into the Bill the ability for people who do not have a right to care in this country to get it through social solidarity? Are we saying that our global social solidarity is something that the NHS is going to take care of, or is it a matter that we should deal with in other budgets and through other means? That is why I keep saying that precision is essential to good legislation, and that nice words that are not precise are extremely unfortunate.

Andrew Gwynne (Denton and Reddish) (Lab): I have been listening very carefully to the hon. Gentleman. Does he accept that his amendment is fundamentally flawed, in that it would change the wording to place a duty on the Secretary of State to promote a comprehensive health service based on “medical necessity”, which fundamentally misses the point? We are no longer talking about a medical model of the national health service. His own Secretary of State is talking about doing more preventive work and more on public health to prevent people from getting ill in the first place. The hon. Gentleman’s amendment would fundamentally weaken that.

Jacob Rees-Mogg: Yes, absolutely it would. I am very suspicious of the Government telling me that I should not eat things such as bacon sandwiches, or whatever it is that Labour party members so much enjoy. I want to eat those things without interference from the Government. I have every intention of speaking on that important matter later in my remarks. I have tabled other amendments to make it absolutely clear that I think that the health service is about curing people who are ill, rather than telling us how to live our lives.

Mr Arbuthnot: I am shocked by what my hon. Friend is saying. My understanding is that one of the duties of the national health service is to keep us as healthy as possible in the longer term. That might be interpreted as falling within my hon. Friend’s phrase, “medical necessity”. Therefore, the hon. Member for Denton and Reddish misunderstood the value of medical necessity in prevention and in curing people.

Jacob Rees-Mogg: I am sympathetic to what my right hon. Friend is saying. It is one thing for the health service, as a matter of medical necessity—that is the term I used—to prescribe statins. They are a medical advance and an advantage that help people to eat more nice things. They are an absolutely wonderful medical breakthrough. I tuck into my statins so I can tuck into my chocolate éclairs. The two go hand in glove and add to the general joy and happiness of life.

Mr David Nuttall (Bury North) (Con): Does my hon. Friend therefore regard his intake of statins—I must admit that I do not partake, although I know that others enjoy them—as a medical necessity?

Jacob Rees-Mogg: That is a good question. Yes, I do. Otherwise I would not be able to eat my chocolate éclairs, and the cream that comes from dairy farmers—in Somerset, I hope—would not be produced. It is therefore not only a medical necessity but an economic imperative, in order for the good people of north-east Somerset to prosper from their sale of dairy produce. Medical necessity allows for preventive treatments; it does not allow for telling people how to live their lives. We want to maximise free choice rather than giving detailed instruction.

Sir Greg Knight (East Yorkshire) (Con): Before my hon. Friend leaves that point, I have some sympathy with the argument made by the hon. Member for Denton and Reddish. Let us take the case of a person who has a cataract over one eye. One could argue that it is not a medical necessity to perform that operation, but it would certainly be highly desirable.

Jacob Rees-Mogg: I am not convinced by that. I think that it is a medical necessity to give somebody a basic cure for an illness from which they suffer. That is the purpose of a medical necessity. If my right hon. Friend took his argument to its logical conclusion, almost nothing would be a medical necessity, because all of us die eventually. It is a question of getting the balance right between that and interference in people's lives. If somebody does not want a cataract operation, I would not send the police round to arrest them, bring them to hospital and force it upon them. To that extent, it is not absolutely necessary, but none the less, it is a perfectly reasonable and important medical procedure.

Mr Nuttall: Does my hon. Friend agree that on that basis, the definition of a medical necessity could change as time goes by? What might be necessary for someone in their 20s might not be regarded as necessary for somebody in their 60s or 70s.

Jacob Rees-Mogg: I am grateful for that intervention, because the great virtue of medical necessity is that it allows practice to evolve. Not only might what is necessary change over the course of somebody's life; it might also evolve over succeeding generations. As medical practice becomes more advanced and more successful, things that might not have been necessary because they were disproportionately risky might become in 20 years, let alone 50, so easy to perform and so routine that the balance of necessity shifts in that direction. Medical necessity is a term with the virtues of being understandable and clear and being able to grow with legislation over the years.

Andrew Gwynne: I want to follow on from the point made by the right hon. Member for East Yorkshire. In 2012, the RNIB did a freedom of information request on all NHS trusts, and it found that 57% had set their own criteria for cataract operations, and that 152 trusts had decided to limit the treatment available. It is rather ironic that the right hon. Member for Chelmsford, who was then the Health Minister and who sits on this Committee, described that as unacceptable. Is that not why we need to move away from the amendment and keep the Bill's wording?

Jacob Rees-Mogg: I am grateful for that intervention, but no. Choices must be made in the health service; it is a question of where those choices are made. Are they

made centrally or by the clinical commissioning groups or hospitals concerned, or is there a mix of approaches, so that as many decisions as possible are made locally but some are made nationally, or there is some form of appeal nationally? I would go for a mixed and relatively flexible system that encompasses what the hon. Gentleman is talking about while leaving the first decision to be made locally, by the people who are closest to their patients and know them best. That is why I stick to the point about medical necessity.

Andrew Gwynne: Clause 1 is about placing a duty on the Secretary of State. As we are talking about a national health service, not a series of local health services, does the hon. Gentleman not accept that it is incumbent on the Secretary of State to set out a framework based on the issue of social solidarity rather than changing the criteria, as he proposes? The "N" in NHS—the "national"—and the "what" should be set centrally. I am very much in favour of the "how" being a local decision.

Jacob Rees-Mogg: There is less disagreement between the two of us than might be immediately apparent. It seems to me that the core requirements of the health service can reasonably be set by the Secretary of State. However, the question is then: what are those core requirements? In my view, they are medical necessity, not social solidarity, because social solidarity is a relatively flexible term. It is very imprecise and difficult to litigate around because it is essentially a philosophical or theological notion, as I have tried to explain and, indeed, will come back to explain. Medical necessity is layman's English and is understandable to almost anyone. Of course, whether one thing is strictly necessary or not can be argued and decided. There is, as in all cases, a determination to be made, but the basis on which that determination is being made is clear.

Mr Arbuthnot: Following the intervention that my hon. Friend has just taken, would it not be right to say that his amendment points to the "H" of NHS—health—which is surely what the national health service should be about? It is surely about medical necessity as opposed to the rather vague term of social solidarity.

Jacob Rees-Mogg: My right hon. Friend has, as he so often does, hit the nail on the head. "Rem acu tetigisti" is, I believe, the phrase that the classicists liked to use. I only know that from my reading of P. G. Wodehouse; I have never read it in its original form. My right hon. Friend is absolutely spot on; it is about health. It is about both the "national" and the "health". We are not dealing with vagaries.

The hon. Member for Denton and Reddish made a point about localism and national provision. Helpfully, that too is covered by the teaching of the Catholic Church on the matter of social solidarity. Pope Benedict XVI, the Pope Emeritus, explained in "Caritas in Veritate":

"The principle of subsidiarity must remain closely linked to the principle of solidarity and vice versa, since the former without the latter gives way to social privatism, while the latter without the former gives way to paternalist social assistance that is demeaning to those in need."

That seems to me a really important point that has perhaps not been considered in debates on the Bill. Surprisingly, it is the left that is looking for a paternalist social assistance model in its terminology.

Clive Efford (Eltham) (Lab): I am interested. The hon. Gentleman mentioned earlier that he takes his statins so that he can eat his chocolate éclairs and therefore sustain the dairy industry in Gloucestershire—*[Interruption.]* Sorry, in Somerset; it is beyond the M25. I want to point out that clause 1 says:

“The Secretary of State must continue the promotion in England of a comprehensive health service designed to secure improvement” in the prevention and diagnosis of treatment.

The hon. Gentleman has suggested that the NHS has no role at all in improving people’s awareness of things that might be dangerous to them and that the NHS should provide no information that might prevent people from getting themselves into a situation where taxpayers have to pay for their statins through the national health service. That is an irresponsible approach to the national health service. I agree about freedom of choice, but people should make informed choices. The NHS has a role in informing people.

The Chair: Order. Before the hon. Member for North East Somerset responds, the speeches seem to be getting longer and so do the interventions. Perhaps I am just getting tired.

Jacob Rees-Mogg: I am concerned that you should be tired, Mr Bone. It might be helpful if the Committee adjourned so that we can have a siesta and resume later, but perhaps, in spite of our European involvement, we are not that continental.

There are two points to make in response to the intervention from the hon. Member for Eltham. First, I pay for my statins personally, rather than making a charge on the national health service. Secondly, I have tabled amendment 40, which would deal with precisely the point that he made. He will be reassured to know that I am looking forward to coming on to that amendment at a later stage in my relatively brief remarks.

3 pm

I want to come on to what it means to practise social solidarity, sticking to the teaching of the Catholic Church, so that we may have a full understanding of what is going on, having made the point that having solidarity without subsidiarity gives way to paternalist social assistance. We do not want this rather condescending model of the health service telling people how to lead their lives—how they should eat, exercise and so forth—in this deeply paternalistic way. We want a health service that allows people the maximum amount of freedom in their lives, with liberty to do as they choose rather than saying, “Because the state pays for it, we must determine.”

I always agree with Pope Benedict XVI, who is one of the great men of our time, but on that point he is so right and helpful to the debate that he might almost have written his encyclical “*Caritas in Veritate*” specifically for the debate we have in hand, although I have a feeling that he did not, because it predates the presentation of the Bill to this House.

Mr Simon Burns (Chelmsford) (Con): I seek some clarification. Does my hon. Friend agree that the NHS has an important role to play in public information so that, when people experience a medical episode or symptoms, they can present themselves for treatment early and avoid long-term care? The excellent advertisements on strokes are an example of that.

Jacob Rees-Mogg: I could not agree more with my right hon. Friend. That is invaluable work, and treating people who have had a stroke is a core part of what the national health service does. However, I seem to remember that a few years ago it told the British public how many potatoes they should eat every day, because if they ate too many they might fall ill from some related disease—they might get potato blight or something, whatever it was. The state should not be doing that. Of course it should be saying what the symptoms of a stroke are. It should put up posters and even spend money on advertising. Normally I am deeply suspicious of Government advertising, because it is often a means of promoting the party in government rather than Government generally, but, in the specific instance that he refers to, I am all in favour.

I am less keen—my right hon. Friend might agree—on the Government spending a lot of money telling people not to smoke if they want to. If people have not worked out the dangers of that by now, they never will. I happen to speak as a non-smoker and, though his predilections may lie in the other direction, he is entitled to do so without being nagged by these paternalistic social assistance types who we have established are really rather disagreeable.

Solidarity is more than an idealistic attitude for shaping society; it is a moral value. Solidarity exists not only between individuals, but within and between social institutions. Signs of solidarity in practice are services of neighbours, social action and mutual respect. That leads me back to why I am so concerned about legislating for social solidarity. Morality—we now see that solidarity is a moral value—is a matter for individual conscience rather than the statute book, although that has not always been the case. Many moral statutes were passed in the 16th century.

The Parliamentary Under-Secretary of State for Health (Dr Daniel Poulter): My hon. Friend makes some important points. On the basis of that definition of social solidarity, does he not agree that it seems strange that the Bill would stop charities from providing NHS services?

Jacob Rees-Mogg: I think that would be absolutely extraordinary. I have not declared this in the Register of Members’ Financial Interests—it has ceased to be relevant, as it happened before I was elected—but many years ago, I was a trustee of the Hospital of Saint John and Saint Elizabeth, a Catholic hospital just beyond Lord’s cricket ground. It is a private hospital, which uses its profits it makes to run a hospice charitably. That sort of wonderfully good work should be hugely encouraged, but that is a type of moral value outwith legislation. It is not necessary to legislate—indeed, I would go as far as to say that it is wrong to legislate—in this way for a moral value, which is essentially a matter of private conscience about how people conduct themselves towards one another.

As I was saying, we used to legislate for moral values. We used to legislate that people had to go to church on Sundays and that they would be fined if they did not go. We had legislation on conformity, and legislation on people’s private behaviour behind closed doors. Historically, all sorts of matters were covered by legislation, but we have tended to move away from that approach to a feeling that it is not the duty of the state to tell people

how to lead their lives, and that it is the duty of the state to legislate for basic security of the state and for the institutions that the state has determined to run.

That point—that it is a moral value that we are considering—means that putting that moral value in legislation is a rather backwards step. I find myself surprised to oppose something old-fashioned; I normally like things that are old-fashioned. However, on this occasion it is unsuitable for legislation.

I thought that it might be worth giving some examples of the non-legislative social solidarity that is shown by the Church. Pope Francis celebrated mass on the tiny Sicilian island of Lampedusa to commemorate thousands of migrants who died crossing the sea from north Africa. That is the Holy Father putting into action social solidarity with people from an underprivileged part of the world, and a part of the world at risk, but it is not a legislative matter.

In these few remarks, I hope that I have made it clear why social solidarity is unsuitable for legislation. Either it is merely woolly talk—something that is unjusticiable, and spin to say what decent jolly people we are that we like motherhood and apple pie—or it is an example of the social teaching of the Catholic Church, which in itself is a good thing, but it would be quite a break for this House of Commons, with an established Church of England, to start legislating for the social teaching of the Catholic Church, although there is one hon. Member on the Opposition Benches of the Committee who may think that that is a jolly good thing. He is a very sound hon. Member in many respects, but I am still not sure that, even with his support, we should incorporate into our domestic law the rules of Holy Mother Church.

That covers one or two of my amendments, because they take out the term “social solidarity” where it appears and replace it with the term “medical necessity”. Let me go back to the term “medical necessity”, and why I have used it. I have touched on this in answering some interventions. I think it is an important part of the objective of the Bill, and what a private Member’s Bill, and indeed legislation, is about.

There is an argument that the Government set up a service and pay for it. Of course, taxpayers pay for it, because the Government have no money. Other than, arguably, the Crown estates, there is no actual Government money; there is simply taxpayers’ money. And once the Government have decided to spend that money on that service, anything that leads to a charge on that expenditure then becomes a matter of concern to the Government. We can see the slippery slope argument advancing: the Government pay for the service; therefore, if someone does x, they may be at risk of y; y will have a cost of z; the Government do not want to pay for z; and therefore one must not do whatever letter it was that I started with—I think it was x. Therefore, if someone does that, they are either to pay or they ought to be penalised for doing it; it ought to be made illegal and there ought to be some punishment.

I wanted to bring matters back to medical necessity, because that takes the issue away from the ability of the Government to go down that slippery slope. The terminology—“medical necessity”—is pretty clear. My right hon. Friend the Member for North East Hampshire and the hon. Member for Denton and Reddish said in interventions that they thought the phrase “medical necessity” was too tight, and that there could be occasions

on which medical necessity could not be absolutely shown or there were two different options that could be used, one cheaper and one more expensive. It may be, then, that should this amendment be accepted, further amendments to tidy up the language will be tabled on Report, or else perhaps their lordships may consider the matter.

As I have mentioned the battle of Waterloo, I suppose I should mention Lord Raglan, who had his arm amputated at that battle. That may or may not have been a medical necessity, although they thought it was at the time. The great thing about it, brave man as he was, was that they cut his arm off and threw it on to a pile of limbs in the surgery where the amputation was taking place, but he shouted, “Oi, there is a very valuable ring on my finger, which you have just discarded. I want it back,” and he got the ring back. I must say that that seems to me to be the height of courage—to remember, on having just had an arm cut off, that there was a valuable ring on it and demand the ring back.

One wonders what Lord Raglan might rather have had done to him in terms of medical necessity. I suppose that in those times the amputation was necessary, whereas now there would be other forms of treatment—although someone could have an old-fashioned doctor who might say that he would rather do an amputation. I therefore see why hon. Members want to tidy up, tighten and reinforce the concept of medical necessity so that we do not find that doctors are doing things that are out of date or are beneficial but not necessarily within the bounds of absolute necessity. There are discussions to be had around degrees of necessity, but something like the phrasing in the amendment needs to be in the Bill.

The health service is there to look after people who are ill, free at the point of use. I doubt there is a person in this room who would wish to challenge that fundamental principle. It is a principle beloved of the British people. But it is about medical necessity.

Mr Burns: My hon. Friend raises a crucial point with regard to the health service being free at the point of use. I know he has done his homework, so he will be aware that section 1 of the Health and Social Care Act 2012 amended the National Health Service Act 2006 to insert a new section 1, in subsection (4) of which that specific commitment was enshrined for the first time in legislation.

Jacob Rees-Mogg: I am grateful to my right hon. Friend for reiterating that point. It is a fundamental principle shared on a cross-party basis—even the UK Independence party has come round to it after a brief flirtation with other views.

Mr Burns: I am sorry, but I cannot let my hon. Friend get away with that. I am sure he will remember that the leader of UKIP believes that a conversation needs to be had about an insurance-based health service. That certainly is not a national health service in the same way and with the same commitment that every member of this Committee signs up to.

The Chair: Order. That subject is far away from what we are discussing today. I am a lenient and generous chairman, but we need to come a bit closer to what is on the amendment paper.

Jacob Rees-Mogg: I am grateful, Mr Bone, to get back to the issue of medical necessity—we can wander back.

The point of the NHS being free at the point of use is that it applies to things that are medically necessary, not to things that may be optional. What are those going to be? They are hard to define, but doctors used to be able to prescribe bottles of whisky for their patients, back in the 1970s—I think it was Margaret Thatcher who made that impossible through one of her legislative reforms—and Christmas puddings if they thought that would be good for patients who needed building up. Those things are now no longer deemed medically necessary even though a nice Christmas pudding may be a good thing to have and a bottle of whisky may be equally welcome. It is not my drink of choice, but people may wish to have one; however, again, it is not a medical necessity.

That is why we need to hone our terminology and phraseology to make sure that what is being done constitutes the right use of hard-pressed and hard-working taxpayers' money.

Andrew Gwynne: I am still very concerned about the hon. Gentleman's terminology. Although I do not doubt his motives, I worry that there are some, across the political spectrum, who might see what he is saying as an opportunity to water down the commitment to the NHS. I will give him what I think is a superb definition of social solidarity from page 2 of the NHS constitution:

"The NHS is founded on a common set of principles and values that bind together the communities and people it serves".

3.15 pm

Jacob Rees-Mogg: I am grateful to the hon. Gentleman for a characteristically helpful intervention, but I think that it helps my point. In the constitution of an organisation it is quite right to use terms that do not have a clear justiciable precision about them, but in legislation it is different. The right place for the terminology of social solidarity is in documents relating to the health service published by the Department of Health.

Mr Burns: My hon. Friend is right, as is the hon. Member for Denton and Reddish, to draw attention to the contents of the NHS constitution. An even more important signal that the Government will not dilute that commitment is that it is enshrined in legislation. The 2012 Act states:

"The services provided as part of the health service in England must be free of charge except in so far as the making and recovery of charges is expressly provided for by or under any enactment, whenever passed."

The last time charges were introduced was in 1998 by the previous Labour Government, with regard to road traffic accidents.

Jacob Rees-Mogg: That is a valuable point, and it is worth reiterating the absolute commitment to the principle of free at the point of use. That is why we need the safeguard of medical necessity. This great service needs to be there for people who are using it for the right purposes, but not for the Christmas puddings and bottles of whisky that were once available. That is why I have proposed that we should replace "social solidarity" with "medical necessity", to ensure that taxpayers get value for money but that patients get exactly the service that

they require. That is of fundamental importance. It underpins everybody's commitment to the national health service that the whole purpose of it—

Andrew Gwynne: The hon. Gentleman started off by saying that he did not want a paternalistic view of the NHS to creep into legislation, but services are not free of charge if an NHS trust restricts treatment—if it uses his definition and deems something not to be medically necessary. That is more paternalistic than anything that anyone has suggested today.

Jacob Rees-Mogg: I am not convinced about that. We have all had constituency cases in which issues of medical necessity have arisen, where it is possible to help constituents work their way through the national health system if they have a medical necessity to ensure that they get the treatment that they need. I think that that system and the appeals within it mostly work, and they have to be based on medical necessity. The whole point of the National Institute for Health and Care Excellence is to try to work out whether treatments will work, whether they are necessary and whether they are funded. I believe that that was brought in by the previous Labour Government.

For once, let me praise the previous Labour Government—I am glad that you are seated, Mr Bone; otherwise you might fall down in shock—for doing something that was actually pretty sensible. There has to be some independent body that works out whether such matters meet a requirement for medical necessity. If it is left entirely free and open, it is possible that money will be wasted, and that cannot be in the interests of the NHS or of taxpayers. Why do I say that that would not be in the interests of the NHS? It is of great importance that the NHS retains the support of the country at large. To retain that support, which it has overwhelmingly, it needs to be able to show that it is using its funds efficiently.

Andrew Gwynne: I will try to help the hon. Gentleman with an example from my constituency, where a lady came to see me at my surgery having been diagnosed with breast cancer. NICE has approved the use of the drug Herceptin. The local health trust where she lives decided that that was not medically necessary for her. Had she lived in the other part of my constituency, the NHS trust would have prescribed her Herceptin.

Jacob Rees-Mogg: I obviously do not know the hon. Gentleman's individual constituency cases, but I have found, mostly with the constituency cases that I have had, that good sense has prevailed and that a reasonable agreement has been reached.

Dr Poulter: My hon. Friend is making a good point. Does he not agree that one reason why, as he has indicated, good sense now prevails is the fact that unlike previous rationing decisions when primary care trusts were in place, clinical commissioning groups are run by clinicians, so there is a clinical oversight of the process of how local health care services are run under the 2012 Act that we introduced?

Jacob Rees-Mogg: I must confess that I entirely agree with that, because my experience, although limited—I have only been in this House for five years—is that since

the clinical commissioning groups have been in place, I have had fewer of these cases to deal with. The decisions seem to have been got right at an earlier stage. The system has also been easier to collaborate with. It seems to work more efficiently, and I think that my hon. Friend and my right hon. Friend the Member for Chelmsford deserve credit for the work they did on that Bill to make sure that it got through Parliament and allowed that to happen.

I think it is a requirement that there is medical necessity. It is hard to get away from that and I do not really understand why, when there is the ability to use precise phraseology—phraseology that can be understood not just by the legal eagles, but by the nation at large—we should want to get away from that. I want to reiterate the theme that I was touching on before the previous intervention. The NHS requires the consent and support of the nation at large. It has that overwhelmingly, but the best way to keep it is if it consistently manages to do its job well. If it does its job well by medical necessity, by treating people who are ill, by the fantastic success record it has got in treating so many illnesses, but particularly in terms of—

The Chair: There is a Division in the House. I think it would be convenient if we returned at 15.50.

Mr Burns: 15.50?

The Chair: That is correct.

3.22 pm

Sitting suspended for a Division in the House.

3.50 pm

On resuming—

Jacob Rees-Mogg: I was talking about the issue of the medical necessity of the NHS, so that people will respect it, feel that they have commonality with it and have confidence that it is spending its money as wisely as possible. This is an important point about why we need to insert the term “medical necessity”.

Mr Nuttall: Does my hon. Friend agree that there is a risk that the term could be interpreted in different ways depending on the occupation of the patient concerned?

Jacob Rees-Mogg: I am grateful to my hon. Friend for his extraordinarily interesting and perceptive intervention, because “medical necessity” has great virtue as a term, in that it is precise on the one hand but flexible on the other. Precise flexibility is a good place to be in terms of this legislation.

Clive Efford: I wonder what the hon. Gentleman thinks that doctors do other than determine medical necessity.

Jacob Rees-Mogg: It is the hon. Gentleman’s Bill and he put in the term “social solidarity”. Perhaps he did not take in all that I said about social solidarity. I will therefore add a wonderful point from “Mater et Magistra” on the issue of social solidarity, to remind the hon.

Gentleman of its importance. The Pope writes of the dignity of agricultural work, with the family farm held up as an ideal, and notes that a trend of people moving away from farms toward cities was partly due to economic growth but also reflected depression in the occupation of farming and inadequate standards of living in rural areas. I confess that that is a concern of mine too. I always want to see the highest social solidarity in farming areas.

Mr Burns: Like my hon. Friend, I have a serious problem with the expansion of social solidarity, which sounds rather militant. The health service is not militant. Medical necessity is important, but would my hon. Friend not agree that clinical necessity is even more important? All decisions taken by doctors, nurses and consultants are based on clinical need. Should that not feature more?

Jacob Rees-Mogg: I am grateful to my right hon. Friend for a number of points in his intervention. The first is that this social solidarity is the Arthur Scargillisation of legislation. I remember when I was a schoolboy between childhood and adulthood seeing groups shouting, “The miners united will never be defeated”. That is perhaps what they mean by social solidarity—that they want to bring back picket lines and all that went with Mr Arthur Scargill. I see my right hon. Friend’s point.

On my right hon. Friend’s point about clinical necessity, why did I not choose the word “clinical”? The reason is partly pedantry. The word “clinical” strictly means “bedside” and, although I know that it has evolved to mean something more encompassing, a clinical manner is strictly a bedside manner rather than what we have come to think of it meaning. I accept the charge of pedantry, and accept that “clinical” has virtue, because it is slightly wider than “medical”. Nonetheless, I think “medical” covers what we are trying to get at, partly because of the intervention from my hon. Friend the Member for Bury North, who made an inspired point about the concept of flexible certainty. That is to say—to go back to “Mater et Magistra”—that the medical need for the agricultural worker may well be different from the medical need of the office worker. They may have different requirements.

Andrew Gwynne: Does the hon. Gentleman not recognise that we are talking about the duty on the Secretary of State to promote a comprehensive health service? That is not just about the medical model; it is about the whole of the national health service.

Jacob Rees-Mogg: I am grateful to the hon. Gentleman—grateful but puzzled on this occasion. Surely the object of the health service is in its title: its object is to be a health service. Therefore, when he talks about broader responsibilities to society, there are other institutions that deal with that. There are charitable organisations, individual activities and the women’s institute, but it is not a job for the national health service.

Andrew Gwynne: I accept that the hon. Gentleman has probably not made it to 1848 in his speech, let alone 1948, but with today’s national health service we are talking about the integration of the medical, the physical,

[Andrew Gwynne]

the mental and the social needs of the population. It is not just about one aspect—the medical model—but about integrating all health and social care.

Jacob Rees-Mogg: The hon. Gentleman is being unduly narrow.

Mr Burns: It would seem that the hon. Member for Denton and Reddish has not read the Health and Social Care Act 2012, because section 1 lays out the duty to promote a comprehensive health service and defines what that is. It includes mental health, and states that the health service should secure improvement in the “prevention, diagnosis and treatment of physical and mental health issues.”

Mental health is enshrined in the original legislation that the Bill seeks to amend.

Jacob Rees-Mogg: My right hon. Friend is spot on. It is obscure to say that mental health is not part of health or medical necessity and therefore will not be part of the requirement on the Secretary of State to promote a comprehensive health service. The whole point I was trying to make was that this is a health service. If a health service is based on anything other than medical need—I accept that an argument could be made for clinical need, but basically the same terminology applies—then it is not a health service. It may be a general service doing all sorts of nice and good things, but it is not a health service.

To go back to the point I was making when we went off to vote in the Chamber, it is important that the health service retains its primary objective so that it maintains the support of the people. If it becomes a vacuous service trying to do a million and one things, but none of them very well, and if it has statutory duties thrown upon it that do not relate to the health of the nation or of the individuals who make up a nation, it cannot be seen to be doing its job. The Secretary of State for Health needs to be focused on the duties given to him that underpin the seals of office that he holds. He holds his seals of office by virtue of health and not by virtue of a broader range of nice-to-do things—of motherhood and apple pie, as I said earlier.

I return to an earlier intervention from my hon. Friend the Member for Bury North—lest you think, Mr Bone, that I had forgotten it or allowed it to slip my mind, because it was an important point on differences in medical necessity. The flexibility within the term is such that while it may be particularly important for a spin bowler to have an operation on his hands, someone who is 90 and is no longer bowling—Dunbowlin being the retirement home for old cricketers—may not need such an operation. I believe Tich Freeman retired to a property called Dunbowlin, and the Chair will remember that he was a first-class bowler at county level. He is the only man ever to take 300 wickets in a season. If he had a problem with his fingers, it would have been a medical necessity for him to have that operation, but if I had such a problem, it would not particularly impede my speaking. I could carry on addressing the House. Although I confess I make the odd hand movement, I would not be in the same position as the famous, now late, Tich Freeman, most remarkable man that he was.

The concept applies more broadly. A racing car driver would have different medical needs from someone who did not race motorcycles, but raced horses instead. A jockey would have different concerns, because of the position he adopts, from a racing car driver. If we look at the various types of footballer—

The Chair: Order. It is quite clear to me that the hon. Gentleman has made that point and is now repeating himself. He should get back to the amendment.

4 pm

Jacob Rees-Mogg: I am sorry, Mr Bone. I thought it was important to consider some of the aspects to which the measure could apply. I accept that we have covered the professions, but difference in age is also important to the issue of what determines necessity. The term “medical necessity” has a glorious sense of flexibility as well as being precise.

To return to our learned friends—to the wife of my right hon. Friend the Member for North East Hampshire, who may consider such matters in her court at some stage—if the clause said “medical necessity”, our learned friends would be able to rule on it in accordance with what Parliament had said, rather than guessing what we might have meant or looking at our proceedings, which has recently been allowed, unfortunately. I think that the more robust approach taken historically—that no proceeding in Parliament could ever be considered in a court—was preferable and put a stronger onus on us to pass robust and intelligible legislation. That has been eroded by allowing judges to look more into what we, particularly Ministers, actually say in Committee, rather than at the precise wording of Bills. Although the House can be enormously proud of its parliamentary draftsmanship—a fabulous service is provided—right hon. and hon. Members sometimes do not take the advice of our fine parliamentary draftsmen and end up with language that is imprecise and difficult to judge.

My proposal to replace “social solidarity” with “medical necessity” arises in a number of amendments that I have tabled—I draw Members’ attention to amendments 38, 39, 50 and 52. Basically, wherever “social solidarity” appears, I propose to delete it, in clauses 1 and 2. I look forward to turning to the matter more specifically in relation to the next clause.

Sir Greg Knight: My hon. Friend has not yet convinced me that his amendment is worthy of support. Echoing in the back of my mind I have the words of the hon. Member for Denton and Reddish. I will give my hon. Friend an example relating to the phrase “medical necessity”. Would it be deemed a medical necessity for the NHS to operate on a man with varicose veins? Under his definition, that may well not be a medical necessity and the man might be told to go away and wear stronger socks.

Jacob Rees-Mogg: I had not realised that we were going to be debating gentlemen’s hosiery.

The Chair: Order. I can assure you that we are not.

Jacob Rees-Mogg: That is of great reassurance. As you stood up, Mr Bone, I noticed the vivid colour of your own hosiery.

Mr Burns: The answer to the example given by my right hon. Friend the Member for East Yorkshire is that the question of whether the NHS would treat that patient's varicose veins would depend on their clinical condition and whether the correction was cosmetic or the result of a clinical decision.

Jacob Rees-Mogg: I am grateful for both of those interventions; they are helpful in clarifying the situation. I am proposing to use the phrase "medical necessity", not "medically essential"—there is a difference. Something can be necessary, but not of fundamental essentialness—that is, something can be a good thing to do and therefore necessary, but it would be a step further to say that it is essential. I would not propose the phrase "medically essential", because that would be too high a hurdle for a clinician to overcome, or, indeed, for the Secretary of State to overcome in his responsibilities. The phrase "medically necessary" puts it down a layer, as my right hon. Friend the Member for Chelmsford intervened to say. It would be a case of looking at whether the procedure was required for the health of the patient or was purely a cosmetic operation and not really required.

Sir Greg Knight: My hon. Friend is not getting himself out of a hole but digging himself into one. If two people, identical in all respects except that one is male and the other is female, and both have varicose veins that do not put their health at risk, it could be argued that, because of the attire normally worn by females, an operation on the NHS should be given to the lady for cosmetic reasons.

Jacob Rees-Mogg: I am grateful for that ingenious intervention, but I think that circumstance would be covered by the Equality Act 2010, which requires equal treatment for the gentleman and the lady. There are some gentlemen who, even though they are adults, still wear short trousers—[*Interruption.*] I had forgotten about our friends in Scotland, who obviously wear kilts. For the same cosmetic reasons, their care would have the same urgency as a lady's care. That answers that broad, albeit valid and interesting, point.

Mr Burns: Is my hon. Friend able to help me with his definition? Will it include the removal of tattoos?

Jacob Rees-Mogg: That is a very interesting question. I read an interesting piece in a newspaper recently about children from the German extermination camps who came to the United Kingdom after the war. They went to the lake district, and some of them had their tattoos, which numbered them, removed. That is a perfectly reasonable thing for the national health service to do, and it would be described not as merely cosmetic but as a way of restoring a right that was unjustly taken away. As it happens, some of them did not want the tattoos removed. One man was quoted as saying that he did not want his tattoo removed because he felt that he had nothing to be ashamed of—it was his captors who had something to be ashamed of.

There are circumstances where it is right that tattoos should be removed by the NHS, and there are other situations where it is not, such as when an adult, in full knowledge of what they are doing, decides to have a tattoo that they later regret. As so often, there is good advice on the matter in P.G. Wodehouse, who says that

a young, unmarried gentleman should never have a girl's name tattooed on any part of him because he might change the girl before he gets married, and then the tattoo would be awkward. If somebody had the name "Sue" tattooed on their heart, I am not sure it would be wise for the health service to remove it because the decision to have that tattoo was made with full knowledge. If there is any expense attached to that decision, perhaps the individual could pay for it themselves.

Stephen Metcalfe (South Basildon and East Thurrock) (Con): That demonstrates the difficulties with definitions. If, however, the tattooing of the name "Sue" upon someone's body was causing them mental anguish, they should be treated with the mental health services they need, and the removal of the tattoo may then be medically essential.

Jacob Rees-Mogg: That is a brilliant and most wonderful point, because I can see that, if the gentleman then married a lady called Felicity, having "Sue" tattooed on him might cause him a good deal of mental anguish. One hates to think of the daily mental anguish that might be inflicted, and my hon. Friend is therefore right. I see that the removal of such a tattoo may be a medical necessity.

What I like about the way this debate is going, and about the helpfulness of the interventions, is that it clarifies my view that "medical necessity" is the right terminology to use. We have discussed, debated and considered the cases that have come up and, as we have done so, we have discovered that the cases that arise could be resolved with fairness to all parties. The cases could be treated on the national health service, free at the point of use, without any great difficulty. That is not a very high test; it is a reasonable test. It is a test that will be allowed to evolve as medical science evolves, and as needs and expectations change.

Dr Poulter: My hon. Friend makes an important point. We recognise that more people are living longer with multiple medical conditions; there will be 3 million such people by 2018. Does he agree that, as a medical necessity, it is just as much a priority for our health service to support people with these long-term conditions, and to keep them well, as it is to provide a reactive service in hospital?

Jacob Rees-Mogg: I am in entire agreement with my hon. Friend. It is important that "medical necessity" encompasses the Health Secretary's co-operation with other relevant bodies. Indeed, I have tabled a separate amendment to ensure that social care can collaborate with the health service. Bath and North East Somerset council covers the area I represent, and it has been exceptionally good at trying to work with local hospitals to ensure that the combination of considerations of medical necessity and social care keeps people in their own home and out of hospital, gives them a better quality of life, and ensures that their underlying conditions are treated. His point is valid, and it goes back to the point that "medical necessity" is the term that we want to use.

Mr Arbuthnot: My hon. Friend suggested that the use of the words "social solidarity" in the Bill was inappropriate because it would be difficult for a court to work out what it meant. I wonder whether the same problem applies to "medical necessity". Is it for the courts to

[Mr Arbuthnot]

determine what, in a changing world, is a necessity? Is it for the Secretary of State? Who is it for, under his amendment?

Jacob Rees-Mogg: That is a very good point. My right hon. Friend will know this, so to the extent that I am teaching my grandmother to suck eggs, I apologise, but it may none the less be sensible to set this out. The Bill places duties on the Secretary of State. He will therefore determine what a medical necessity is under the Bill, but his judgment could be subject to a judicial review if his judgment were thought to be faulty. In the first instance, the decision would be made by the Secretary of State, but if it were thought that it was a wrong decision, it would be passed along the line to a judicial review and, ultimately, it would work its way through the courts to the Supreme Court.

I see my right hon. Friend's point: any terminology we use is obviously open to interpretation, and the courts have to work out the boundaries between political interpretation and that which is not within the law. This is sometimes a very blurred boundary. Some things appear, on the face of it, to be within the language used in the Bill but, partly because times have changed and partly because of fundamental rights and so on, it is thought that a decision made on that basis is not a rational decision, and can be challenged through and by the courts and overturned. However, that must apply to any language used in a Bill. It must always be the case, as soon as a duty is placed on not only a Secretary of State, but the Lord President of the Council, the President of the Board of Trade, the Chancellor of the Exchequer, the First Lord of the Treasury, or the holder of any other specific, named post within our constitution, such as the Lord Great Chamberlain. Any post whose holder is given the legislative authority to make decisions may find that that decision can be challenged in the courts, and the understanding of the language used will become justiciable.

Mr Burns: My hon. Friend makes a very important point, because this phrase is an unusual one that, as far as I know, has not been used in legislation before in dealing with the national health service. If the courts had to interpret what it means, it would be a nightmare, and a boon for lawyers. I am surprised that during the half-hour speech that the hon. Member for Eltham made on 21 November introducing his Bill, he never once referred to this phrase, let alone gave a definition that could have been guidance for lawyers in the future.

Jacob Rees-Mogg: I am grateful to my right hon. Friend for his supportive and helpful comment. It is surprising that so important a part of the Bill was not referred to on Second Reading, though I was absent from Second Reading. It would have been possible to have explained the term then, and that might have superseded my amendment. I think that the courts would find it much easier to deal with the term, "medical necessity", which, as I was saying, is a relatively definable activity for the courts and for the Secretary of State.

I should have added, as I went through the list of people whose decisions can be challenged, that, of course, if the Crown itself were to make a decision, that

cannot be challenged in the courts. A decision by our sovereign lady is above any consideration by a court. That is the highest form of authority, but it would be unusual for Her Majesty to make a personal decision relating to a matter delegated to one of her Secretaries of State acting as the Secretary of State. That comes to the point made by my right hon. Friend the Member for East Yorkshire about the use of language in Bills. I have been trying to get across that all language is interpretable. Indeed, one of the joys of language is to try to work out what it means, how it has developed and what it might have meant in a different context, in a different era.

The Chair: Order. The hon. Gentleman has made that point a number of times. I do not think that he will want to repeat it any more.

Jacob Rees-Mogg: I am so sorry, Mr Bone; I was just responding to an intervention about it. Suffice it to say that clarity is the essence of good legislation.

4.15 pm

I had intended to come on to some of my other amendments, because amendment 38 was just the opening one of the amendments listed for consideration in this group. Amendment 37 would add at the end of clause 1(1): "as far as is compatible with the liberties of the people of England and without any additional regulatory burden."

So, if the amendment was accepted, clause 1(1) would read: "The Secretary of State must continue the promotion in England of a comprehensive health service designed to secure improvement as far as is compatible", and so on.

Why did I table this amendment? First, I apologise to my friends in Northern Ireland, Wales and Scotland for the fact that they are excluded from my amendment. That is not because I do not hold their liberties dear; I would not like anyone to think that. The liberties of other people in the United Kingdom—people in the other countries that make up our blessed Union—are just as valid and valuable as those of the English. However, this Bill is an England-only Bill, so I had to follow the terminology used in the Bill. What am I trying to get at?

Andrew Gwynne: I would not like the hon. Gentleman to give the impression that he has not read the whole Bill. He describes it as an England-only Bill, but if he goes to part 5 he will see that clauses 14 and 15 apply to England, Wales, Scotland and Northern Ireland.

Jacob Rees-Mogg: I am grateful for that point, but the bulk of the Bill is England-only, and clause 14 is quite a jump from the rest of the Bill.

Mr Burns: Notwithstanding what the hon. Member for Denton and Reddish says, my hon. Friend will of course be aware that the Health and Social Care Act 2012 predominantly dealt with the provision of health care in England, and England alone. That was because we were protecting the English health service from the ravages that Labour have imposed on the Welsh health system, and what we have seen there with A and E hospital waiting times, and some of the problems in Scotland caused by the Scottish National party-run Government there.

Jacob Rees-Mogg: That is a very good point, and it is a benefit of that Act that it protects the health service in England. The failures elsewhere are quite well known. We will come on to consider clause 15 in due course—

Clive Efford: On a point of order, Mr Bone. It has just been brought to my attention that this amendment may not be in order. The Bill refers to implications for the NHS in England, Scotland and Wales, and the broad nature of this amendment would bring it under the possible consequences of the transatlantic trade and investment partnership as they apply to the NHS. So, I wonder whether this amendment is wrongly worded, in the sense that it should refer to England, Scotland, Wales and Northern Ireland.

The Chair: I thank the hon. Gentleman for that point of order. I assure him that the amendments are in order, but it is entirely up to the members of the Committee whether they accept them or not.

Jacob Rees-Mogg: I will read out the sentence in the Bill again, for the benefit of those who were not listening the last time:

“The Secretary of State must continue the promotion in England of a comprehensive health service designed to secure improvement”; it would continue, if my amendment was accepted, “as far as is compatible with the liberties of the people of England”. At that point, it would have been eccentric to add “and in Scotland, Wales and Northern Ireland, and perhaps the Channel Islands and the Isle of Man as well—why not?” I think that I am following on from the wording of the hon. Member for Eltham with considerable clarity, and am underwriting absolutely what we are trying to do. That is because of the phrase, “secure improvement”.

Mr Arbuthnot: Before we leave the issue of England and my hon. Friend’s apologies to the people of Scotland, Wales and Northern Ireland, is there a risk that by agreeing to this amendment we will restrict what seems to be an admirable provision to the people of England? It seems clear to me that the people of Scotland, Wales and Northern Ireland also deserve these liberties and this freedom from “additional regulatory burden”.

Jacob Rees-Mogg: I very much agree with my right hon. Friend. However, under the Sewel convention, the Government would have needed to seek the permission of the devolved authorities on my behalf, had I wished to table an amendment that covered areas devolved to them. Health is a devolved area. I am therefore working with the tools at hand. If I had other tools, I would possibly be able to work more effectively to protect the general liberties of the United Kingdom.

Mr Burns: I would like to try to help my right hon. Friend the Member for North East Hampshire and my hon. Friend the Member for North East Somerset. However, it would surely not be possible to extend the benefits of what is, in effect, section 1 of the 2012 Act. All the responsibilities of the Secretary of State as laid down in that section or the other sections refer only to England because the British Secretary of State for

Health has responsibility for the national health service only in England; health is devolved to Scotland, Wales and Northern Ireland.

Jacob Rees-Mogg: Mr Bone, you now see the difference between a proceduralist and a scholar. I am a proceduralist and I dealt with the Sewel convention because I know from my reading and study of “Erskine May” and other relevant documents that that is an important convention. My right hon. Friend is a scholar, and he goes to the heart of why it is not possible for the amendment to be tabled in a different form.

Mr Burns: Before my hon. Friend causes any upset to the Scots—[*Interruption.*] I am sorry; a scholar. I thought my hon. Friend said “Scot”.

Jacob Rees-Mogg: I apologise that my enunciation is so lacking in clarity that there could have been such confusion. I had better not make an aside on the subtitles that occasionally appear on the electronic television, and which confuse phrases. They can be somewhat amusing, and people may be allowed to laugh.

I come back to the term “secure improvement”. Why do I want to limit that? Of course, we all want good health, and we want our fellow subjects to enjoy good health. We want the Secretary of State to encourage good health. Governments of old took great strides to improve public health, but they aimed to improve public health by the provision of sewers and clean water and by the removal of slums. I think of Disraeli’s Artisans’ and Labourers’ Dwellings Improvement Act 1875, which was very successful at clearing slums and increasing the health of the British people.

That is all good, noble work. However, there has to be some limitation to what we mean by “improvement”. Studies have been done, and learned people go on the wireless to say how healthy this nation was during the second world war, in a period of rationing when the Government set out the maximum amount of butter that someone could have in a week. I believe it was a mere 4 oz of butter, which is hardly enough to give a generous covering to a slice of toast. There were limits on butter, eggs, bacon and other forms of meat. Only foods such as potatoes were not limited.

That apparently led to an enormously healthy nation, but it was a nation at a time of war under controls that they were willing to accept in wartime conditions. It seems to me that in peacetime, it would be wrong to allow that power to exist, or to give the Secretary of State the authority to secure improvement without clearly limiting the areas in which he can involve himself.

We know only too well that politicians, once in office, are very keen to tell other people what to do. We get very good at it. It is an unfortunate habit of public life that a trend of bossiness comes in. The last Labour Government were absolutely appalling at telling people how to lead their lives. We have been all right so far, but it would not surprise me if even a Conservative Government headed in that direction. It has to be said that the great lady, the late Baroness Thatcher, to whom almost nothing other than perfection can be imputed, occasionally had it within her to become a little bit bossy in the approach she took.

Liz McInnes (Heywood and Middleton) (Lab): I cannot accept that Mrs Thatcher is always spoken of with affection.

Jacob Rees-Mogg: I am sorry that the hon. Lady is not willing to do that. *De mortuis nil nisi bonum* is my approach. I will not say rude things about deceased socialists, and it is a pity that that is not a cross-party attitude, but there we go. You would not like me to be distracted from the main thrust of what I was saying, Mr Bone, but I certainly talk of the late Baroness Thatcher with great affection for all that she did for the nation.

Mr Nuttall: On that point, without wishing to digress, Mr Bone, will my hon. Friend confirm that the late Baroness Thatcher, during the 11 years for which she was Prime Minister of this country, protected our national health service for the good of the people?

The Chair: Order. Mr Nuttall was right on one point, namely that we are not going to divert to that subject.

Jacob Rees-Mogg: May I say yes simultaneously to you, Mr Bone, and to my hon. Friend the Member for Bury North, so as to remain in your good books and in order, and yet to answer my hon. Friend's question?

Sir Greg Knight: Is not the dilemma faced by any Government that there is a fine line between being bossy and giving people the information to make informed decisions? I am sure that my hon. Friend would say that a Government who told people not to smoke were bossy. I think it is important, however, for a Government to tell people that if they smoke, they may get a serious disease and die.

Jacob Rees-Mogg: I am very sympathetic, but there is a dividing line. It is quite right that Governments should seek improvements in the health of the nation by giving us information, and by telling us well known and clearly established facts so that we are well advised and able to calculate what our response should be. That helpfully leads me on to my amendment, which states that that should be done

“as far as is compatible with the liberties of the people of England”.

The Government would have to consider the balance, whereas the Bill as it is currently phrased has no balance at all. It does not begin to talk about there being any objective other than the improvement of health, but that, as I have mentioned, gets us back to rationing. If we had rationing, we would all be frightfully healthy, fit, thin and so on, but the Government would have taken absolute control of our lives. It seems to me that that cannot be the right way to proceed.

We must remember that there are other underlying principles, which is why I have tabled my twofold amendment. The liberties of the people of England—what are those? There was a 19th-century bishop who said:

“Better England free than England sober.”

I am afraid to say that that has generally been my view. I am all in favour of sobriety; the only inebriation should be that of sophisticated rhetoricians inebriated by the

exuberance of their own verbosity, as Disraeli said of Gladstone. Inebriation of other kinds, at other times and in other places, is surely something that one disparages, disapproves of and dislikes. However, surely it is a freedom of a subject of Her Majesty, if he or she so wishes, to go out on a Saturday or a Friday evening and drink more than is good for them, without my hon. Friend the Minister or the Secretary of State telling them that they must not and wagging a governmental finger at them.

The English have been known for getting drunk since before they were English. If one believes Asterix the Gaul, they were getting drunk in Roman times. The Anglo-Saxons certainly had a fine capacity for indulgence, and we have carried that on. It was commented on a considerable amount during the 18th century and at other times. I have a feeling that Erasmus may have mentioned it, although I may be wrong; I may stand correction on the capacity the English had for drinking when he visited. However, that is a wonderful freedom, is it not? It might be that a po-faced health official disapproves and thinks that it really will not do at all, but are we to exclude it from our national life?

Think of the great Prime Ministers who drank prodigious quantities. Two of our finest Prime Ministers drank huge amounts. I think of Pitt the Younger and Winston Churchill, who consumed quantities that would have me under the table within about half a day. *[Interruption.]* Does the hon. Member for Eltham want me to give way? I thought that he wanted to intervene. I am a lightweight compared with those two great figures, but a journalist from *The Daily Telegraph* tried copying the consumption of Winston Churchill. We know what journalists are like—I do, because I am related to one or two of them, one deceased—they have a good capacity for drinking, but by teatime this poor journalist was finished; he had had so much Pol Roger and so on that he could not even manage his cucumber sandwiches. Do we really want the Secretary of State for Health saying to our great figures—people like Winston Churchill—“Cut it out. No more of that. The Secretary of State doesn't approve. It'll improve your health. You'll live to 90 anyway, but you'd better stop drinking”?

4.30 pm

Pitt the Younger is an easier case because he lived only to his early 40s, but none the less he was supposed to drink three bottles of port a day. Port is a fine drink, which is strongly to be recommended. It was popular in that period because we were at war with the French, so the more traditional English drink of claret was being avoided, partly because it was difficult to get and partly because we did not wish to support the enemy economically. Would we want, for the sake of the improvement of his health, someone going to Pitt the Younger and saying, “We really don't think you should have that third bottle of port. Two is quite enough; a third looks like greed”? That would be a highly unsatisfactory state.

Stephen Metcalfe: I was slightly perturbed that my hon. Friend said earlier that he only thought that people could over-indulge on a Friday or a Saturday. I think that Sunday is a perfectly good day to over-indulge over a fine lunch, but I will move on swiftly from that. He is talking about being moaned at for over-indulgence, with restriction to two bottles and being told that a

third would not be good. Does he not think that the balance is right: information should be presented but not legislated for?

Jacob Rees-Mogg: I am very much in accordance with my hon. Friend's views. The design to secure improvement seems to be giving too much power that is not just about information; it could be sheer bossiness, sending nurse around to confiscate the third bottle of port so that Pitt the Younger could not drink it. What fine speeches he made, inspired by drink.

I must recall F. E. Smith, the late Lord Birkenhead in this context, who was a prodigious drinker. He would be practically slumped at dinner, unable to communicate with the people sitting next to him, but he would get up to speak and make the finest speeches anyone of his era made—almost certainly finer speeches, from all that one reads, than those of Winston Churchill. *[Interruption.]* I do not know whether *Hansard* picked up that helpful intervention: that was probably according to people who were pretty inebriated themselves.

However, I am sure that there were some old sobersides there, some puritanical types and teetotallers, because there are such people. Was it not Nancy Astor who held up a glass of whisky, put worms in it and said, "What do you get if you put worms in whisky?" and someone called out, "Dead worms"? I believe that she was an ardent teetotaler, but she did not have the law behind her. She was doing that by example, persuasion and oratory, but not by edict.

Here we open the way to edict. Those fine speeches of F. E. Smith and the fine leadership of Pitt the Younger and Churchill would have been lost. I cannot recall this perfectly, but Pitt the Younger said something about necessity being the plea of tyrants and the creed of slaves. That is what one gets: the feeling that it is necessary that the Secretary of State should have that power. Once he has that power, we become a downtrodden nation of serfs and slaves.

Sir Greg Knight: Is my hon. Friend saying that he is against all edicts in this area?

Jacob Rees-Mogg: It depends on what my right hon. Friend means by edicts. I have no objection to taxation on spirits, wine and cigarettes because the Government have to raise their money somehow or another and it is perfectly reasonable to get it in those areas. I am in favour of licensing laws, because there are other factors to consider: one needs to think about the neighbourhood and whether people who wish to enjoy their slumbers will be disturbed as others go around, inward and outward of their public houses, drunkenly causing a disturbance.

There are places within the whole of society where some regulation and control may be necessary, but it is about that being the job of the Secretary of State for Health that perturbs me. The Secretary of State will be focused on what is good for people, and that is where I become very suspicious that the Secretary of State ought not to be giving such orders. In the other parts of regulation, the licensing laws will be dealt with by local authorities and the taxation laws by the Chancellor of the Exchequer. That is all fair and reasonable, but it is this level of edict that I dislike—hence "the liberties of the people of England"—

and it may be worth adding at this point that the amendment would prevent, as is currently topical, the idiotic proposal to insist that cigarettes are sold in plain packaging.

Several hon. Members rose—

Jacob Rees-Mogg: I am spoilt for choice. I give way to my hon. Friend the Member for Bury North.

Mr Nuttall: I am most grateful to my hon. Friend for giving way. He is making a compelling speech in support of the amendment. Does he agree that there is a fundamental difference between someone being told or ordered what to do by a Government official or a politician and someone being given advice about what is medically best for them by their general practitioner?

Jacob Rees-Mogg: My hon. Friend is absolutely right. Also, it is a question of authority. One should not encourage the Government too much to issue orders and instructions and to place adverts, because an awful lot of people instinctively disbelieve them, whereas they might believe their own physician. I think it is a bad idea for the Department of Health to issue edicts saying, "You will live a healthier life; you will live longer if you do this, that and the next thing," because a lot of people are immediately suspicious of such advice.

Mr Burns: I fully understand and have a degree of sympathy with what my hon. Friend is saying, but does he accept that there are times when the Government have a key role? The example that comes to my mind is Lord Fowler's AIDS advertising campaign in 1988-89: "Don't die of ignorance". There was a new killer disease that no one knew anything about at that time, and it was imperative to get the message across to minimise the possibility of people becoming either HIV-positive or dying of AIDS.

Jacob Rees-Mogg: My right hon. Friend makes an important and valuable point. There are cases where there is an urgent need for the Government to bring things to people's attention, and that would not be precluded by my amendment. It is hard to see that an advert warning people not to die of ignorance could in any way be incompatible with our ancient liberties. I do not maintain that a part of our ancient liberties is the ancient liberty to die. I am not suggesting that that is a reasonable or rational position to take. The Government having responsibility when they know things that other people do not, and warning them of what may happen, is one thing. It would have been another thing had they decided to legislate about people's private behaviour that might have put them at risk of getting AIDS. That would be an entirely separate matter, so it is about getting the balance right, which I do not think the clause as currently written does.

Clive Efford: I am grateful to the hon. Gentleman. A scintilla of his speech has been pertinent to the 21st century. He has made a compelling argument against health and wellbeing boards. What does he think the function of such boards is if not to promote healthy lifestyles and to provide information on that? Did he vote against that section of the 2012 Act? Perhaps the right hon. Member for Chelmsford will answer that.

Jacob Rees-Mogg: It would be a privilege for my right hon. Friend the Member for Chelmsford to answer—he is very knowledgeable in such matters—but as far as those boards identify the needs of communities and promote solutions to health needs, that is a perfectly reasonable thing for them to do. If they exceed their brief and tell people how to live their lives, that is not a reasonable thing to do.

Mr Arbuthnot: I could listen to my hon. Friend for hours. I hugely appreciated his quotation from William the Pitt the Younger about necessity being the argument of tyrants and the creed of slaves, but how would he apply that expression to his previous amendment about medical necessity?

Jacob Rees-Mogg: That is an exceptionally good point. Medical necessity is not a case of the Government insisting that something is necessary and therefore has to be done to someone; it is the Government saying that if someone has that necessity and asks for it, it will be funded for them. It is a different type of necessity from the type that Pitt the Younger was talking about, which was aggressive regulation from the Government to restrict freedoms because they said it was necessary to do so, not a situation in which they said, “Because you need something, we, the Government, are able to fund it.” I am grateful for that intellectually stimulating intervention, which has allowed the general attitude of the Committee to be raised even higher than it was before.

Sir Greg Knight: If I understand my hon. Friend correctly, he is now in effect arguing against the scope of his amendment 37. He said a moment ago that he thought it was in order for Ministers to give the public advice where their decisions may impinge upon their health. Amendment 37 stated that he wanted that to happen

“without any additional regulatory burden.”

Surely labelling is a regulatory burden. If people buy drinks that are marketed as fresh fruit juice but are full of sugar it is quite right and appropriate that the state requires the producers of those products to state that they contain sugar.

Jacob Rees-Mogg: I am not convinced by that. I like a bit of sugar and have a sweet tooth; I particularly like Cadbury’s creme eggs, even with the change in the chocolate—the change is broadly disagreeable but they are still not at all bad. I am not in favour of the anti-sugar brigade. We should allow people to enjoy a bit of sugar—it sweetens them up and makes them better tempered and more good-natured. Sweetness and light spreads across the nation when people have a bit of sugar.

Liz McInnes: May I suggest to the hon. Gentleman that he might not be so keen to prescribe sugar to all the people in this country who suffer from type 1 or type 2 diabetes—something he should be aware of, given that we are discussing a health and social care Bill and the NHS?

Jacob Rees-Mogg: I was saying that I like sugar. I am not going to force-feed it to people—it would be against what I am proposing in amendment 37. I am not going to go round nursing homes and say to people, “Do have

a bit of sugar.” That would be the last thing I would want to do. Their medical needs are being taken care of and they are getting medical advice to deal with the disease that they have. Of course I am not going to interfere with what their doctors say to them.

Doctors need to have the right to give advice to their patients, but the patients do not have to follow what their doctor says, and that also applies to the Secretary of State. He is a wise and good man, and I have the highest admiration for him, but I do not want him to be leading my life for me. I quite like sugar, and I do not want to be terrified of having a little bit of sugar in a fruit juice—although I am going to pish the fruit juice, because it is far too healthy for me.

Andrew Gwynne: If the shops have not closed before we finish tonight, I will buy the hon. Gentleman a Cadbury’s creme egg. To bring him back to his amendment 37, I am concerned that although he does not mean to be he is being too prescriptive with the addition of the phrase, “without any additional regulatory burden.”

That will bind the hands of all future Governments. I am surprised that the right hon. Member for Chelmsford has signed up to that, because he was the Minister who brought forward the largest additional regulatory burden on the national health service with the many, many pages of regulations, rules and new laws in his 2012 Act.

Jacob Rees-Mogg: I am grateful to the hon. Gentleman for his always interesting interventions. I disagree with that one but look forward with eager anticipation to the gift that he has promised me. It will encourage me to come, eventually, to an end in our deliberations, simply so that I get a creme egg. However, I was intending to be both prescriptive and proscriptive; I wish to proscribe extra regulatory burdens and I wish the Bill to proscribe that they should be proscribed. As for the Bill of my right hon. Friend the Member for Chelmsford, it is one of the most important reforms that this Government have carried through, with enormous burdens removed to allow the health of the nation to flourish.

I wish to come on to the second part of the amendment, which includes the phrase,

“without any additional regulatory burden”,

to which the hon. Member for Denton and Reddish rightly referred in his intervention. It is in the nature of Governments to regulate. Why? Because they can. They have a majority and the ability to do so. There are many pressure groups that bang the drum, make a lot of noise and say that it is important that a regulation should be introduced and that a little bit of freedom should be taken away. The pressure is always for increased regulation to be imposed on the British people.

4.45 pm

I am calling for Her Majesty’s Government to lead by example and show what shining lights they are in the firmament of politicians who say that health may be improved by doing X or Y. I want the nation at large to believe them because they are such trustworthy and upstanding figures, and because they do it in a way that is embraced by a willing, joyful public who think, “How lucky we are to get such sensible advice”, rather than a downtrodden public who are ordered to do it.

Sir Greg Knight: I cannot let my hon. Friend get away with dodging a point I made earlier via a detour into Cadbury's creme eggs. The point is that food labelling is important for health reasons. May I venture to say that it is also important for my hon. Friend's farmers, because produce that does not come from Somerset should not be labelled as if does come from Somerset? I want to see some regulatory burden—as does the hon. Member for Denton and Reddish—when it is necessary to inform the customer that what they are buying to eat or drink is bad for them.

Jacob Rees-Mogg: The tractor sign that may be put on food that comes from Somerset and is produced in accordance with certain requirements is voluntary, not compulsory. If my right hon. Friend really wants the Secretary of State to change food labelling, he will need an amendment to the European Communities Act 1972, because it is regrettably a European competence.

I am saying that we should have no further domestic regulation because there is a higher level of regulation that is already interfering. If the day comes when we have a glorious negotiation with the European Union and regain the power to determine regulation ourselves, the Bill could be amended. We might allow some limited regulation that is purely informative—I would have no objection to that. I am in favour of knowledge; it is to be encouraged. People should be allowed to have information that enables them to make choices freely. However, I am against hectoring, bossy regulation that makes things more difficult.

People broadly know that fizzy drinks or sweet drinks contain sugar. It has been widely reported, and I am not sure that we should place an extra burden on manufacturers and distributors to say that there is sugar in those products. I accept that there may be a point in doing so with fruit juices which are deemed to be healthy and turn out to be basically sugar, but that is a particular exception, and I would not allow one exception to open the floodgates of regulation for everything else.

It is like sleeping pills that can be bought over the counter, which I buy if I am taking long flights—I think the pills are called Nytol or Sleepeaze—that have a little notice on them that says that they may cause drowsiness. It seems to me that to require an over-the-counter sleeping product to say that it may cause drowsiness is to assume that the British people are stupid. I do not think they are stupid; I think they are highly intelligent. If they are buying Nytol or Sleepeaze—it is Boots' own brand, and it is much cheaper than Nytol, which is why I tend to go for it—it is because they are hoping to go to sleep. *[Interruption.]* The hon. Member for Denton and Reddish looks as if he wants to intervene.

Andrew Gwynne: I am probably being a bit cruel, but I would suggest that the hon. Gentleman's speeches ought to be on prescription.

Jacob Rees-Mogg: An obvious alteration can be made to my name to make it Rees-Mogadon. No doubt, by the end of today's proceedings, some Opposition Members may think that that is only too appropriate. In which case, I apologise. *[Interruption.]* I am cut to the quick.

Liz McInnes: I am a little concerned about the amount of product placement going on in the hon. Gentleman's speech. I hope that he declared any specific interests before this meeting.

The Chair: Order. There is nothing wrong with mentioning specific products, but I think we are beginning to repeat the same point.

Jacob Rees-Mogg: Thank you, Mr Bone. I add that I hold no candle either for Boots or for the owners of Cadbury, a pretty dreadful firm that closed a factory in my constituency, having promised that it would not, and that was condemned in a report by the Panel on Takeovers and Mergers for its outrageous, shocking and dishonest behaviour after I brought a complaint. That was before I was elected to Parliament.

The Chair: Order. That is far wide of the debate.

Jacob Rees-Mogg: I am sorry, Mr Bone. Interests are an important subject to cover. I have no interest, although I do get given a lot of creme eggs, it must be said, having made public my liking for them. I do not say that in the hope of getting any more.

Sir Greg Knight: There is a serious point here. A few years ago, a product called Sunny Delight was marketed as a healthy drink; it had a picture of a slice of orange with the sun's rays coming out of it. I managed to pick up a bottle and read the back, and it said, "Fruit content, 13%". I was obliged to our present law for requiring the manufacturer to label how rubbishy that product was.

Jacob Rees-Mogg: I am grateful to my right hon. Friend. I thought he was concerned that the fruit content was so high, because he would prefer a more sugary drink without any dangerous fruit in it, but clearly that was not the case.

I understand my right hon. Friend's point. As I said, I am in favour of knowledge, but not of bossy regulation. I tend to think "caveat emptor"—let the buyer beware. If he took the drink and spat it out because it was disgusting, that seems quite good enough; if, on the other hand, he swigged it back and thought, "Well, that was jolly tasty," that is also fair enough, but it is a matter for the market to work out. It is a matter of commercial judgment by individuals who are intelligent. We must have faith in the people of the United Kingdom, and in this specific context, the English people, to make decisions for themselves. That is why it is so important to have the caveat—

Andrew Gwynne: It is also important for the purchaser to understand precisely what is within the product, and for that to be as clear and understandable as possible. That takes additional regulation.

Jacob Rees-Mogg: I contest "additional". There is plenty of regulation in that area that covers such issues. We have regulation in place. We really do not need to go further down the regulatory road in light of the powers given to the Secretary of State under clause 1(1).

Clive Efford: The hon. Gentleman is taking us down a blind alley. The Department of Health has no powers to regulate advertising or require any product to have any form of labelling; that comes from the Department for Business, Innovation and Skills or some other

[Clive Efford]

Department. We are talking about advice so that people are well informed about certain foodstuffs that might be harmful to their health if they overindulge.

Jacob Rees-Mogg: The clause gives the Secretary of State a general power. He

“must continue the promotion in England of a comprehensive health service designed to secure improvement”.

Stephen Metcalfe: The hon. Member for Eltham said that the Department of Health has no powers to regulate labelling and so on, but I understand that plain packaging for cigarettes is coming through the Department of Health.

The Chair: Order. We are not having a stand part debate; we are discussing specific amendments. All this about plain packaging and all the rest of it are wide of the mark. The hon. Gentleman has made his basic argument; I hope that he will return to his amendment.

Jacob Rees-Mogg: I am grateful, Mr Bone. Without any additional regulatory burden, the Secretary of State would not have the power to increase regulations on the hard-pressed British people. That is a general power being given in clause 1, and I wish to limit it. I wish to restrict it, and to some extent I wish to stop it. I want us to retain our ancient liberties, and I want regulation to be stopped. Government after Government say that they want to get rid of regulation. They want to roll back the regulation that comes out of Ministries and Europe. Government after Government do not do so. This Government have done it on domestic regulation, but European regulation carries on. There is nothing that can be done to stop it under our current arrangements. Let us take charge of this where we can, put our money where our mouth is and legislate to limit the flow of regulation, as I seek to do in amendment 37.

That leads on to amendment 40. Clause 1 amends the National Health Service Act 2006 with proposed new section 1, which deals with

“the prevention, diagnosis and treatment of physical and mental illness.”

My amendment would add,

“nothing in this section shall be interpreted as entitling or requiring the Secretary of State to direct people in their personal conduct, nor provide unsolicited advice on diet or behaviour, nor to spend public funds on propaganda, nor to discriminate against specific foodstuffs, nor detrimentally to affect any lawful industry;”

Hon. Members will notice that with the help of the Clerks, I managed to avoid a split infinitive in those last few words, which I am sure that the Committee is delighted by. Those words,

“detrimentally to affect any lawful industry”,

would make it impossible for the Secretary of State to introduce regulations on plain paper packaging by the law of implied repeal. That was deliberately put in with that in mind. Despite what you said earlier, Mr Bone, I hope that I may mention that because it is pertinent to this clause.

Why do I want to limit the power of the Secretary of State to do us good, to be kind and thoughtful, or to send us merrily on our way with his good advice? I hope

the hon. Member for Heywood and Middleton will forgive a further product placement but the *Daily Mail* has a headline today on page 1 that reads, “Butter isn’t bad for you after all: Major study says 80s advice on dairy fats was flawed.” The article continues:

“Guidelines that told millions of people to avoid butter and full-fat milk should never have been introduced, say experts. The startling assertion challenges advice that has been followed by the medical profession for 30 years. The experts say the advice from 1983, aimed at reducing deaths from heart disease, lacked any solid trial evidence to back it up. The guidelines—the first of their kind—were introduced when as much as one-fifth of the average British diet was saturated fat such as butter, cream and fattier cuts of meat. Britons were advised by an official dietary committee to cut their fat intake to 30 per cent of total energy and saturated fat intake to 10 per cent, while increasing the amount of carbohydrate they ate. This led food makers to create low-fat spreads”—

which are disgusting. That is not in the *Daily Mail*; that is my comment. The article continues,

“including cholesterol-lowering products, while consumers shunned cheese, milk and cream. However, now some scientists even say the advice is responsible—in part—for the obesity crisis because it encouraged an increase in carbohydrate in our diets.”

This is why I want to stop advice being dished out, because it might be wrong.

Mr Arbuthnot: Am I right that my hon. Friend worded and tabled this amendment before this report came out, with a prescience that is typical of him?

Jacob Rees-Mogg: My right hon. Friend is deeply flattering. Coming from a dairy farming part of the world, it comes as no surprise to me how good dairy products are for you. My constituents and farmers in North East Somerset have enjoyed their butter, cream and milk for generations. They are as healthy and fine a people as found anywhere in the world. I would certainly say that one man from Somerset is worth 10 Frenchmen, but that is probably widely accepted. This is because of their butter and cream. That is one of those things that was obvious to everybody other than the experts.

5 pm

Let me continue because this review is important:

“A new review says evidence from trials did not support the advice. It says it is ‘incomprehensible’ that such advice was introduced for 56 million Britons in 1983 and 220 million Americans six years earlier ‘given the contrary results from a small number of unhealthy men’.”

They were probably Members of Parliament; you never know. It continues:

““The present review concludes that dietary advice not merely needs review; it should not have been introduced.””

It concludes:

“However, many public health and nutrition scientists criticised the conclusions of the review”.

Well, they would, wouldn’t they? They are now looking pretty silly because they have been telling us all this stuff about butter being bad for us when it is not; it is good for us. Eat more butter, Mr Bone; it is good for you and it will be good for the farmers in my constituency.

Another point worth mentioning from the article is that

“a US research scientist called for a campaign telling people they had been taken down the ‘wrong dietary road for decades’ in avoiding saturated fat while not being warned about eating too

much carbohydrate... A key finding was that total saturated fat, whether measured in the diet or the bloodstream, showed no association with heart disease.”

There is a wonderful chart in the *Daily Mail* showing the decline in whole milk drunk per head in the United Kingdom per week. It has gone; we are all drinking this horrid skimmed milk stuff rather than the much better, creamier milk. Why are we doing it? We are doing it because the experts said that whole milk was bad for us, but the experts are wrong.

We have seen this with so many things. I remember being told when I was a child that I should only eat a small number of eggs a week. We can now eat as many eggs as we like. The Government do not know best and must be reined in because they will have us eat all sorts of terrible things if we take any notice of them. They will want us to eat lots of unpleasant vegetables and not the nice, simple ones that I like—the runner beans. I actually like Brussels sprouts, but I do not know that that is particularly informative. They are not universally popular, but I do not think that my liking of a Brussels sprout should be enforced across the country at large.

There should be a freedom to eat Brussels sprouts. *[Interruption.]* I know that they are “Brussels” sprouts, but they are none the less grown in England. There is nothing unpatriotic about a Brussels sprout. It is merely named in its honour. It does not worry me, though it does remind me of our rather ineffective campaign in the 1989 European elections, when we said, “Don’t have a diet of Brussels.”

The Chair: Order. One thing we are definitely not going to debate is the European Union.

Jacob Rees-Mogg: I am grateful to you, Mr Bone, for saving us from debating the European Union. Otherwise, I would have to go on a great deal and I am doing my best on this occasion to be brief, as I am sure everyone realises.

Mr Burns: I am confused by that, but I certainly do not want to get on to the question of Europe. It seems contradictory that my hon. Friend likes Brussels—as in Brussels sprouts—but does not like a diet of Brussels.

The Chair: Order. We will not deal with that, because it is outside the scope. I am concerned that the hon. Member for North East Somerset is making very similar points about the amendment to the ones he made about the previous amendment. I am sure that he will want to bring his remarks on this amendment to a close briefly, unless he is going to move on to a different tack.

Jacob Rees-Mogg: I am grateful to you, Mr Bone, for your comment and advice. This amendment is fundamentally different from the one before. It is much sterner because it concerns the expenditure of public funds, whereas the previous amendment did not. It concerns public funds on propaganda, and it is important to determine what propaganda is. What do I mean by propaganda? We think, of course, of the Soviet Union and how it approached propaganda. It had *Pravda* and *Izvestiya* to put out the line that the Government wished people to follow and believe.

Andrew Gwynne (Denton and Reddish) (Lab): But of course the hon. Gentleman has the *Daily Mail*.

Jacob Rees-Mogg: The *Daily Mail* is not propaganda; it is a journal of truth and record, much enjoyed—*[Interruption.]* Yes, indeed, but let us not go through journalists working in government; that is not necessarily relevant to the topic under discussion. I am sorry, Mr Bone, that your interruption prevented me from making a joke about the Diet of Worms, but I have now briefly got it in.

Do we really want the Government to spend money on the British equivalent of *Izvestiya*? If we go back to the time of Canning, he spent a good deal of Government funds on paying cartoonists to provide the cartoons that ridiculed his political opponents. That was par for the course. It happens that the Tories were much better at paying for propaganda than the Whigs were at the time. It was an effective way to get the Government message across. In those days, the Government had access to special slush funds, effectively, which they could use to fund cartoonists and writers who they liked, so that they could indulge in the political discussions of the time.

A much smaller Government existed in those days. The Government’s spending, as a percentage of GDP, was—I think—around the 10% level, excluding wartime expenditure, so it was much more limited. Now, the NHS has a budget in the order of magnitude of £110 billion. That is a phenomenal amount and it would not be difficult—

The Chair: Order. I am sorry to interrupt the hon. Gentleman, but if Members wish to have discussions with other Members, even if they are Whips, they need to take themselves out of the Committee.

Jacob Rees-Mogg: Thank you very much, Mr Bone.

As I was saying, this huge budget that the NHS has—£110 billion—and the expenses that there are in Richmond House alone mean that there is a lot of money about for propaganda, if it is needed, and for employing PR people, press people, people to put out stories right, left and centre, and people who can make us worry about one thing and then another. It may be what we eat; it may be diseases that are going to get us. It may be general things that help the Government in their election process, because propaganda—

Mr Burns: Oh no.

Jacob Rees-Mogg: We would never do that. I heard an, “Oh no” from my right hon. Friend. Absolutely—I know that my right hon. Friend the Secretary of State for Health would not dream of doing any such thing. But it is not impossible that a Government less benign than the one we have today—I am looking at no one specifically on the Opposition Benches—would behave in a way that used the funds available for propaganda. Therefore, I want specifically to prohibit the use of that money for propaganda.

Under the amendment, the Secretary of State would not be entitled or required to provide advice to direct people in their personal conduct. He could still make speeches in the House of Commons saying that people

[*Jacob Rees-Mogg*]

might be better off if they had less sugar, or ate more butter, as we now discover that butter is so good for us, but it would prevent him from giving orders. It is orders that are important. We do not want a Secretary of State sitting there in his ivory tower, sending down commands: “Thus saith the Health Secretary, for three potatoes, and for four. I shall not traduce the punishment”, to misquote the Book of Amos—

Liz McInnes: The hon. Gentleman is talking about adults receiving messages about what is good and what is bad. One thing that he has not considered at all is advice given to parents about what they feed their children. Regarding what was brought up earlier about Sunny Delight, a lot of children suffered bad tooth decay because parents unwittingly gave their children that stuff, believing it was healthy. Advice went out later on, asking parents not to give that drink to their children.

There are all kinds of issues. In my constituency, just the other day, I heard about a mother who was liquidising McDonald’s meals to give to a three-month-old baby. That is something we need to think about; we really need to think about advice we give to parents about healthy food to give to children. There is an absolute necessity for people in this country to be given advice about healthy eating; it is the Government’s duty.

Jacob Rees-Mogg: I am grateful to the hon. Lady for that intervention, because she quite rightly identifies a very difficult area—where the balance should be struck, and who the Government should be looking after. I do not think that it is practical for the Government to look after people who are liquidising McDonald’s meals to give to their babies. If people are doing those sorts of thing, however many instructions come from the Secretary of State, that will not change. What we need is local advice that encourages people locally, and we need communities and families to help.

Therefore, where I disagree with the hon. Lady is that the choice about what children eat and the standards of what they are given to eat belongs to parents, because parents have the best interests of their children at heart. Parents know—I think they know, according to their discretion—when it is a good idea to give their children a chocolate bar and when it is not. They do not need the Secretary of State for Health’s advice—or more importantly, because I was talking about it, direction—on these matters.

There will always be hard cases, but the problem with quoting the hard cases and then demanding more regulation is that, at that point, the Government have to intervene in every aspect of our lives and have to lead our lives for us, to protect that one person who does something really fundamentally silly. But those people are few and far between and need their communities and families to help them, because it seems to me unlikely that they will listen to the Whitehall bureaucrat instead.

Where do we want responsibility to lie? I want it to lie at the local and immediate level, not at the higher, directed level. I absolutely see what the hon. Lady is saying; her point is important, and it is at the nub, in some ways, of where she and I will disagree on many issues, because it is the basis of one’s concept of the state. Do we see the state as a benign influence, directing the collective, that

will help and guide people in their behaviour, or do we see it as an institution made up of individuals who are responsible for their own behaviour? I absolutely accept that the collective view is a respectable one to take, but it is not mine, and I have therefore tabled amendments—this is not the first time that I have done so—to reinforce individuals and their families and to remove authority from the state.

Sir Greg Knight: But is there not an argument to say that, in matters of diet and in other matters, it is the duty of the state to protect innocent children from bad parents?

Jacob Rees-Mogg: I very much accept that the protection of liberty applies to adults and that there is a right to greater involvement in the lives of children. That is absolutely classic liberalism; it is the view of John Stuart Mill, among others, that the state’s responsibilities in relation to children differ from those in relation to adults—I would not begin to dispute that. The protection of children from irresponsible adults is an example where the state may have to intervene, but that falls under the Department for Education, which is why the Department has been doing so much in response to matters of adoption, fostering and so on. So, yes, of course I accept that the state is entitled to have a different set of regulations for children from those that it has for adults and that the objective should be to maximise adults’ ability to take decisions for themselves and to interfere with families who are not looking after their children when that has gone beyond a certain point, but I do not believe it is the responsibility of the Bill to do that. That is why I would prohibit the Secretary of State from directing people in their personal conduct.

What do I mean by “unsolicited advice on diet or behaviour”? As I was saying about butter, such unsolicited advice is not always right, and there is a great responsibility on the Government to be cautious about what they tell people to do and how they tell them to behave, because the evidence changes. For example, how much exercise should be taken? I saw recently that if people run at over 7 mph they do more damage to their health than if they run more slowly. I do not think I could run at 7 mph if I was being chased by a demon, so my health in that respect will probably remain pretty good; but I do not think the Government can be secure enough in what they say to issue advice to people on their personal behaviour.

We have already discussed drinking and smoking. On smoking, it is so well known, and has been for so long—

The Chair: Order. The hon. Gentleman is helping me with this. He is saying that he has already discussed it, so he probably should not be discussing it again.

Jacob Rees-Mogg: I am grateful, Mr Bone. But on the general issue of behaviour, that does not just mean the use of substances. It might mean exercise. It might mean the structure of one’s life. It might mean how many hours one sleeps. As we are looking forward to having a night free of sleep and of torpor and of indolence, but one of work and energy and zest, as we discuss these matters, I would not want the Secretary of State to come wandering in and say, “No, we must have our little snoozette,” interrupting business, because that is his decision to direct our behaviour.

The Chairman looks upset about the word “snoozette”. Perhaps he would prefer me to say nap, which, for the record, does not come from that Frenchman I was talking about earlier, Mr Buonaparte. It predates him and can be found in many dictionaries.

5.15 pm

The amendment states that there should be no “unsolicited advice on diet or behaviour”, and that is basically to stop cold calling. My professional business has been in financial services—I am happy to direct people to the Register of Members’ Financial Interests—and one of the things that the Financial Conduct Authority is particularly hot on is cold calling. It is not contradictory that it is hot on cold calling: that makes for lukewarm calling. It dislikes and disproves of cold calling, and that is what I mean by “unsolicited advice”. I do not want to go home and suddenly discover that the Secretary of State is ringing up and saying, “Mr Rees-Mogg”—we are probably all frightfully matey now, so it would be “Jacob, I do not think you should walk up the stairs so quickly”, or, “I would have a bit more tonic in that gin and tonic if I were you.” If the Minister called me, it would be a pleasure to hear from him. Let me put on the record that there would be joy in the Rees-Mogg household if that happened, so long as he did not start telling me through an unsolicited cold call what I should be doing for the improvement of my health or asking me to send him a report the next day.

Andrew Gwynne: I am slightly confused by the hon. Gentleman’s logic. In response to an intervention on the example of the 1980s AIDS advertising campaign, he said that he supported that kind of measure. The wording of the amendment as it stands is that the Secretary of State should not

“provide unsolicited advice on diet or behaviour”.

Of course, that AIDS campaign resulted in unsolicited leaflets being delivered to every household in the United Kingdom—rightly, in my opinion—and promoted the message of safe sex, which is about someone’s behaviour. Surely the hon. Gentleman cannot have it both ways.

Jacob Rees-Mogg: I am a great believer in having my cake and eating it, or eating my cake and having it. One should regularly try to do that, because life is too short not to. I will, however, explain exactly what I mean by “unsolicited advice on diet or behaviour”

and why that campaign was perfectly legitimate. It was warning people about a very dangerous disease. It was not telling them that walking up a few steps would make their heart a bit better; it was passing on a fact. I mentioned propaganda. I am against propaganda and things that do not have an element of truth within them.

Dr Poulter: Does my hon. Friend agree that there is a public interest in informing the public when there is a dangerous disease or illness? The campaign was not telling the public not to have sex; it was telling the public about the risks of unprotected sex and how to protect against contracting the disease. It was not being prescriptive about not being able to do something, but giving important warnings about what might happen if someone followed a certain course of action.

Jacob Rees-Mogg: I am extremely grateful to the Minister for his good intervention. Although I did not want unsolicited advice from the Minister, that was obviously helpful unsolicited advice. It was a cold-call intervention par excellence that has helped the debate along its way. It is exactly the point I was trying to make.

The amendment talks about not spending public funds on propagand, which I have covered.

Andrew Gwynne: The hon. Gentleman has skipped quickly over the point I made earlier. I think this is the first time he has skipped over something quickly. The issue here is that his amendment is not as clear as he would like to think. I appreciate that it is his view, but a future Secretary of State, looking at his wording, were it to be adopted, may well come to a very different conclusion and decide that it is outside his remit to offer any kind of advice, such as that in the AIDS campaign.

Jacob Rees-Mogg: I am grateful to the hon. Gentleman for his intervention, and I apologise for going too quickly through my speech. I could of course go back over some of the more salient points if that would help the Committee, if it has forgotten what I have said or was not listening in the first place. I thought the Minister covered the point so extraordinarily clearly. He said that it was not about telling people what to do; it was about providing information on facts.

Andrew Gwynne: That is not what the amendment says.

Jacob Rees-Mogg: I think that is covered by what the amendment says. We disagree on this point. I am quite happy for the hon. Gentleman to make sedentary interventions, but I think the amendment is clear and a Secretary of State would understand what it meant. The differentiation is pretty clear. The Minister covered this and I thought I had: a notifiable disease of real seriousness, not just random advice or a cold call telling people how to change their behaviour, is of such an obviously different order of magnitude that it is covered. When we get home this evening, we will wait to see whether we get lots of cold calls from the Secretary of State. We will look forward to them and enjoy them. He might give us some tips about how to continue this debate on future days.

I want to come to the point about discriminating against specific foodstuffs. I set out some of my argument in what I quoted from the *Daily Mail*, but it seems to me to be a judgment that it is not proper for the Government to make. They cannot really say that we ought to eat bananas and ought not to eat sugar, because in five years’ time they will be telling us that bananas are bad for us. I actually think that bananas are loathsome. I have never liked them, so if the Government told me that I should eat bananas, I would find it difficult to obey. Even if the Minister himself wrote out a prescription telling me that I should eat bananas, I would find it difficult to oblige him. That is not what Governments should be doing. They should allow consumers free choice.

I do not disagree with my right hon. Friend the Member for East Yorkshire that free choice often encompasses information—the more information one has, the better—but does it not fall back on to consumers to demand it? They should say, “I want to know: what is in this banana?”

[Jacob Rees-Mogg]

What is in this Creme Egg? What is in this Appletise?" or whatever it is—Babycham is a famous drink made just outside my constituency in Shepton Mallet that was very fashionable in the 1960s; I must confess that it slightly predates even me. People might ask for such notices about what those things contained, rather than it all having to be prescribed and the Government deciding what they liked and did not like. I hope I have made the point clearly: they get it wrong.

The final part of the amendment says, without the split infinitive, which we are all applauding, "nor detrimentally to affect any lawful industry". This House, Parliament and Government—the forces of law making in this country—have the ability to decide that certain things that are legal should be illegal, or that certain things that are illegal should be legal. That is what we are here to do. We are not here to decide that things that are legal are only semi-legal by edict. That strikes me as an improper way to behave.

With your indulgence, Mr Bone, at this point I come to plain paper packaging, because it is immediately relevant.

Sir Greg Knight: Before my hon. Friend gets on to plain packaging, is his argument not flawed in that, where an event occurs that requires the public to be informed, we would all surely expect Ministers to give advice? I am thinking of the egg crisis when the then Minister, Edwina Currie, advised people not to eat eggs. That clearly had a detrimental effect on an industry, but it was done in the interests of public health.

Jacob Rees-Mogg: Will you forgive me, Mr Bone, if I say that that was an "eggcellent" point? Or perhaps it was an "eggregious" interruption of my flow; an "egg-sample" to us all. I think that is enough of that.

No—that was desperate, terrible advice. It did terrible damage to the egg industry because the Government did not really know enough. They bungled it, telling us we should not eat perfectly good eggs. We have had a terrible scare about eggs ever since.

Clive Efford: Everyone knew that she bungled it—was that not the point?

Jacob Rees-Mogg: The hon. Gentleman is right. I am sorry to diverge from my right hon. Friend the Member for East Yorkshire, which is a rare event because I like to follow in the tracks that he lays out for me, but when we were told not to eat eggs because they were all stuffed full of salmonella, it turned out that, actually, a lot of eggs were not; that if they were cooked for a little while, they would not be stuffed full of any salmonella; and that even if someone has soft scrambled egg, which is much nicer than rubbery old scrambled egg, which I very much deprecate, they will be fine. I read somewhere that now they are even saying that most expectant mothers can have soft scrambled egg without taking an undue risk. Such advice comes in an atmosphere of panic and urgency, but it is fundamentally rotten. Oh—sorry to have said rotten in the context of eggs; that was not deliberate.

Sir Greg Knight: Sometimes the advice is not negative. For example, there was recently an outbreak of avian flu in my constituency, sadly. People were advised,

"This should not stop you eating chicken; it is perfectly safe if you cook it properly." Sometimes the advice is positive, helpful to the industry and, frankly, helpful to the British public.

Jacob Rees-Mogg: I hope so. Perhaps it is the duty of what used to be the Ministry of Agriculture, Fisheries and Food to start telling us that foodstuffs are safe and are not subject to avian flu. I do not want that to be the responsibility of the Secretary of State for Health because, although my right hon. Friend the Member for East Yorkshire is right—dare I say that his point is almost a curate's egg because it was good in parts?—the wrong Ministry is going to have that authority, which is why I want to take it away from the Department of Health.

Mr Burns: I have been following my hon. Friend carefully, and he carried me a certain distance until he came to his final point.

Jacob Rees-Mogg: It's not my final point.

Mr Burns: His final point before my intervention. Surely it is the responsibility of the Secretary of State for Health, if he or she is to have such a role, to determine what is healthy, unhealthy or detrimental to people's health, rather than an agriculture Minister, particularly as we do not have a Minister with responsibility for agriculture in the way we did during the salmonella problem.

Jacob Rees-Mogg: I am grateful to my right hon. Friend, but I think it is for the Food Standards Agency to determine whether food is fit for human consumption and to advise accordingly. That aspect is covered by a separate and different Government body, and the Food Standards Agency basically implements European regulations anyway, so my point that it should not be the Secretary of State for Health stands. I make that differentiation because the overall push from the Department of Health is to regulate our lives further. The occasions when things turn out to be all right are relatively rare. Therefore, I would rather that those responsibilities were with other people and other bodies, so that they do not spread and get a bit of leeway that allows them to creep into a mousehole of regulation, and then build a cave of regulation behind it. I would therefore limit this power.

I turn to the phrase

"nor detrimentally to affect any lawful industry".

I have never been a smoker. I have never wanted to smoke, and I have no views on whether it is a habit in which others should indulge. I am well aware that smoking is unhealthy. It is a dangerous habit; none the less, it is a legal industry. It is an industry that is subject to—

The Chair: Order. Before the hon. Gentleman develops his argument—I am certainly not trying to stop him—we are not going to debate plain packaging, although he can use it as an example to make his point.

Jacob Rees-Mogg: I am grateful to you, Mr Bone, because that is exactly what I am trying to do. I said "any lawful industry" because my point is much broader than plain packaging. Although plain packaging is not my specific point, it is a side part of it.

Tobacco is a legal industry, and there are regulations concerning many aspects of it. Tobacco may not be advertised on television, on radio or in newspapers, and tobacco may not sponsor cricket—I remember going to the John Player Special league in the old days when cricket was played on a Sunday. That has all stopped. I remember cigarettes being advertised on the back of parking meters in Westminster. We do not have parking meters any more, and parking meters certainly cannot be used to advertise cigarette manufacturers. I do not object to that because it is a habit that can cause serious diseases—that is very well established—and no one would argue to the contrary, but if the Government wish to make cigarettes illegal, they should simply introduce a Bill and pass a law to make them illegal. They should not cut at the edges; they should determine that smoking is a habit that is so dangerous and so deleterious to health that it should be banned. If the Government decided to do that, we could have the argument full throttle as to whether such a ban is an impingement on people's liberties, or a reasonable thing to do.

I remember a leader in *The Times* many years ago that said, perhaps, “‘England free’, not ‘England sober,’ but do you say ‘England free’ rather than ‘England cancer-free?’” That was a very good leader. This is not a simple decision, but it is a question of asking the Government to provide clarity in respect of lawful industries. I would say the same of those industries that are using sugar. They are doing lawful things, and if the Government are to impinge upon them they ought to do so in an entirely fair manner and not a deliberately detrimental one. The Government must introduce broader legislation to cover all those aspects.

5.30 pm

Cigarettes are the most obvious example, but there are also some types of drink. For example, there is absinthe, a very strong and potent drink that was drunk before the first world war by French artists, primarily. Interestingly, it was banned in 1914, at the beginning of the war, because it was so damaging to people, but was made legal again under the previous Government. Now that it is legal, it would be odd for the Government to start attacking it again. An active decision was made to legalise a particularly dangerous and enormously strong drink. In my view, it was a rather eccentric decision, but it was made, and having made it and exercised that authority the Government should treat that drink fairly along with other drinks; alternatively, new laws should be introduced to deal with it.

My aim is to try to ensure that those in government behave reasonably towards businesses that are acting lawfully. There may be many businesses doing things that people, individually, do not like. There may be activities that one faintly disapproves of, thinks are disagreeable or would like not to happen, but it is not right for the power of Government—that might, that fist—to come crashing down on such businesses without a specific law. That should not be included vaguely, in a clause of a Bill. That is why I have tabled amendment 40, to add a provision at the end of a variety of important things that I am quite happy with, to ensure that the powers are not abused.

I will move on to my amendment 41, which is to the part of clause 1 that currently reads as follows:

“ensure that the health service is a public service which delivers services of general economic interest and operates on the basis of social solidarity”.

I have covered the point about social solidarity, which is the subject of amendment 39. Amendment 41 would replace the words “general economic interest” with “that ensures value for money”.

Why do I want to do that? I wondered what it could possibly mean to deliver services of general economic interest. Indeed, I was deeply suspicious of what that might mean, because I thought it might mean that to treat a teenager was more important than to treat an octogenarian, and I wondered whether that could possibly be right. Should we really discriminate about how health care and health services are delivered on the basis of general economic interest?

I was surprised that a clause written by the hon. Member for Eltham should be so red-blooded in its capitalism—red-blooded in tooth and claw. It says that health care should be given according to general economic interest. So, if treating someone adds to GDP, that is great—off they can go to have their operation. But if it does not—if there is no economic advantage, or there is a continuing cost—it must be stopped. I am afraid that, in this context, I declare myself a woolly-minded liberal. I do not believe that the health service should be there purely for general economic interest. It has a wider calling than that; it has a broader calling to society. It is not about pounds, shillings and pence—although we have not had shillings and pence for many years; I meant that it is not about pounds and pence, although there is talk of abolishing the penny, so it will not even be pounds and pence for very much longer. But we want to ensure that the health service is there for need, not for money, and not to add to economic interest.

If we were to say that the health service delivered services of general economic interest, that could lead to all sorts of things. I have mentioned that it could give one type of person an operation but deprive another. It could therefore be very unfair on the elderly. As they make up a growing proportion of our population, I want to see them treated fairly. I want my older constituents to get the respect that is due to age. It may be that I am sentimental, but I value the whole concept of life, from its beginning to its end, not because of its economic consequence or economic value but because it is a gift of God and therefore precious. The clause is particularly ill-favoured to say that the health service should operate on a different basis. At what point would it be determined that care was no longer worth giving? At what point would it be determined that knee surgery was no longer—

Mr Russell Brown (Dumfries and Galloway) (Lab): Please excuse me if I am being somewhat pedantic, but the hon. Gentleman proposes to remove the words “general economic interest”. Would it not read better if he removed the words “of general economic interest”?

Jacob Rees-Mogg: I am grateful for that intervention, but the hon. Gentleman will note that my amendment would insert

“that ensures value for money”—

yes, the hon. Gentleman is quite right to say that the “of” might go as well. I accept that. Fortunately, there is a provision that on Third Reading, amendments that are merely verbal may be made, so if such an error were put into the Bill, it could be corrected even at the latest possible stage. That would be a great joy, because the amendment merely verbal on Third Reading has not been made for an extremely long period.

[Jacob Rees-Mogg]

I have covered most of my other amendments, which I have been working steadily through. Some of them will come up again later. I mention amendment 42 briefly, which relates to the inclusion of local government bodies, because it should not merely be Government bodies doing these things. As I have mentioned in an earlier speech, my council in North East Somerset is very good at dealing with the social services side and the health side.

My final amendment in the group, amendment 49, would add at the end of line 13,

“or is a charge made to a person who is not entitled to free care by virtue of his immigration status.”

That is a bit mean. I am not one of those people who gets terribly upset about health tourism, because I do not think it is a major problem. I think it is a problem much more written up than in reality. None the less, I did not want the Bill to extend our health service to all and sundry. That goes slightly to the Catholic Church's point about social solidarity including the whole world, not just, in the case of this clause at this stage of this Bill, the people of England.

Motion made and Question put, That further consideration be now adjourned.—(Sir Greg Knight.)

The Committee divided: Ayes 8, Noes 5.

Division No. 4]

AYES

Arbuthnot, rh Mr James
Burns, rh Mr Simon
Kirby, Simon
Knight, rh Sir Greg

Metcalfe, Stephen
Nuttall, Mr David
Poulter, Dr Daniel
Rees-Mogg, Jacob

NOES

Brown, Mr Russell
Efford, Clive
George, Andrew

Gwynne, Andrew
McInnes, Liz

Question accordingly agreed to.

5.41 pm

Adjourned till Tuesday 24 February at twenty-five minutes past Nine o'clock.