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GENERAL COMMITTEES

Public Bill Committee

NATIONAL HEALTH SERVICE (AMENDED DUTIES AND POWERS) BILL

Fourth Sitting

Tuesday 24 February 2015

(Morning)

CONTENTS

CLAUSE 1 under consideration when the Committee adjourned till this day at half-past Two o'clock.

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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 24 February 2015

(Morning)

[MR JIM HOOD *in the Chair*]

National Health Service (Amended Duties and Powers) Bill

Clause 1

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

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

9.25 am

Question again proposed, That the amendment be made.

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 78, in clause 1, page 2, line 2, after “interest”, insert

“pursuant to one or more universal service obligations”.

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

Amendment 79, in clause 1, page 2, line 3, leave out “solidarity” and insert “cohesion”.

Amendment 80, in clause 1, page 2, line 3, leave out “social solidarity” and insert “the public benefit”.

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 81, in clause 2, page 2, line 16, leave out “solidarity” and insert “cohesion”.

Amendment 83, in clause 2, page 2, line 16, leave out “social solidarity” and insert “the public benefit”.

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”

Amendment 82, in clause 2, page 2, line 19, leave out “solidarity” and insert “cohesion”.

Amendment 84, in clause 2, page 2, line 19, leave out “social solidarity” and insert “the public benefit”.

Mr James Arbuthnot (North East Hampshire) (Con): It is a great pleasure to see you back here, Mr Hood, and to be back here ourselves.

My right hon. and hon. Friends know far more about the subject we are talking about than I do, and I hope they will put me right if I go wrong. My hon. Friend the Minister sat on the 2012 Health and Social Care Bill Committee. My right hon. Friend the Member for Chelmsford piloted that Bill through the House. Similar things could be said of Opposition Members. You, Mr Hood, chaired that Committee. Therefore, you all know considerably more about this than I do, so I hope someone will set me straight if I go wrong.

I have not had the opportunity to congratulate the hon. Member for Eltham on his success on getting the Bill into Committee. My hon. Friend the Member for North East Somerset said that the hon. Gentleman was a pretty good egg, and I think we would all rather agree—we would need to have Division about that. In my 28 years in the House, I have never had the good fortune to have a private Member’s Bill, so his achievement after a mere 18 years is a real one.

During my political life, I have often been asked what subject I would choose if I could have a private Member’s Bill. In the early stages of my parliamentary career, I used to say worthy things such as, “I would introduce a Bill to improve the national health service.” More recently, as I have grown in cynicism, I have said, “I’d like to introduce a Bill to abolish private Members’ Bills.” Every year, therefore, I have put my name in the ballot for private Members’ Bills, dreading the thought that, one of these days, it might come out. Luckily, it never has. Now, of course, it never will.

In answer to the unspoken question from the hon. Member for Eltham, I was not present for the Second Reading of his Bill. The task of those who were was, essentially, to ensure that enough Members were present for the Bill to get a Second Reading; in other words, there had to be at least 100 for a closure motion. The Labour Members present also wanted to show that the Labour party believes in the national health service, which, of course, it does. I, too, believe in the NHS, as do all my right hon. and hon. Friends. However, I must tell the hon. Gentleman that I do not support his Bill, which is why I was in my constituency on that Friday.

Clause 1 and the amendments—including mine—highlight the hon. Gentleman’s dilemma. He had to decide between a Bill that did not say very much but was likely to get on to the statute book, and one that was massively ambitious and doomed to fail, but which

might, in its failure, make a great statement. In its own way, clause 1 makes a great statement. It states that the Secretary of State must promote a

“comprehensive health service based on social solidarity”,

which sounds like motherhood and apple pie. I approve of all four of those things: a comprehensive health service, social solidarity, motherhood and apple pie.

Mr David Nuttall (Bury North) (Con): My right hon. Friend just said that he approves of social solidarity, but will he explain, for my benefit and that of others, what he understands by that term? Perhaps he will come on to it later in his speech.

Mr Arbuthnot: I hope that, by the end of my few short remarks, I will have helped my hon. Friend to some sort of understanding of what I mean by the term. What I mean by it, of course, may be entirely different from what other Committee members mean by it. I am fortified by a book on the subject called “The Division of Labour in Society”, written by a gentleman called Émile Durkheim, which I will come on to later if I am so fortunate.

Before I come to my amendments to what may turn out to be a key part of the Bill, I will deal with the other amendments, in particular those tabled by my hon. Friend the Member for North East Somerset. So far, we have not had the benefit of hearing from any other of my right hon. and hon. Friends, but I hope that we will have that opportunity during these debates. I shall not deal in quite as much detail as my hon. Friend might wish with his amendment that seeks to replace “social solidarity” with “medical necessity”. I hope that what I say about my amendments, which would replace “social solidarity” with the concepts of cohesion, public benefit and universal service obligations, will cover social solidarity.

I will deal briefly with the concept of medical necessity, which is an important part of my hon. Friend’s amendment. What is a necessity is a matter of balance and degree. The problem with the word “necessity” is that it implies an absolute; it admits of no compromise. It is true, as my hon. Friend suggested, that what is necessary changes over time, so to that extent it is not absolute. One must not compare these important issues with what one’s children mean when they say, “I need a McDonald’s”, or, “I need a Krispy Kreme doughnut”. One must therefore question what “need” or “necessity” actually mean.

Sir Greg Knight (East Yorkshire) (Con): My right hon. Friend is on to a great point. Is not the problem with amendment 38 that the phrase “medical necessity” is far too severe? Would not “medical amelioration” be better?

Mr Arbuthnot: I am impressed that my right hon. Friend was able to say the word. Whether the phrase would be better is a matter that he might like to consider, if we have time, by tabling an amendment to that effect. That is an important idea that we probably need to pursue. There is the question of what “necessity” means. A clear distinction needs to be drawn between what is nice to have and a necessity.

Sir Greg Knight: It seems to me that if a female has varicose veins, an operation to remove them is not a medical necessity. However, it is desirable and, in my view, something that ought to be available on the NHS, although it is not necessarily a medical necessity.

Mr Arbuthnot: My right hon. Friend is on to an absolutely important point. My right hon. Friend the Member for Chelmsford may have mentioned tattoos previously.

Mr Simon Burns (Chelmsford) (Con): I hope my right hon. Friend understands that the NHS should provide care for patients based on medical need and necessity. Of course, in this country, the NHS does not provide for the removal of tattoos or varicose veins unless there is a genuine medical need.

Mr Arbuthnot: Oh dear. My right hon. Friend has sort of amended the amendment of my hon. Friend the Member for North East Somerset by adding the phrase “need and necessity”. We are beginning to get into a difficult area of language. Where does need stop? In the end, it has to come down to a doctor’s judgment.

Mr Burns: My right hon. Friend is absolutely right. However, that judgment—I hope my right hon. Friend agrees—has to be based on medical need and necessity. For example, tattoos are put on people voluntarily and most people accept that it is unreasonable for the NHS to have to fund their removal if the person comes to dislike them or their girlfriend’s name has changed. Why should the taxpayer pay for that when the money could be devoted to hip replacements, cataracts and other genuine medical needs?

The Chair: Order. I remind hon. Members that interventions should be a lot shorter than the one we have just experienced. I hope future interventions are a wee bit shorter.

Mr Arbuthnot: Of course you are right, Mr Hood. My right hon. Friend’s suggestion opens up a huge new area of concern. To what extent is it a necessity to remove tattoos if their removal will prevent or reduce the possibility of psychological damage for someone who, for example, has been stupid enough to have a tattoo on his or her face? That could well give rise to psychological damage. However, that takes us down the route of the extent to which it is necessary for the national health service to pay for a self-inflicted issue, namely the improvement of those who have been irreparably damaged by smoking. I will get on to the depraved habits of my right hon. Friend the Member for Chelmsford in due course.

However, we are in an area where it is extremely difficult to litigate, which is why I will not support amendment 38. I feel almost distraught about that, because my hon. Friend the Member for North East Somerset moved his amendment with such charm and compelling learning, and in a way that was such fun. The trouble was, he was wrong. I reject what he says about medical necessity because, while I think that it is necessary to draw a clear distinction between what is nice to have and what is necessary, in practice it is

[Mr Arbuthnot]

almost impossible to do that in legislation. However, my hon. Friend then moved on to an important amendment about the liberties of the people of England.

Stephen Metcalfe (South Basildon and East Thurrock) (Con): Before my right hon. Friend moves on from medical necessity—we seem to have gone round the houses on medical necessity and need—the amendment does not mention the involvement of clinicians in deciding where need and necessity lie. I wondered if he might like to comment on what role the clinician might play, before he moves on.

Mr Arbuthnot: My hon. Friend raises another important point. I have this vision of clinicians being dragged off to clink because they have failed to define appropriately what is or is not necessary. I would be concerned if that were the consequence of amendment 38.

Mr Burns: The NHS, since the day that it was created, has taken decisions on the care of patients on the advice of clinicians.

Mr Arbuthnot: Indeed. I think that we are arguing strenuously to agree with each other. While the NHS has taken decisions on the basis of the advice of clinicians, at no stage has it done so because of a couple of words in a statute. It has done so because the people of this country and all the political parties of this country believe in the NHS and regard it as one of the icons of society.

Mr Burns: I do not want to correct my right hon. Friend, but I remind him that one political party, the UK Independence party, has raised the spectre of turning the NHS from free at the point of use and funded by the taxpayer to a possibly insurance-based health service.

Mr Arbuthnot: My right hon. Friend is right to a degree. Mr Farage did raise that question, but then he discovered that it was such a difficult issue for him to deal with in terms of the electorate that he rapidly backed away from it. We, I think, began to discover what he actually believed and so I hope that, when we come to an election in a few months, people will remember where he really stands on the importance of the NHS and its being free at the point of delivery.

My hon. Friend the Member for North East Somerset raised an important issue about the liberties of the people of England. It was a matter of some concern to me that he proposed liberties for the people of England that might not find their way, because of our devolution laws, to the people of Scotland, Wales and Northern Ireland. That worries me—I hope that it is of concern to the people of Scotland, Wales and Northern Ireland. At the end of the day, it has to be a matter for those countries to deal with under our devolved laws. We have the good fortune of having on this Committee the hon. Member for Dumfries and Galloway, even though he is not in his place at the moment. I hope that, once he pores over our discussions in *Hansard*, he will be able to take back to Scotland the important point that liberties are essential and suggest that they might like to follow the lead of this Parliament. I am not sure how that will go down, but he can give it a try.

I support the amendment of my hon. Friend the Member for North East Somerset on liberty. I will always listen to my hon. Friend on liberty.

Jacob Rees-Mogg (North East Somerset) (Con): I am extremely grateful that my right hon. Friend has given way. I stress the urgency of this, because a gentleman called Tam Fry of the National Obesity Forum told us at the weekend that we Members of Parliament eat too many chocolate bars, chalking up about 200,000 a month among the lot of us. I think it is a jolly good thing and we should eat more chocolate bars. I would like to encourage that and tell Mr Fry, named after a famous chocolate manufacturer, that he should enjoy his heritage more.

9.45 am

Mr Arbuthnot: This is extraordinary. I do not know whether my hon. Friend has been reading my speech, because I am about to come on to the important issue of chocolate. I am delighted to hear what Mr Fry says, and I hope we can pursue this in sufficient detail during our deliberations.

My hon. Friend tabled another amendment relating to whether the NHS should tell us what to eat and, presumably, what sort of lifestyle we should lead. He will be shocked to hear, as I was surprised to discover, that I found myself voting for a ban on smoking in public places. I am sure he is shocked by that—I was astonished—but I voted for such a ban because, the night before, I went to dinner with a hard-smoking friend of mine and she sat puffing smoke in my face throughout the dinner. I thought, “I’m not having this; I’m going to vote for that ban”, and I did. In such ways are bans passed through the laws of this House.

Stephen Metcalfe: Did my right hon. Friend not consider asking her to stop smoking? We would not then have needed to ban yet more legal activities.

Mr Arbuthnot: Oh yes, I did, but it had no effect whatever. That is the problem with smoking, as it is with chocolate, which I will come on to. The trouble with those who used to smoke in public places was that they thought they had some sort of God-given right.

Jacob Rees-Mogg: I am a little puzzled. The dinner seemed to be a private dinner, rather than a public dinner. Perhaps my right hon. Friend will elaborate on the exact circumstances of his dinner.

Mr Arbuthnot: Since my hon. Friend asks, it was a legal dinner after a legal event. As I have already announced to the Committee, my wife is a judge, so I was there as an appendage. I was an effective appendage, because the dinner had a profound effect, I like to think, on the laws of the land in that it meant that I went out there and banned smoking, and I felt so powerful doing it.

Jacob Rees-Mogg: Just to clarify, had the loyal toast been given, and was it therefore in order to smoke?

Mr Arbuthnot: It was not an event, I am pleased to say, at which there were speeches, apart from my saying, “For God’s sake, stop smoking”, so there was no loyal toast, but perhaps there should have been. Even if there had been a loyal toast, she would have been puffing smoke in my face.

On the depraved habits of my right hon. Friend the Member for Chelmsford, I wonder whether it would be a matter of medical necessity under amendment 38, which I am afraid I have rejected, to stop people smoking. When my right hon. Friend the Member for Chelmsford was a Health Minister—while also being an inveterate smoker—he might have found himself in a bit of a dilemma over that, and over the amendment on whether the NHS should tell us how to live our lives. However, I see that my right hon. Friend the Member for Chelmsford is not going to justify his depraved habit—oh, he is.

Mr Burns: I will disappoint my right hon. Friend. I am not going to justify my smoking, because I am not proud of it. However, I can reassure him that during both times when I was a Health Minister I had nothing to do with public health policy on smoking, because it could have been construed as hypocritical.

The Chair: Jacob Rees-Mogg.

Mr Arbuthnot: I hope I am not Jacob Rees-Mogg—in fact, I would be delighted to be Jacob Rees-Mogg.

Jacob Rees-Mogg: I can reveal that our mothers are friends, so at least we have a connection.

Mr Arbuthnot: They are indeed, and one way or another we are probably related.

We are what we eat, and in my view, the NHS has a role to play in nudging us towards eating healthily. I listened with care to my hon. Friend the Member for North East Somerset on the dilemmas that the NHS has to overcome regarding what eating healthily actually means, and here we return to the difficulties of definition. I have a hint for the NHS, which is that healthy eating is to be encouraged, provided that it involves a large amount of chocolate. I said I would get back to Mr Fry's intervention, and I am delighted to hear that he is so supportive of his family company. Provided that the NHS gets that right, I shall support its right to suggest what we might eat. However, I will wait to hear from my hon. Friend the Minister on the important matters of chocolate, smoking and the nanny state, and then I will decide which way to vote on the amendment that my hon. Friend the Member for North East Somerset tabled.

Jacob Rees-Mogg: While my right hon. Friend is still on the matter of chocolate, it is important to understand that there have been some recent studies showing that chocolate can have enormous health benefits. Apparently it is very good for removing wrinkles, according to reports in last week's newspapers.

Mr Arbuthnot: I suppose it depends on how you apply it.

Jacob Rees-Mogg: Just eat it.

Mr Arbuthnot: I see. If one eats chocolate to remove wrinkles, I ought to be wrinkle-free, but at the moment I am afraid that I am not. Clearly, I am not eating enough chocolate. I do not know whether chocolate is

an aphrodisiac, although it may be, but I understand that dark chocolate, provided it has above a certain percentage of cocoa content, is frightfully good for the heart and for slimming. It is therefore the sort of thing that the NHS ought to recommend. I am inclined towards rejecting the amendment of my hon. Friend the Member for North East Somerset, although I feel distraught about this.

I have one or two amendments of my own, and it is time to consider those. At first glance, one must wonder what the clause is for. Amendment 1 would leave out proposed new section 1(2)(b) and (c). I hope that in the course of my short remarks I will be able to persuade the Committee that the amendments are important. Proposed new subsection (2)(b) states that the Secretary of State must, for the purpose of promoting a comprehensive health care service,

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

Solidarity, as my hon. Friend the Member for North East Somerset said, brings back wonderful memories of the Polish trade union Solidarnosc in Gdansk, founded in 1980.

Solidarnosc is an excellent name for a trade union. It is a grand-sounding concept, full of hope and togetherness and, as we saw in Poland, the movement helped to bring about the end of the corruption that was the Soviet Union, but how does it translate into a legislative requirement? The Committee is considering not only solidarity, but the introduction into our statutes of social solidarity. How is social solidarity to be distinguished from solidarity? What, in legislative terms, does solidarity actually mean?

We have had the religious context from my hon. Friend the Member for North East Somerset. Since he is the only member of the Committee we have heard on the substance of the Bill—I am sure we will have other contexts from other members—we have only the religious context to go on. In view of my announcement in the House on 16 January that I do not believe in God, I know that my hon. Friend will forgive me for not pursuing him down the religious road.

Mr Burns: Does my right hon. Friend agree that we are somewhat in the dark about the true meaning of this because, sadly, we have not yet heard from the hon. Member for Eltham? The hon. Gentleman was rather reticent in his Second Reading speech in defining exactly what he meant by this almost Stalinist term.

Mr Arbuthnot: My right hon. Friend is right, of course. I read the speech of the hon. Member for Eltham on Second Reading and thought, frankly, that it was a barnstorming speech, although I was not in the House, for reasons I have explained. However, there was, as my right hon. Friend says, a real lacuna, if one may use such a word, in his speech. At no stage did he go into what he meant by social solidarity. At no stage did he go into what he meant by,

“a public service which delivers services of general economic interest”.

It was a really good speech, during which the hon. Gentleman took several interventions, but it would have been nice to know what he thought he was doing.

Clive Efford (Eltham) (Lab): I merely point out to the right hon. Gentleman that if he was so interested, he could have been there to ask me and I would have tried to elucidate.

Mr Arbuthnot: Yes, I could, but I have to say that at the time, in November, I was not in the least interested in it. It was, I thought, a Bill which was trying to do things on an entirely misguided basis for entirely the wrong reasons and I thought my time would be better spent in my constituency as, indeed, it turned out to be. However, I hope that in the course of these debates the hon. Gentleman will have the opportunity to tell us what he means in his legislation, because when we are passing words into law we should all agree that they need to mean something.

I was saying that I am not going to pursue my hon. Friend the Member for North East Somerset down the religious road. I am sorry my hon. Friend spoke so briefly about the subject. If he had devoted a little more time to it he might have tempted me back into the ways of the Church, even into the ways of his Church.

Jacob Rees-Mogg: Fortunately, as this is the Committee stage, I might be able to fill in any gaps later.

10 am

Mr Arbuthnot: I look forward to that with enormous anticipation. Perhaps we will have a Damascene moment in Committee. If I am not going to go look at social solidarity in a religious sense, I shall need to do so in a sociological one.

Sociology is a genuine discipline, which has been unfairly maligned over too many decades. I asked my hon. Friend the Member for North East Somerset if he would tell the Committee when the term “social solidarity” was first used. With his usual charm and courtesy he invited me to do so myself. I shall attempt to do so, but I know that many hon. and right hon. Members of the Committee will know far more about it than I do, including you, Mr Hood. As I said at the beginning, if I do go wrong, someone will set me straight.

Sir Greg Knight *rose*—

Mr Arbuthnot: I will give way to my right hon. Friend, who is about to set me straight already.

Sir Greg Knight: I would not say that. I am puzzled by why my right hon. Friend wants to delete that provision in toto. Surely, he cannot object to the first part, which says the Secretary of State should ensure that the health service is a public service.

Mr Arbuthnot: I do not object to the first part. I will come on to the issue of whether it is a public service and whether there is a need for legislation to provide that it should be a public service. I am not sure that I will convince my right hon. Friend, but I hope to be able to persuade him that the health service is a public service. As I said earlier, virtually all parties in this country believe that it is a public service that needs to be free at the point of demand, and that it should continue to be so.

Jacob Rees-Mogg: I was pleased, indeed honoured, to be able to put my name to my right hon. Friend’s amendment, because I think those first few words are essentially covered by other parts of the Bill and are therefore otiose in the provision he seeks to remove.

Mr Arbuthnot: My hon. Friend is on to a good point. I have not examined the remainder of the Bill in the context of this amendment with quite the assiduity that perhaps I should have. I hope I can put that right later.

Mr Burns: My right hon. Friend says he is not familiar with the origins of the term “social solidarity”. I wonder whether he is teasing the Committee, because he is of course familiar with the works of Émile Durkheim. I suspect he has read the tome on his desk and will enlighten us more in the course of his comments.

Mr Arbuthnot: I am not entirely sure that I did say that I was not familiar with the term “social solidarity”. If I did, I was wrong because over the course of my last ever parliamentary recess—it was strange to come back from that—I have become all too familiar with the concept of social solidarity. I hope that I will be able to enlighten the Committee on the meaning of social solidarity. My right hon. Friend the Member for Chelmsford is right. This is an interesting book called “The Division of Labour in Society” by Émile Durkheim. There is a dispute about whether it was published in 1892 or 1893. Originally it was called the “L’Étude sur l’organisation des sociétés supérieures”—“The study of the organisation of superior societies”. Somehow it has been translated as “The Division of Labour in Society”, which I think is a rather poor translation.

By all accounts, Mr Durkheim was a pretty wonderful chap. He was the first French professor of sociology at the Sorbonne. Some have described him as the father of sociology, not just in France but in the world. In this book, he investigates the important question of how society holds itself together despite everyone having different interests. He put forward the idea that social order was maintained in societies by two different forms of solidarity described as mechanical and organic—he described them in French, but I will not trouble the Committee with that—through the transition from more primitive societies to advanced, industrial societies.

I have asked, as I know many hon. and right hon. Members will have done, whether Durkheim was original in putting forward these ideas, or was merely repeating the teaching of his guide and mentor, Auguste Comte. I have concluded that he was original, because Auguste Comte had a theory that society undergoes three phases in its quest for the truth, according to a general law: the theological, the metaphysical and the positive—sometimes called the scientific—stages. In view of what I have said about God, I have moved beyond the theological stage and have reached what is known scientifically as the demob happy stage. I have not been able to find anything about solidarity, whether mechanical, organic or indeed social, in Auguste Comte’s teachings. There is, anyway, something odd about the notion of organic solidarity.

We can safely attribute proposed new section 1(2)(b) to Mr Durkheim and to the hon. Member for Eltham. In view of how highly I think of them both, it seems a

shame to remove that paragraph, but we must do what we must do in this Committee for the good of the country.

What did Mr Durkheim mean by solidarity? In “The Division of Labour in Society”, he answers by turning to an external indicator of solidarity—the law—to look at the two types of social solidarity. He describes societies with mechanical solidarity as tending to be small with a high degree of religious commitment. People in such societies often have the same jobs and responsibilities, which suggests a known division of labour.

Jacob Rees-Mogg: Would my right hon. Friend be thinking of something such as a monastery or a convent in terms of mechanical solidarity?

Mr Arbuthnot: I think I might, but I will lend my hon. Friend Émile Durkheim’s book so that he can delve into it with the thoroughness for which he is famous. I hope he will discover that his own religious community is well represented in the mechanical and the organic solidarity spheres.

Mr Nuttall: I, too, have looked into this, and it occurred to me in reading about Durkheim’s work that he was perhaps referring not only to those who worshipped a deity in the traditional sense of God or Allah, but perhaps to a tribal society that worshipped, for example, the sun or a particular tree.

Mr Arbuthnot: That is true. In his book, Durkheim says there are many different types of solidarity. He says that

“there are as many classes of juridical rules as there are forms of solidarity.”

Equally, there are many ways of believing in God. One can treat the sun or trees as a god, which is one reason why I am a bit sceptical about the entire business.

Durkheim says that mechanical solidarity denotes a society that is not very complex and that is based on shared sentiments and responsibilities. He then moves on to talk about organic solidarity, saying that it characterises societies that are more secular and individualistic. He puts that down to the specialisation of tasks. He says that organic solidarity is more complex, with a higher division of labour.

Which form of solidarity did the hon. Member for Eltham have in mind when he suggested that we include social solidarity in our statute law? How will we know whether the Secretary of State is fulfilling his duty of delivering

“services of general economic interest”?

What on earth does that mean?

Stephen Metcalfe: I find this conversation about social solidarity fascinating. We are going off into all sorts of different areas. I have to admit that I find the language quite difficult—the terms “mechanical solidarity” and “organic solidarity” are not easily accessible, so there is some confusion associated with this issue. Does my right hon. Friend think the hon. Member for Eltham may have been misguided in selecting the phrase “social solidarity” in the first place to describe what he is trying to enshrine in the Bill?

Mr Arbuthnot: I am grateful to my hon. Friend, but I would always hesitate to describe the hon. Member for Eltham as misguided, because we have pretty much established, without a vote, that he is a good egg. However, I do think his Bill is misguided. I question whether he had quite the tight controlling hand over the drafting of each word as he might have wished, and the drafting may have come from somebody else. However, I hope my hon. Friend will be enlightened to a certain extent about the meaning of social solidarity as I go through my few short remarks.

Jacob Rees-Mogg: Is my right hon. Friend suggesting that the Bill wended its way to this Committee from what used to be called Transport House?

10.15 am

Mr Arbuthnot: I could, but I should not, speculate about its origins. I am already speculating quite enough about the origins of the words in the measure without speculating about where this bit of paper actually came from. It is possible that the hon. Member for Eltham may have been influenced by some outside sources when putting some of these words in his Bill. We are looking forward to hearing from him about precisely where it came from in due course.

I want to return to the intervention of my hon. Friend the Member for South Basildon and East Thurrock about the words used. It is because of the inaccessibility of the words—my hon. Friend need have no fear; I will come on to that issue—that I proposed various amendments to replace the concept of social solidarity with the concepts of cohesion and public benefit, which are easier to understand.

How will we know whether the Secretary of State is fulfilling his duty to deliver services in the general economic interest? How will we know whether he is fulfilling his duty to ensure that the health service is operating on the basis of social solidarity? Let us suppose that the Secretary of State decides to close a hospital because it is performing poorly. Would he be failing to act on the basis of social solidarity? Let us suppose that he decides not to close it. Would he be failing in his duty to deliver a service in the general economic interest?

Sir Greg Knight: Does my right hon. Friend therefore conclude that the Bill is something of a litigants charter, in that it would encourage people to take the Secretary of State to court whenever he makes a decision?

Mr Arbuthnot: Oh yes. Not that I have any objection to litigants charters. I am a lawyer and my wife is a judge, and I approve of anything that improves the income of the struggling legal profession. *[Interruption.]* I am sorry that my right hon. Friend finds that risible.

Will there be statutory instruments that set out the meaning and limits of social solidarity? To a certain extent, those things are covered by clause 2, which is a delight yet in store for us and to which we are all looking forward with a great deal of anticipation and enthusiasm: I am afraid that I will have one or two things to say about it. The next question is, how is the Secretary of State to be described?

Jacob Rees-Mogg: It is important that my right hon. Friend says a little more about the risk that the Bill would be a litigant's charter. As he said, there seems to be an implicit contradiction: on the one hand, the Government are reducing the ability to apply for judicial reviews, and on the other hand, the Bill would introduce something that may allow endless judicial reviews.

Mr Arbuthnot: My hon. Friend need have no fear, I shall. I had only just begun.

How is the Secretary of State to be described in relation to acting on issues of general economic interest and, in particular, social solidarity? We all know that newspapers like a snappy headline. I fear that we will see the headlines, "Jeremy Hunt becomes less solid shock", or "Andy Burnham insufficiently social", or—horror of horrors—"Nigel Farage teeters on the brink of liquidity". Speaking for myself, I would dearly love to become a little less solid, which is why I am on the 5:2 diet despite the chocolate. However, we might question whether solidarity is a suitable word for legislation.

Mr Nuttall: Just for my benefit—and maybe for others—will my right hon. Friend explain what he means by a 5:2 diet? Does it mean he eats only two chocolate bars a week?

Mr Arbuthnot: No, it means that on five days of the week I eat as many chocolate bars as I like. I can assure my hon. Friend that that is quite a number. On two days of the week, I have to restrict myself to 600 calories. Those are the days on which it is best to keep out of my way.

My hon. and right hon. Friends and I have questioned the meaning of social solidarity. The question has arisen ever since Mr Durkheim produced his interesting book. A paper read at the Bern meeting of the International Institute of Sociology in July 1909 by Professor Mark Baldwin was titled "The Basis of Social Solidarity". It begins:

"The difficulty of discussing such a topic as social solidarity arises from the generality of the term".

Jacob Rees-Mogg: I am glad that we are at last quoting a Briton. Are we getting good British common sense coming through against continental fancies?

Mr Arbuthnot: I am not sure that we are, because this was published in the *American Journal of Sociology*. I know that the Americans think that they speak English—a delusion, of which we frequently have to remind them.

Mr Burns: On a point of correction, will my right hon. Friend accept that American English is nearer to Chaucerian English than our own English?

Mr Arbuthnot: I think the pronunciation probably is; I am not sure whether the words or the concepts behind them are. Perhaps I am being unfair to Professor Baldwin; for all I know, he may have been a Somerset lad who was speaking in Chicago.

Jacob Rees-Mogg: While my right hon. Friend took an intervention from my right hon. Friend the Member for Chelmsford, I checked the etymology of the name

"Baldwin", which, as I expected, is a good Anglo-Saxon name. With Alfred the Great looking down on us, I think we can claim him as one of ours.

Mr Arbuthnot: I am sorry that we have not been able to limit him to North East Somerset. Perhaps further researches during the course of this Committee will establish precisely where Professor J Mark Baldwin comes from. He goes on to say:

"As a sociological concept, solidarity is an affair of the mutual relations of a group of individuals to one another. As a psychological concept, the term connotes the meaning of these relations as reflected in the mind of the individual".

In other words, he is saying that it can mean lots of different things. I will not go into that article in greater detail during these few short remarks unless it becomes necessary.

An article written by Art Evans—Evans sounds a distinctly Welsh name, Art does not—was published at Kansas state university.

Jacob Rees-Mogg: "Art" is very often short for Arthur, which must be the name of a very sound Briton.

The Chair: Order. I am trying to catch up with some of the interventions to find out whether they are relevant to the amendments. I remind Members to assist the Chair in doing that.

Mr Arbuthnot: I am grateful to you, Mr Hood. The relevance of this is that, because Art Evans wrote his article, which is called "An Examination of the Concept 'Social Solidarity'", published by Kansas state university, the question arises of whether the American concept of social solidarity is similar to the English concept. When I say "English", I am conscious of the fact that I would normally use "British".

Stephen Metcalfe: I presume that my right hon. Friend means the original French concept of social solidarity. Was not Durkheim French?

Mr Arbuthnot: My hon. Friend has caught me out again. I think that one is allowed—correct me if I am wrong, Mr Hood—to speak English and Latin but not French in these Committees. I am not sure that it would be permissible for me—even I were able, which I am not really—to go into the French meaning of Mr Durkheim's book.

Mr Burns: Can I help and also possibly disappoint my right hon. Friend? James Mark Baldwin was born in Columbus, South Carolina and was an American.

Mr Arbuthnot: My right hon. Friend does the Committee a service, as I knew that he would. That was what, in a sense, I was inviting him to do during my discussions about Mr James Mark Baldwin, but he must keep up because we have now moved on to Art Evans. No doubt he will be able to discover where Art Evans originates from. The clue might be in the fact that Kansas state university published in 1977 the *Mid-American Review of Sociology*. My suspicion is that Art Evans was a mid-American. The summary of Mr Evans's—or

Dr Evans's or Professor Evans's—paper is that, although Durkheim's original definition of social solidarity included both beliefs and practices, modern sociologists—we are talking 1977 here—have empirically operationalised the concept in terms of only beliefs or only practices. He says:

“It is suggested that the modern conceptualisation of social solidarity is invalid because it does not allow the researcher to get close to empirical reality.”

In other words, he is saying that it is all very well for people to say things, but if they do not do what they say, people are not examining the full meaning of social solidarity. He goes into his split of social solidarity, not between mechanical and organic, but between micro and macro sociologists.

Sir Greg Knight: The more I hear about Mr Durkheim, the more he seems to me to be a French version of Lord Prescott. Would my right hon. Friend not have done the Committee a greater service if, rather than speculating about what social solidarity means, he had tabled a short amendment giving those two words a definition?

Mr Arbuthnot: Well, perhaps I would, but the difficulty is that with social solidarity—and I will come on to this point—there is no such thing as a short definition. When one looks at what the European Union means by social solidarity—I am afraid I might have to consider that during my few short remarks. There is a guidance document about what constitutes a service of general economic interest. Again, we will have to go into that a bit—although I hate to think what the European Union will have to say about social solidarity, I am afraid we will have to consider it.

10.30 am

Art Evans says:

“According to Durkheim, social solidarity should be treated as any moral phenomenon, i.e., not directly measurable.”

The hon. Member for Eltham is trying to include in statute law a concept that is not directly measurable, if we accept what Art Evans suggests. I therefore suggest that we do not include it. My suggestion is perfectly simple: leave it out, or exchange it for something that might be directly measurable.

Art Evans says lots of other things, but I do not want to trespass on your patience, Mr Hood, by going into the macro-sociologist and social solidarity, or the micro-sociologist and social solidarity, because we would all lose the will to live.

Jacob Rees-Mogg: Before my right hon. Friend moves on, and so that we have a basic understanding of these broad principles, is it fair to say that mechanical solidarity is equivalent to micro, and organic solidarity to macro?

Mr Arbuthnot: No. That would be a grotesque oversimplification of what is contained in Mr Durkheim's book and Mr Evans's article. I am almost speechless at the triviality of that intervention. It would not be right to say that micro and macro equal mechanical and organic. If my hon. Friend caught your eye, Mr Hood, he could reconsider his remarks and possibly apologise to the Committee for his triviality.

Jacob Rees-Mogg: I am extremely grateful to my right hon. Friend for helping me to avoid error. That is why it is so important for him to explain the differences. We can then be clear about what we are looking at before we move on.

Mr Arbuthnot: I hope that my hon. Friend will find that we are a little clearer at the end of my few short remarks, or perhaps the Committee will accept that there is no clarity on this issue. That is an important point, which we need to consider when we introduce legislation.

Stephen Metcalfe: My right hon. Friend is being generous. As I have said in previous interventions, I am finding the language inaccessible, and the more we discuss this issue, the more complicated and complex it becomes. Is there any way he can give us real-world examples, so that we have more of a feel for what mechanical, organic, micro and macro societies are?

Mr Arbuthnot: I am tempted, but I am held back by one thing: my fundamental ignorance, which is quite extreme in this case. I would love to be able to go into the detail of what an organically solid or a mechanically solid society is. I think we can agree that a mechanically solid society is the more primitive, theological society. Mr Durkheim's aim was to establish that a mechanically solid society did not have a great degree of division of labour. For example, people would be subsistence farmers who would get up and go to work not far from where they lived. They would grow their food, make their furniture, worship their gods and go back home feeling comfortably mechanically solid.

Mr Burns: Does my right hon. Friend think it would assist the Committee better to understand this if we look at the charter of fundamental rights of the European Union? Social solidarity is one of its six principles, and as my right hon. Friend will know, it is celebrated on 20 December each year, social solidarity day.

Mr Arbuthnot: I suspect that my right hon. Friend has the making of a few short remarks of his own there. He might enlighten the Committee and, less importantly, me. I was not aware that 20 December was such an auspicious day or that this was a matter of such supreme importance in the EU. I look forward to what my right hon. Friend has to say, so that I can learn. It is always a pleasure to attend such a Committee to improve one's education. I hope that with what I have been able to say so far about Mr Durkheim, Mr Evans and Professor Baldwin, the Committee's education is being steadily improved.

Stephen Metcalfe: In my right hon. Friend's response to my earlier intervention, he talked about mechanically solid and organically solid society. He seems to have dropped the “solidarity”, the mechanical solidarity bit. Is he interchanging solidarity with solid, and are they the same definitions?

Mr Arbuthnot: Really I was making a joke. It is always a mistake to make a joke in Committee because it gets translated into undying words in *Hansard*, and

[Mr Arbuthnot]

when one is 93 I assume one gets revisited by those words because *Hansard* has to make everyone appear to be deeply serious and sensible all the time. From time to time in Committee one has to have a bit of fun. The point I was making about being mechanically solid is that it is not entirely clear what solidarity means. That is why I have produced my amendments about cohesion and public benefit.

As it is not entirely clear what all this means, there is a risk that clause 1 will turn out to be fuzzy rubbish. I do not want to say that it is fuzzy rubbish for four main reasons. First, I do not want to be rude and it would be to say that it is fuzzy rubbish. Secondly, it is clear that the national health system is, with all its faults, one of the icons of our society. As I have said, we all in this Committee fundamentally believe in the NHS. We muck about with it at our peril. If we can tease out what it means, we want to achieve a comprehensive health service that operates on the basis of social solidarity. Thirdly, I believe that the hon. Member for Eltham is genuinely motivated by the good of the country and the national health service.

The fourth and most important reason is that clause 1 is not fuzzy rubbish. It is far from it. The two phrases, “services of general economic interest”,

and operating,

“on the basis of social solidarity”

have special meaning. They are terms of art. They are in the Bill for a purpose. It is true that they are the sort of “in” speech I hate, are understandable only to the initiated and the types of phrase that give lawyers and law a bad name, but it is the duty of each member of the Committee to set out to understand these phrases, the part they can play in the NHS and whether this proposed new law, set before us to change the existing order of things, is good or bad.

Sir Greg Knight: If I follow my right hon. Friend correctly, is he saying that the promoter of the Bill is a good egg but the Bill is a curate’s egg and we should not swallow it in its present form?

Mr Arbuthnot: I like my right hon. Friend’s juxtaposition of concepts. I accept that the promoter of the Bill is a good egg. I do not accept that the Bill is a curate’s egg. I think that it ought not to proceed and I will set out why in due course.

The purpose of these phrases is to change the existing order of things. I remind the Committee that the existing order of things is not very old—it is just over two years old. One might think it wise to leave the provisions of the Health and Social Care Act 2012 in place for a few years’ more to see whether stability might allow the Act to work as well as it was intended. I remind the Committee that the law which brought in the concept of competition, which the Bill is designed to change, was introduced by a Labour Government. As the hon. Member for Eltham said in his barn-storming speech on Second Reading,

“I accept that the last Labour Government unlocked the door to competition”.—[*Official Report*, 21 November 2014; Vol. 588, c. 539.]

Amendment 1 would remove the requirement to provide “services of general economic interest”,

and to act,

“on the basis of social solidarity”.

To explain the amendment, I need to explain why the clause introduces these concepts. It is no accident that it does so; it is neither an afterthought nor the product of fuzzy thinking. This is the very first clause of the Bill. What is it about these two concepts that is so central to the Bill’s intentions that they need to come first?

Let us remind ourselves what the hon. Member for Eltham wants to achieve with the Bill. He has been obliging enough to tell us, and he was extremely candid in his barn-storming remarks on Second Reading. He said that he wanted to

“tear the heart out of the hated Health and Social Care Act 2012.”—[*Official Report*, 21 November 2014; Vol. 588, c. 539.]

Given what he said, it is fair to examine whether by imposing the duty to

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

it all sounds incredibly innocuous—he is tearing the heart out of the 2012 Act.

10.45 am

We also need to consider whether the Act is indeed hated. Certainly in the pubs and clubs of North East Hampshire, people are not sticking pins into wax effigies of my right hon. Friend the Member for Chelmsford. Perhaps they are doing so in the pubs and clubs of Eltham, but they are certainly not in North East Hampshire and, I suspect, not in the byways of Chelmsford either. In fact, my right hon. Friend is probably carried shoulder-high when people mention the Health and Social Care Act 2012, and he will include it in his manifestos as he delivers them to the residents of Chelmsford to say, “Look what I have achieved.”

I am not arguing that the Act failed to provide for services of general economic interest or failed to operate on the basis of social solidarity—in fact, quite reverse.

Mr Burns: I am listening carefully to my right hon. Friend, but I have a problem. Frankly, no one has explained to me what “general economic interest” means. To me, it sounds to be either gobbledygook or sinister.

Mr Arbuthnot: My right hon. Friend has been reading my speech as well—I must keep my speeches under better lock and key. When my hon. Friend the Minister responds to the debate, I hope that he can enlighten the Committee to an extent that I have not been able to do so, but I need to go into what that phrase means with the assistance of a European Commission document that I have with me. It goes into a little detail, so I hope that I can help the Committee a bit. The Minister will be able to do so more.

The hon. Member for Eltham is entirely intentionally trying to set up a certain set of consequences in European law of the introduction of the phrases

“services of general economic interest”

and “social solidarity”. He is doing it on purpose and, as I said, for what he sees as the good of the NHS and the country. They are not, however, meaningless phrases that one can laugh at—we might laugh at them, but they have been litigated over and are the subject of

articles in learned journals. The Committee will be pleased to hear that I shall share some of that learning and litigation, so that we can see what the hon. Gentleman is trying to do and why, by moving the amendment, I am trying to stop him doing it. I hope that the Committee will come to a clear idea of such things.

My right hon. Friend the Member for Chelmsford referred to the phrases as “gobbledegook”. It would of course have been helpful had the draftsmen of the Bill, who might not have included the hon. Member for Eltham, been able or even permitted to signpost the fact that such phrases are terms of art, perhaps by adding capital letters to, for example,

“services of general economic interest”.

For some reason, however, the draftsmen of Bills are not permitted to use capital letters, except in rare circumstances.

Mr Nuttall: Does my right hon. Friend agree that although the draftsmen of the Bill might not have been able to use capital letters, they could, if they wished, have included a definitions clause?

Mr Arbuthnot: My hon. Friend is very far from a fool, but he is treading on ground where angels fear to tread. I will come on to that issue during my few short remarks. When he intervened, I wondered whether he would suggest that we table an amendment to change the phrase

“services of general economic interest”

to include capitals. I suspect that that would be deemed out of order. Still, we have not done that.

Stephen Metcalfe: I am learning a great deal this morning. It was only today that I really began to understand that the five words

“services of general economic interest”

are to be taken as a whole, not as five individual words strung together in a random fashion. They have a definition, which is set out on the European Union’s website. How are we supposed to know that from the Bill, or is it to be assumed that we have prior knowledge that it is an established and recognised phrase, which will help those who have to interpret the Bill in the future to understand its true meaning?

Mr Arbuthnot: Indeed. I wish that my right hon. and hon. Friends would stop reading my speeches—it is plain that they have had access, through some awful hack or other, to what I was about to say—because I was about to make exactly that point. It is a shame that we have not been able to use capitals—apparently they cannot be used in legislation—but I was pleased, during our discussion of the amendment tabled by my hon. Friend the Member for North East Somerset, to see that England, at least, was favoured with a capital letter. Perhaps the draftsmen of Bills consider the use of capital letters in legislation to be shouting and therefore rude. In the articles that I shall refer to and in the European Commission staff working document services of general economic interest are referred to in capitals as “SGEI”, although I think that may be taking capital letters a bit too far.

Jacob Rees-Mogg: I suppose they had to leave out the “O”; otherwise it would have been “soggy”.

Mr Arbuthnot: All I can say to my hon. Friend—if one is allowed to say this—is chapeau. [*Interruption.*] In that case, I congratulate my hon. Friend. He is absolutely right.

In some of the articles, services of general economic interest, or SGEIs as they are affectionately known, are compared with the concept of universal service obligations, or USOs as they are affectionately known. The comparison becomes a little confusing, and some people seem unable to tell the difference between an SGEI and a USO. I sincerely hope that, by the end of these few short remarks, the Committee will have no such confusion and we will all be able to teach our children and grandchildren about the important distinction between those two concepts.

Another paper, entitled “Services of General Economic Interest: Opinion Prepared by the State Aid Group of EAGCP”, is relevant to this discussion. The EAGCP is the Economic Advisory Group on Competition Policy, so I assume that its members know what they are talking about. They certainly know a great deal more about this than I do. They ask:

“What are Services of General Economic Interest?”.

That question has now been at the back of our minds for two weeks. We need to look at that article to find the answer. It states:

“In economic terms, the concept of SGEI”—

I am sorry, Mr Hood, but that is what it says—

“as defined above”—

I will not go into what that definition is, because that would take the Committee’s time and I do not want to do that—

“is closely related to that of “Universal Service Obligations” (USO), that is obligations imposed on one or more firms of a given industry to supply given products or services to all citizens, often though not always on a non-discriminatory basis”.

A service of general economic interest is something that, in general, is provided by Governments, and universal service obligations are imposed on firms or industries by Governments. I think that that is the distinction, but I hope that when my hon. Friend the Minister comes to reply to these short remarks he will be able to tell us whether I am correct.

Jacob Rees-Mogg: Will my right hon. Friend explain where the economic interest is? That part is not clear. I can see that this is a service obligation, which it might be right—or not—to place upon Governments, but in what sense is it economic or making any contribution to the economy?

Mr Arbuthnot: My hon. Friend puts his finger on an issue of extreme complication. I am ashamed to say this, but I am afraid that I will have to leave my hon. Friend the Minister to clear that up. I have been wrestling with this very question for about two weeks. I think it may be something that is of great importance, or it may not, but let us see as we go through this discussion; it may become a bit clearer.

Sir Greg Knight: Does not the phrase “general economic interest” have rather sinister undertones? Does it not imply, for example, that someone who has retired and is therefore not contributing to the economy may not be worthy of health care?

Mr Arbuthnot: It might contain that implication. Clearly, it does not in European law. A retired person coming to the Bill—they will, of course, read it with fascination and enthusiasm to see what the hon. Member for Eltham is proposing for them—might think that this is not entirely what they expect of their health service. We are coming back to the issue that my right hon. Friend the Member for Chelmsford described as “gobbledegook”.

Mr Nuttall: Does my right hon. Friend not agree that the real concern and danger is not how a retired person might interpret the Bill—although they may well be very upset and concerned indeed—but how a judge might interpret it if it became an Act? That is the real problem.

11 am

Mr Arbuthnot: Indeed so. A little later I will come on to the fact that by passing this phrase into law, we would be delegating our duties as legislators to the courts of this land. I have fewer concerns about that than most people would—I had better, given that I am married to a judge and a lawyer myself—but nevertheless, as legislators, we need to be clear what we are legislating about.

Jacob Rees-Mogg: May I tempt my right hon. Friend further about that? He says that we would be delegating to our judges, but if we incorporate terms from European law—one in the charter of fundamental rights and one defined by the European Union—we risk making the health service a European competence.

Mr Arbuthnot: That is a fear that I had not actually considered, and I shall need to do so at some length during the short Adjournment between today’s sittings. I ought to tell my hon. Friend that I have a suspicion that this country’s Department of Health—this is trailing my coat a bit—believes that it already delivers services of general economic interest. In view of his intervention about economic interest, I very much look forward to hearing the comments of my hon. Friend the Minister about what takes these issues out of services of “general interest” into being services of “general economic interest”.

I want to get back to the opinion prepared by the state aid group of the Economic Advisory Group on Competition Policy, which mentions universal service obligations and services of general economic interest. I think the group is making a mistake by equating the two, but it states:

“Note also that USO (or SGEL) are by definition services which are provided at a loss by firms, otherwise there would be no need to impose the USO. Therefore firms often need be compensated for the provision of such services.”

We may be groping towards an answer to the question put by my hon. Friend the Member for North East Somerset about why these are economic services, because the providers need to be compensated by Governments.

Mr Hood, you may be wondering whether I am drifting just a touch off the point of my amendment, but, in order to decide whether we leave in or take out of the Bill the concept of

“services of general economic interest”,

we need to be absolutely clear about what we mean by the phrase—what it is, and why it is what it is. The same will also be true in time of the phrase “social solidarity”, but I am getting ahead of myself, because I have a few things to say about that.

On the important issue of capitals, if the draftsman could not have used capital letters to point out that the phrase

“services of general economic interest”

was a term of art, perhaps he could have put the phrase into inverted commas. However, in the rarefied world of the draftsman—to which, as a chancery barrister, I used to belong—inverted commas too are frowned upon, except for delineating those parts of a Bill that are to be left in or taken out. Since he or she could not use capitals or inverted commas, perhaps he or she should have said, “The Secretary of State would, for the purposes of the European rules relating to competition and state aid, be deemed to be providing services of general economic interest,” and all that sort of stuff. However, the draftsman has not given us any pointers towards the purpose of clause 1, so I fear that we will have to rely on our own resources, which are considerable.

Actually, this is the main point of my amendment 78, which relates to the concept of universal service obligations. The phrase is described in a working paper produced by the university of Leicester in October 2009, in which Mike George and Linda Lennard go through what universal service obligations are and the EU’s approaches to essential services. Unfortunately, I shall be talking against my own amendment now, because they say:

“what is meant by universal service obligations in the first place is often unclear and definitions of the concept vary between different sectors. At the same time, universal service needs to be sufficiently dynamic and flexible”

to take account of changes to how law is produced.

I tabled amendment 78 to introduce into the Bill a phrase that is so utterly outlandish that whoever reads it will know that something is up. They will need to go along to some library, or look it up on Google, as I have done once or twice, to see that we are not using normal language here, but an Expression—with a capital E, if I may use capitals. They will have to go and look that up, so they will realise that this innocuous phrase we are introducing—

“services of general economic interest”—

as well as “social solidarity” and everything else will need to be looked up. When they look them up, they will discover that there have been books and articles about them—I have referred to one or two.

My amendment works as a pointer, or a command, to the reader of the clause to go and look this up. Without such a pointer—capital letters, a reference to the European rules relating to competition and state aid, inverted commas, or, indeed, the wording about universal service obligations in my amendment—the layman reading this clause may think, “What on earth does that mean?” They will wonder why, as my hon. Friend the Member for North East Somerset asked, the national health service should be delivering services of

economic interest. They will ask whether services of economic interest are the same thing as services that are economically interesting, and what economics has to do with it. Of course, the NHS is of interest, but it is of medical interest, rather than being economically interesting.

Mr Burns: My right hon. Friend will agree that the primary function and duty of the health service is to provide health care for patients. To talk of it in financial terms, as “economic interest”, is slightly obscene, because that suggests putting money before the care of patients.

Mr Arbuthnot: I think that my right hon. Friend is right, but he might be trying to catch a horse that has bolted. The concept of

“services of general economic interest”

is widely used in the context of European law, but—this will shock him—if discussion in the Slug and Lettuce in my constituency rages around the question of the treatment of someone’s varicose veins, do people come away saying, “Oh yes, that was a service of general economic interest and no mistake”? I suspect that they do not, or at least I have never heard that. Things might be different in the pubs and clubs of North East Somerset, which of course would have much earthier names than The Slug and Lettuce; they would be called names such as The Ploughman’s Arms or The Cattle Grid.

Jacob Rees-Mogg: I am pleased to say that the public house in the village where I live is called The Crown.

Mr Arbuthnot: I am delighted to hear that. I do not know whether my hon. Friend’s constituents in The Crown discuss varicose veins in terms of services of general economic interest, but if he has heard such a discussion, I would very much like to know the punchline, because that has not been heard recently in North East Hampshire.

As my right hon. Friend the Member for Chelmsford said, to the layman, the phrase

“services of general economic interest”

is gobbledegook. My view is that our laws should be accessible to the layman. I deprecate the use of coded language or in-speak in our statutes or anywhere else. I used to be involved in the Ministry of Defence—the MOD, as it is affectionately known—which is a Department that shortens everything to acronyms. I have always regarded acronyms in phrases as coded language that is a means of excluding the layman from an understanding of the elite’s considerations. That is a bad thing to do, but it is what we would do if we brought the clause into effect.

The laws that we make in the House are the laws of the people. They apply to the people, they are enforced on and by the people, and they are owned by the people. It is therefore only right that such laws should be entirely comprehensible to the people, but the use of coded phrases such as

“services of general economic interest”

and “social solidarity” make them less so.

Stephen Metcalfe: I am slightly concerned because, as I mentioned earlier, I did not realise that

“services of general economic interest”

was a discrete, defined phrase. As I read through the Bill, I worry whether it contains other phrases that I and my right hon. Friend might not recognise as a series of connected words about which he has not been able to table suitable amendments to make the Bill clearer for the public, if it were to pass.

Mr Arbuthnot: My hon. Friend is right that there might be such phrases, but we are moving into the context of known unknowns and unknown unknowns. If there are things that need to be amended that I have not recognised, the problem is that I have not recognised them, so I cannot really respond to his intervention with any degree of sense. It might well be that none of this is making a great deal of sense.

Stephen Metcalfe: I accept that my right hon. Friend may not know where there are phrases with alternative definitions, but does not that worry him? He has great experience in the House, so perhaps he could advise me where I could turn to find out if there are phrases in the Bill that I would not recognise.

Mr Arbuthnot: It does worry me; the whole Bill worries me. All I can suggest to my hon. Friend—this would take him a bit of time, I am afraid—is that he feeds the entire contents of the Bill, phrase by phrase, into some search engine or other. He might find that that throws up concepts, ideas, problems and issues, as well as suggestions for amendments that might improve the Bill. Although there is quite a long way to go before we can do that, the process would be valuable to the Committee. I am grateful for his suggestion, but I am afraid that he has a lot of work to do.

11.15 am

Sir Greg Knight: May I gently suggest that my right hon. Friend is being inconsistent? He has railed against the phrase “general economic interest”, but I notice that amendment 41, to which he has added his name, wants to replace that phrase with the phrase, “that ensures value for money”.

In NHS terms, what is value for money? If a drug is cheap but occasionally ineffective, is that value for money? If a drug is expensive but wildly effective, is that value for money? He raises as many questions with his own amendments as he does about the Bill’s drafting.

Mr Arbuthnot: Oh dear. My right hon. Friend is, as ever, entirely correct. He has caught me out in an inconsistency. All I can say about that is that

“consistency is the hobgoblin of little minds”

and that

“I am large, I contain multitudes.”

Mr Burns: My right hon. Friend is being unfair upon himself and unduly harsh. Of course, when he concludes his explanation for our right hon. Friend the Member for East Yorkshire, he will point out that the efficiency and cost-effectiveness of drugs is determined by the National Institute for Health and Care Excellence.

Mr Arbuthnot: Of course I will point that out. Thank heavens somebody is here to put me right in my ignorance.

Jacob Rees-Mogg: I commend my right hon. Friend’s wisdom in supporting my amendment, because value for money is simple to understand. The term does not

[Jacob Rees-Mogg]

have some hidden European meaning. I was trying not to find a phrase that was understandable only to an elite, but to find a phrase that was understood by everybody in their normal use of language. I do not model myself on Humpty Dumpty.

Mr Arbuthnot: Yes, but as my hon. Friend may remember, I found that I had put my name to amendments to the times when we should sit that turned out to be inconsistent. I was clearly pursuing my idea that I should not be consistent in this Committee and I might pursue it again. While I have signed my hon. Friend's amendment, I will have to consider again whether I support it during the short Adjournment.

Stephen Metcalfe: As amendment 41 has been brought up, I want to be clear what it would actually mean. It would insert words into clause 1, which would then read: "services of that ensures value for money". We may need to remove a particular word, as I am not sure that we can have that. It may be a small drafting error, but someone may need to attend to it.

Mr Arbuthnot: I am sure that my hon. Friend is right. He clearly has much more to say on this than I have. I sincerely hope that that will be put right during the course of the debate.

Jacob Rees-Mogg: That point was brought up in a previous sitting by the hon. Member for Dumfries and Galloway. I said that it could be corrected on Third Reading, when it is possible to make amendments that are merely verbal.

Mr Arbuthnot: So he did. I had forgotten that moment, which was a delicious one.

My amendments are intended to try to get round the issue of gobbledegook that my right hon. Friend the Member for Chelmsford raised regarding the words "cohesion" and "public benefit". That is also pursued in amendments 81, 83, 82 and 84 to clause 2. It would not be right to spend too much time at this stage discussing the merits or otherwise of clause 2, because we may have an opportunity to do so when we reach that clause.

I now want to consider why clause 1 would require the Secretary of State to act to

"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 am sorry to say that it is rather a long story. One of the books I said had been written on the subject is by Dr Michael Sánchez Rydelski. It is entitled "The EC State Aid Regime: Distortive Effects of State Aid on Competition and Trade". In 2006, when the book was published, Dr Sánchez Rydelski was the deputy director of the legal and executive affairs department of the

European Free Trade Association Surveillance Authority in Brussels. I do not know what all of that means, but I suspect it means that he knows what he is talking about.

At the start of his book, Dr Sánchez Rydelski says that

"the Community and its Member States are pursuing economic policies which are conducted in accordance with the 'principle of an open market economy with free competition'. The EC Treaty thereby relies on the concept of competition as a notion of Community law and a tool for the creation of a Common Market"—

as, indeed, did the last Labour Government, as the hon. Member for Eltham accepts. Dr Sánchez Rydelski continues:

"Free undistorted competition requires that not only private anti-competitive behaviour, but also State intervention in the market, for example in the form of State aid, are subject to control mechanisms. This has been the reason why the Community's State aid regime"—

we are going to have to go into that in a little detail—

"formed an integral part of the Community's competition policy from the very beginning."

As I said, an extremely helpful guide has been published. It is called "Commission staff working document"—I will call it the working document—"Guide to the application of the European Union rules on state aid, public procurement and the internal market to services of general economic interest, and in particular to social services of general interest". The title is rather long, but that is because these issues are of such extraordinary complexity and importance.

The document runs to 110 pages, which I have, perhaps unwisely, unfairly or in an un-ecofriendly way, printed, because I thought it would be easier to refer to the document in paper form. I am lucky enough to have it with me, but it too requires some explanation, because it does not really start at the beginning. The Committee will be comforted to know that I will do my best to help it through the relevant provisions of the working document and European law.

Sir Greg Knight: We all know my right hon. Friend is a raving Europhile, but would all this not be irrelevant if Britain voted to leave the European Union?

Mr Arbuthnot: My right hon. Friend is right in both parts of what he says: I am a raving Europhile, and all this would be irrelevant if we left the European Union. Whether or not that would be a good thing, it would be taking a sledgehammer to crack a nut. The far easier way to deal with this issue would be to pass my amendment, which takes the relevant words out of the Bill. I almost feel the need to apologise to my right hon. Friend for being a raving Europhile, but I am what I am.

11.25 am

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

Adjourned till this day at half-past Two o'clock.