PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

NATIONAL HEALTH SERVICE (AMENDED DUTIES AND POWERS) BILL

Fifth Sitting

Tuesday 24 February 2015

(Afternoon)

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

£6·00

PBC (Bill 018) 2014 - 2015

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Saturday 28 February 2015

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

The Committee consisted of the following Members:

Chairs: † Mr 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

(Afternoon)

[Mr Peter Bone *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.)*

2.30 pm

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".

Clive Efford (Eltham) (Lab): On a point of order, Mr Bone. In my estimation, we have been debating the amendments to clause 1 for more than four hours. I have just checked the record of the progress of the Health and Social Care Bill in Committee. In the first sitting, the Committee dealt with a number of amendments and had four votes. We have had four sittings and are about to start our fifth, but we have not yet had any votes on any amendments whatever. I draw that to your attention and ask whether we will make progress today. At some time in the near future, will you be mindful of accepting a closure motion that the Question now be put?

The Chair: Thank you. It is not my intention to accept a closure motion at the moment, but I am aware of the length of time and in due course perhaps that will happen.

Mr Simon Burns (Chelmsford) (Con): Further to that point of order, Mr Bone. To help the hon. Member for Eltham, may I explain why more progress was made when the Health and Social Care Bill was considered in Committee? That Bill was properly drafted and did not include phrases such as "general economic interest" or "social solidarity", the meaning of which no one knows anything about.

The Chair: That is not a point of order.

Clive Efford: Further to that point of order, Mr Bone. I remind the Committee that at the end of the sitting on Tuesday 10 February, at 5.41 pm, the Government Members, having spoken for four hours about the need to have time to debate the Bill, moved a motion to adjourn. For the record, the right hon. Member for North East Hampshire voted in favour, and yet he has spoken for more than two hours today. We could have quite comfortably listened to what he had to say on that Tuesday, had he been so determined to make a contribution. It is rather galling that he has taken up so much time today, when we could have listened to his speech two weeks ago.

The Chair: That is not a point of order.

Jacob Rees-Mogg (North East Somerset) (Con): Further to that point of order, Mr Bone.

The Chair: If it is a point of order.

Jacob Rees-Mogg: It is as much a point of order as the one made by the hon. Member for Eltham. Had the Labour party Members stayed that day, we would have been able to have the debate. We were more than willing to stay, but if the Opposition waltz off home, they cannot expect us to stay.

The Chair: Order. The hon. Member knows full well that that is not a point of order. The Committee decided to adjourn and that is entirely up to the Committee.

I call Mr Arbuthnot.

Mr James Arbuthnot (North East Hampshire) (Con): The issues are complicated. It is not surprising that it takes time to sort out matters such as how European Community law has responded to the issue of entities such as the national health service. In fact, the European Union has taken 20 years to begin to come close to sorting that out. Various cases, such as the Altmark case, which I will talk about in due course, can take weeks of battle raging among the lawyers. It is therefore right for us to discuss with an appropriate degree of length precisely what the hon. Member for Eltham is trying to do in the Bill—precisely what he is trying to achieve by saying that

"the Secretary of State must… ensure that the health service is a public service which delivers services of general economic interest and operates on the basis of social solidarity".

This morning I was setting out why most people would not have the slightest idea what that meant. We have to consider various books and journals to work out what it does mean and why it is that the hon. Gentleman is doing what he is doing. Just before we rose this morning, I was saying that one such book is by Dr Michael Sánchez Rydelski, entitled "The EC State Aid Regime: Distortive Effects of State Aid on Competition and Trade". I read out the opening paragraph of that book, and I went on to say that the matter had been clarified by the working document that was produced by the European Commission. This Commission staff working document describes how the European Union had been struggling in 2011with the question of how the EU's state aid rules applied to the way that services of general economic interest could be organised and financed by public authorities in member states.

Of course, that prompts the question of what a service of general economic interest is, but the Committee can rest assured that I shall come onto that. The European Union had been struggling with lots of other things as well, but that is the point that is relevant to this clause and to my amendments. Some of the other things with which it had been struggling will have to be considered in relation to later clauses in the Bill, but that is a pleasure which we must forgo for the moment.

What was this struggle about? It was about two different things: first, the conditions under which compensation for public service obligations constitutes state aid and, secondly, the conditions under which state aid may be regarded as compatible with the treaty on the functioning of the European Union. The European Commission naturally shortens that treaty to "TFEU", but I hope the Committee will forgive me if I do not. As I have already said this morning, I hate acronyms. This working document begins—although paragraph 1 starts on page 18, which explains how big the index is—by describing and defining three things. The first is a service of general interest, the second is a service of general economic interest, and the third is a social service of general interest.

Oddly enough, since a service of general interest is a concept that is really rather important to European Union law on this issue, it might be thought that the treaty on the functioning of the European Union—or at the very least a protocol under that treaty—might have defined what a service of general interest was. We must look at protocol 26, after having been through protocols 1 to 25 to no avail, to find out what a service of general interest is. Here we discover that that is where it ought to be defined, if it is to be defined anywhere. I have the good fortune to have with me protocol 26 of the treaty on the functioning of the European Union. It states:

"On services of general interest"—

This implies that it will tell us what they are. The protocol is not very long, so I do not need to take too much time over it. It continues:

"The High Contracting Parties, wishing to emphasise the importance of services of general interest, have agreed upon the following interpretative provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1. The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the Treaty on the Functioning of the European Union include in particular: the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users."

So far, Mr Bone, I am getting very little by way of definition. It goes on:

"the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations; a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights."

My right hon. Friend the Member for Derbyshire East—

Sir Greg Knight (East Yorkshire) (Con): East Yorkshire.

Mr Arbuthnot: I am so sorry; I have committed one of the greatest political faux pas of my life. He described me this morning as a raging Europhile, and I plead guilty to that.

Sir Greg Knight: Raving not raging.

Mr Arbuthnot: A raving Europhile. That extract was raving Europhile-speak that meant, as far as I could tell, nothing at all. We have article 2, which is even shorter.

Mr David Nuttall (Bury North) (Con): If I remember rightly, Mr Bone, and I appreciate you were not in the Chair, it was on that very point that my right hon. Friend was making just before the luncheon adjournment that he admitted he was happy to be called a raving Europhile. Would my right hon. Friend confirm briefly whether he agrees that one can love Europe as a continent without having any truck with the European Union, which is an entirely different matter?

Mr Arbuthnot: I entirely agree with my hon. Friend on this as on so many things. I am not saying whether I do love the European Union as an idea, I am just saying that it is perfectly possible to do so. That was the question I was asked by my right hon. Friend the Member for East Yorkshire.

I move on to article 2, which states:

"The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest."

That comes back to the intervention by my hon. Friend the Member for North East Somerset and I will come to that in due course.

Those treaties and that protocol do not define a service of general interest. In fact, this Commission staff working document accepts and asserts that they do not define a service of general interest. However, it does say that such a service is within the meaning of article 14 of the treaty on the functioning of the European Union. Imbued with hope, we turn to article 14 that treaty, which is clearly where the answer will lie. That article, which is not very long, reads as follows:

"Without prejudice to Article 4"

—do not worry, Mr Bone, I will not trouble you with that, unless anyone wants me to—

"of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services."

I do not know whether you got that, Mr Bone, but I certainly did not. It sounded to me like a load of European guff. It sounds as though it has been drafted by committee, which of course it has been.

As I said, Mr Bone, I shall not trouble you with article 4 of the treaty on the functioning of the European Union, which is full of stuff about the equality of member states before the treaties and treating member states with mutual respect—there are times when I have some difficulty being a raving Europhile—and all of that sort of stuff. Nor shall I trouble you with articles 93, 106 or 107 of the treaty on the functioning of the European Union, because we would all lose the will to live—some of us, I dare say, already have done—so we are going to have to look elsewhere at what service of general interest is.

2.45 pm

Jacob Rees-Mogg: I am grateful to my right hon. Friend for giving way. I agree that the article is quite impenetrable. However, might he try to translate it for us, so that we can develop some understanding, because he is widely regarded as one of the cleverest men in the House of Commons? While we still have the pleasure of his being here, perhaps he could turn his mind to a translation.

Mr Arbuthnot: My hon. Friend is far too flattering. I do not know that I am widely regarded as anything, really, but I will do my best to help the Committee by saying that, for a definition of what a service of general interest is, we are going to have to look elsewhere than to the treaties or the protocols. One good place to start is the 110-page Commission staff working document.

Sir Greg Knight: Is not there a way to short-circuit all of this? Amendment 41 in the group we are debating suggests that we leave out the phrase, "general economic interest" and insert the words

"that ensures value for money".

Therefore if we accepted amendment 41, which my right hon. Friend, by signing it, urges us to do, would not that make all the documents he is referring to irrelevant?

Mr Arbuthnot: My right hon. Friend is right, although I have to say that my signature means little, apart from on a cheque. We could resolve the issue in other ways, such as by leaving out the entire clause or, indeed, according to my amendment 1, by leaving out subsection (b) and (c), which is my primary aim.

Jacob Rees-Mogg: My right hon. Friend is generous and tolerant in accepting interventions. With regard to the point made by my right hon. Friend the Member for East Yorkshire, do not we have to discuss these matters, because one cannot be sure which amendments may be approved by the Committee? The Committee needs to be in possession of the full facts and full understanding before coming to Divisions.

Mr Arbuthnot: We do indeed and I suspect we will discuss the issues at a little length to get to the bottom of precisely what the words in the Bill and the amendment mean. Yet to decide whether to amend the Bill, it would be wise and helpful to work out what the Bill itself says. My right hon. Friend, in his impatient way, wants to short-circuit things. I cannot understand why he wants to do that, because these are matters of great interest. I have spent a great deal of time learning about what a service of general interest is and what a service of general economic interest is, and I do not think that it would be right for the Committee to continue in its ignorance on these issues.

Mr Burns: Is my right hon. Friend surprised by the suggestion made by my right hon. Friend the Member for East Yorkshire? The whole point of this Committee is to study the legislation line by line, to improve it where needed. To do that effectively, one has to know what is behind the legislation and the full implications of the Bill.

Mr Arbuthnot: I am entirely with my right hon. Friend. To be fair to my hon. Friend the Member for North East Somerset, that is precisely what he was saying. It was my right hon. Friend the Member for East Yorkshire who was trying to short-circuit.

Jacob Rees-Mogg: There has been understandable confusion between my right hon. Friend the Member for East Yorkshire and me. We are very similar in so many ways and I understand why the Committee may have made that error.

Mr Arbuthnot: I am glad that we have been able to clear up that natural misunderstanding.

I said that I was concerned that the treaties and protocols did not bother to define what they meant. Despite their free and easy use of the words "service of general interest" we have to look elsewhere, and I suggest that we look at this working document. On page 21, it asks:

"What is a service of general interest?"—

rhetorically—well not rhetorically, because it goes on to answer:

"Protocol No. 26 to the TFEU concerns SGIs, but does not define the concept"—

as I think I have just said—

"The Commission has clarified the concept in its Quality Framework".

I know that the Committee would like me to expound at length on the quality framework, but I am going to leave that to somebody else because, while I believe the quality framework is a matter of key importance, I might trespass on the Committee's good will if I spend time on it myself. However, I hope that others will do so. The concept has been clarified in the quality framework, which explains that services of general interest are

"services that public authorities of the Member States at national, regional or local level classify as being of general interest and, therefore, subject to specific public service obligations".

I cannot remember if I commented on public service obligations. I have commented on universal service obligations, but I am not sure that I have dealt with public service obligations in sufficient depth. The term "service of general interest"

> "covers both economic activities (see the definition of SGEI below) and non-economic services".

If the term covers both economic activities and non-economic services—this goes back to article 2 of protocol No. 26—non-economic services are not subject to specific European Union legislation and are not covered by the internal market and competition rules of the treaty—at least, that is what this wonderful working document says:

> "The latter are not subject to specific EU legislation and are not covered by the internal market and competition rules of the Treaty".

Services of general economic interest are covered by the competition rules of the treaty, so we need to look at what a service of general economic interest is. Luckily, the working document tells us.

Jacob Rees-Mogg: My right hon. Friend is referring to the EU working document. Can he tell us what the status of an EU working document is in terms of EU law?

Mr Arbuthnot: I can and I shall. The answer is that it is not part of EU law. It is merely a helpful guide to tourists such as me who wander into Brussels for a bit of light entertainment. The document says right at the beginning:

"This document is a working paper prepared by the Commission's services. It provides technical explanations, in particular on the basis of concise and sometimes simplified summaries of the legislation and case law on state aid, public procurement and the internal market and, in relation to state aid, of Commission decisions on SGEIs and in particular SSGIs"—

that means social services of general interest.

"This document is not binding on the European Commission as an institution."

It is not law, so in these discussions we may have to seek out where the law actually lies.

On services of general economic interest, the working document says:

"The Commission has clarified in its Quality Framework"—

which I hope one of my right hon. and hon. Friends will cover in their contributions—

"that SGEIs are economic activities which deliver outcomes in the overall public good that would not be supplied (or would be supplied under different conditions in terms of objective quality, safety, affordability, equal treatment or universal access) by the market without public intervention."

The document goes on to talk about public service obligations, which I have mentioned briefly. It says:

"A PSO is imposed on the provider by way of an entrustment"—

Committee members will want to know what an entrustment is; they need have no fear, because it is central to the meaning of a public service obligation. Some people equate public service obligations with services of general interest and universal service obligations, but I know that the Committee will not make such a mistake. The document says:

"A PSO is imposed on the provider by way of an entrustment and on the basis of a general interest criterion which ensures that the service is provided under conditions allowing it to fulfil its mission."

The document suggests that an obligation has a mission, which strikes me as a strange use of language. Nevertheless, it is a European document, and we have to make do with whatever we have.

Stephen Metcalfe (South Basildon and East Thurrock) (Con): My right hon. Friend is more experienced in these matters than me, and I have to admit that I am struggling with some of the terminology that he is using. Can he direct me to where I might find some of those definitions? He said:

"A PSO is imposed on the provider by way of an entrustment and on the basis of a general interest criterion which ensures that the service is provided under conditions allowing it to fulfil its mission."

I am completely lost. Can he at least direct me to where I can access his speech so I can understand more about what he said? He is going a little rapidly for me.

Mr Arbuthnot: I am extremely sorry. I am going a little rapidly for me, actually. My hon. Friend will be pleased to know that the question of what is an entrustment is dealt with in paragraph 51 of the working document. I will come on to it in a moment or two, and I hope I will be able to explain it to the Committee.

The definition of a service of general economic interest in the working document continues:

"The Court has established that SGEIs are services that exhibit special characteristics as compared with those of other economic activities"—

that is where we come on to the issues raised in the Altmark case, which we will need to go through. The document says:

"The concept may apply to different situations and terms, depending on the Member States, and EU law does not create any obligation to designate formally a task or a service as being of general economic interest, except when such obligation is laid out in Union legislation".

[Mr Arbuthnot]

I point out briefly that there is no requirement, according to this working document which, as my hon. Friend the Member for North East Somerset points out, is not law, for the national health service to be designated a service of general economic interest if it already is one. If there is no requirement for the national health service to be designated a service of general economic interest, that raises the question of whether clause 1 is necessary at all. The hon. Member for Eltham need have no concern; we will come on to that.

3 pm

The Parliamentary Under-Secretary of State for Health (Dr Daniel Poulter): To pick up on my right hon. Friend's important point, does he agree that by defining this as being of general economic interest we open up the NHS and how we fund it to challenge under European law?

Mr Arbuthnot: Indeed. The Minister knows, as I hope I have said enough times, a great deal more about this than I do—that would not be difficult. I hope that he will cover that point in his own speech, because it is of extreme importance in whether we agree that the clause should stand part of the Bill.

In this definition patch of the working document the authors go on to define a social service of general interest. It is clear that the terms "service of general economic interest" and "social service of general interest" are not mutually exclusive and there can be overlap between the two. The working document says that social services of general interest that are economic in nature are services of general economic interest. I do not need, I think, to read out the precise definition of a social service of general interest because what is important for the purposes of the clause is a service of general economic interest.

Jacob Rees-Mogg: I am sorry to press my right hon. Friend on definitions of social general interest and economic interest. In the health service, are we using the word "economic" in its normal context, or are we simply saying that anything that has a cost is automatically economic?

Mr Arbuthnot: Oh dear, my hon. Friend once again plumbs the depths of my knowledge, or my ignorance. I hope that the Minister will be able to explain this to the Committee better than I can. What we are doing in clause 1 is asserting that the national health service is a social service of general interest, which is economic in nature. The question is, can that really be true? The next question is, can we ensure that that is so by statute?

I was troubled over lunch by my hon. Friend's intervention as to whether the national health service was indeed an economic service. I scouted about a bit and I discovered a paper on competition law from the Office of Fair Trading which came out in December 2004 entitled "Services of general economic interest exclusion: Understanding competition law". Paragraph 2.4 states:

"A public sector body will be considered to be an undertaking in so far as it carries out economic activities."

The Chair: Order. I am sorry to interrupt the right hon. Gentleman. I want to make the Committee aware that because we are having an extensive debate on the amendments, and because more amendments have been tabled since the Committee began to sit, I am not going to have a separate stand part debate afterwards. I thought that would be useful for the Committee to know.

Mr Arbuthnot: That is indeed useful to know, Mr Bone, because it means that we can perhaps range a bit wider and discuss not merely the amendments that are before the Committee at the moment.

Paragraph 2.5 of the OFT paper states:

"When assessing whether the provision of state services is economic in nature or relates to non-economic administrative or social functions, the OFT will, while taking into account the particular circumstances of each case, consider how the characteristics of the service provided by the state meet the general principles established by the relevant EC jurisprudence."

We come to the key part of the article in paragraph 2.6. To a certain extent, it pertains to the issue that my hon. Friend the Member for North East Somerset raised in his intervention this morning when he asked how the national health service can be considered an economic service. Paragraph 2.6 states:

"An entity does not engage in economic activity simply through buying goods or services; the buying must be considered in conjunction with the end use of the goods or services bought. For example, an entity buying goods or services to advance a purely social activity is unlikely to be engaging in economic activity. Equally, the supply of goods or services in the execution of an exclusively social function (such as the provision of health services on a non-profit making basis on the principle of solidarity"—

that is where we are with the clause—

"where the entitlement to services is not dependent on the amount of contributions) is unlikely to be an economic activity."

That is where we were in December 2004. Paragraph 2.7 states:

"The policy of successive UK governments has been to expose the activity of parts of the public sector to competition or economic regulation, sometimes coupled with privatisation. It is therefore possible that, over time, functions that may once have been considered to be exclusively administrative or social will come to be regarded as economic."

I think that is where the hon. Member for Eltham is coming from.

Jacob Rees-Mogg: I am grateful for that revelation. I think my right hon. Friend is saying that, with the Bill, the Labour party is planning to privatise the national health service. That is what the clause would do.

Mr Arbuthnot: I am sure that my hon. Friend does not want to run away with himself.

My understanding of what the hon. Member for Eltham is trying to do is as follows. When the Bill states that the Secretary of State must

"ensure that the health service is a public service which delivers services of general economic interest",

the hon. Gentleman is not trying to ensure that the health service is a non-economic service, and therefore not subject to the internal market and competition rules of the treaty. On the contrary, he is trying to ensure that it is an economic service that is covered by the internal market and competition rules but which, for reasons to do with social solidarity, will be exempted from them. I hope I have got that right.

The hon. Member for Eltham is nodding sagely; I am relieved, because it suggests that I have.

The House of Commons Library briefing on this issue says:

"The reference to social solidarity in clause 1(2)(b) is, in conjunction with other measures in the Bill, an attempt to exempt the NHS from EU competition law."

The footnote to that briefing reads:

"If it is established that a service is organized under principles of social solidarity then this is one factor that could be used to argue that an organisation is an undertaking engaged in a social rather than an economic activity—and therefore EU competition law could be held not to apply."

It continues:

"However, this is a complex area and a more detailed discussion of EU competition law and health policy, including an account of relevant case law – can be found in chapter 8 of *Health Systems Governance in Europe: The Role of European Union Law and Policy* (Edited by Mossialos E, et al., Cambridge University Press, 2010)."

The Committee will be relieved to hear that I have that chapter about my person. I do not intend to read it all, but on page 346, it says:

"Analysis regarding how competition law could apply to trusts in England's NHS is an open question worth further study."

In the Bill we are attempting to enact something that could be used to argue that an organisation is an undertaking engaged in a social, rather than an economic activity. Therefore, EU competition could be held not to apply, but this is a complex area and it is worth further study. If we are going to enact the legislation, the Committee will wish to give it further study; otherwise, it will not be doing its duty. We will need to go into the issue.

Is the working document—this goes to the point raised by my hon. Friend the Member for North East Somerset—correct in the way in which it describes EU law? We will have to look at that. I do not need to say again that the working document is not law. If it is correct—let us assume for these purposes that it is—can the Bill succeed in placing an obligation on the Secretary of State to ensure that the health service is a service of general economic interest? What would happen if it did? Chapter 8 continues on page 366:

"If Member States were to declare that all health services qualified as SGEI, would health systems enjoy a blanket exemption from competition law? Thus far, the Court has not provided a clear answer."

We have to provide, in this Committee, a clear answer. The hon. Member for Eltham is understandably concerned that this is taking some time, but we will have to do things that, so far, the courts have failed to do, the Library has failed to clarify, and that the working document deals with in undefined ways.

Jacob Rees-Mogg: My right hon. Friend has raised a profound point. If the courts have not adjudicated on the issue of a declaration of the health service being of general economic interest and taking it outside general competition law, we could pass—without his amendment—a clause that would require the Secretary of State to do something unlawful under EU law which, under the European Communities Act 1972, trumps our domestic law.

Mr Arbuthnot: My hon. Friend is right. I wonder whether that is a two-edged sword. If such a provision were unlawful and trumped by the 1972 legislation, that might make it null and void. I think we ought to be wary of passing legislation that is null and void, particularly when we have the opportunity to consider it in the light of the learning I have talked about.

Jacob Rees-Mogg: I am indebted to my right hon. Friend. Does he think it might be sensible to get counsel's opinion? Possibly his learned wife might be able to provide us with a learned opinion on the situation.

3.15 pm

Mr Arbuthnot: My wife would not thank me or my hon. Friend for such a suggestion. I certainly think it is necessary at this point, given what my hon. Friend has said about getting counsel's opinion, to interject a completely different issue. It has become clear that the insertion of these phrases into our statutes in the way proposed by the hon. Member for Eltham is ambitious. I shall come on to the reasons it is questionable and unwise. What is utterly apparent is that a private Member's Bill is not an appropriate vehicle in which to do it.

Sir Greg Knight: I do not share my right hon. Friend's criticism of the hon. Member for Eltham for being ambitious. I think everyone in this building should seek to be ambitious in what they do. I take my right hon. Friend back to what he said. Is he telling us that if a British Government, of whatever political persuasion, issued a declaration that the national health service was a service of general economic interest that that would be it and that the European Commission would accept that as a statement of fact, or would it be able to look behind it and question it?

Mr Arbuthnot: There are two points arising from that helpful intervention. First, I did not criticise the hon. Member for Eltham for being ambitious. I am proud of Members of Parliament who come to this place with a high degree of ambition. He is doing his job very effectively. "Ambitious" is not a dirty word for me; I think he is doing quite the right thing.

I want to come back to the second point raised by my right hon. Friend the Member for East Yorkshire. If the national health service were declared to be a service of general economic interest, then yes, the European Commission would certainly be able to look behind it. Chapter 8 says that thus far the court has not provided a clear answer, so we do not know.

To be fair to the hon. Member for Eltham, he is not, in clause 1, declaring that the national health service is a service of general economic interest. He is doing something subtly different; he is placing a duty on the Secretary of State to ensure that it is a service of general economic interest. That is a different concept. It is a wholly understandable concept, although I think it is misguided and wrong.

Jacob Rees-Mogg: I was troubled about the hon. Member for Eltham being accused of being ambitious. I recall that Brutus said that Caesar was ambitious and that all ended nastily. I do not see the hon. Gentleman as a tyrant in the way that Caesar was.

Mr Arbuthnot: Indeed. I was saying that a private Member's Bill is not an appropriate vehicle for such an ambitious undertaking as we have here. If we pass this clause, we are introducing a series of concepts without the possibility of taking oral evidence, without counsel's opinion—as my hon. Friend the Member for North East Somerset proposes—without any idea of precisely what would happen if we introduced these concepts, and without the protection of a money resolution in the final month of this Parliament. Those points alone are an argument for accepting my amendment to omit those particular provisions. They are not procedural points; they relate to our understanding of what we are trying to achieve in this clause. To do anything other than pass these amendments would run the risk of being reckless with community law and with our national health service. I know that the hon. Member for Eltham would not wish to do that.

I said that we would need to go into the law underlying the working document. I hope Members will forgive me if I say that in order for the Committee to understand precisely what it is I am about to say, we will need to have in the back of our minds the terms of articles 106, 107 and 108 of the treaty on the functioning of the European Union. I shall not read all of those articles; I shall simply read a small, relevant part of each. Article 106 (2) reads:

"Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union."

Article 107 (1) says:

"Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."

Article 108 (1) and (2) read:

"The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States…If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid".

Those are draconian powers.

A few moments ago, I said that the European Union had been struggling with the question of how its state aid rules applied to the way in which services of general economic interest could be organised and financed by public authorities in member states. How great that struggle had become is rather well set out in Dr Sanchez Rydelski's book, "The EC State Aid Regime: Distortive Effects of State Aid on Competition Trade". On page 55, Dr Rydelski sets out how the European Union came to be where it now is, particularly how it came to, and then reacted to, what is commonly known as the Altmark case—Altmark Trans GmbH—which was a landmark case. He traces the origin of the phrase,

"services of general economic interest".

Without an understanding of how the European Union got there, we as a Committee will not be able to make a properly informed decision on whether to leave the words in or to take them out.

On page 55, Dr Rydelski states:

"When the Court of Justice of the European Communities... handed down its judgment"

in the Altmark case,

"it put an end to an almost 20 year old debate on how Member States' compensation for the costs associated with the fulfilment of public service obligations should be treated under European State aid law. A proper analysis of the role this ruling plays in the State aid surveillance exercised by the European Commission....—pursuant to the jurisprudence on the direct effect of Article 88(3), third sentence... in national law—by the Member States' courts"

requires—

"a brief outline of the development of the Community Courts' jurisprudence since the mid 1980s."

Article 88(3) states:

"The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision."

Dr Rydelski goes on:

"Within a time span of a little less than 20 years the Luxembourg Courts gave, all in all, three different answers to the material question of how compensations, granted by the Member States in return for the fulfilment of a public service obligation, should be treated under Article 87(1)"

of the European Community treaty. That article is now article 107 of the treaty on the functioning of the European Union. I shall not read that out again, because I suspect that members of the Committee might lose the will to live. I shall not read the next couple of pages of that book; I will simply summarise them. Dr Rydelski says that there were three different answers to the material question of how compensation should be treated.

The first answer given by the European court was given in the ruling in a case called ADBHU in around 1984. The European Court of Justice in essence agreed with Advocate General Lenz that

"as long as the indemnities granted out of a public fund did not exceed annual uncovered costs actually recorded by the undertaking, taking into account a reasonable profit, no economic advantage...could be present."

The second answer—I hope the Committee is keeping up with this, because it is quite important—

Mr Burns: I am sorry to interrupt my right hon. Friend, but may I seek guidance from him, as he is a lawyer? He talked about a case in 1984. Given the development of the single market from 1986-7 onwards and changes in competition law in the EU over the past two decades, are those cases still relevant today or have they been overtaken by events in the development of competition law in the EU?

Mr Arbuthnot: Again, my right hon. Friend has clearly been reading my speech. One would think that this case was no longer relevant, because of those developments in law, but for the fact that in the third answer that Dr Rydelski mentions in his book, the European Court of Justice reverted to the ADBHU case of 1984 and said that the second answer was wrong. My right hon. Friend anticipated the second answer. In the late 1990s—subsequent to the developments that my right hon. Friend is talking about—two judgments were given in

courts of first instance, rather than the European Court of Justice. These were that financial benefits granted by member states merely to compensate for the additional burden incurred by discharging the costs connected with public service obligations did in fact fall under the provision laid down by article 87(1), but could be declared compatible with the Common Market under the derogation provided by article 86(2). The result was the same as in the 1984 case, but a different route was taken.

3.30 pm

The Commission changed its practice as a result of that different route. As my right hon. Friend the Member for Chelmsford presaged in his intervention, then came the third answer in 2001 in the Ferring case. The European Court of Justice did not even quote the 1990s judgment, and restored the finding of the 1984 case. This, apparently, caused consternation. Speaking as a British lawyer, I am not quite sure why it caused consternation. This is not an area of law in which I am an expert in any sense. Frankly, there are not many of those now that I have been so long away from practice at the Bar.

My own view is that if a court of first instance decides not to follow a decision of the European Court of Justice, as happened in the 1990s cases, it will hardly be surprising if the European Court of Justice then ignores the court of first instance when the matter comes back before it, as it did. However, there was general consternation. If I were to criticise the book by Rydelski, I would question whether he was quite right to say that three different answers were given in the space of 20 years. It seems rather more like two different answers, followed by a reversion to the first answer, but perhaps I am being pedantic.

The 2001 Ferring case was decided after the oral argument had closed in the Altmark case. There was a lot of heavy criticism of the Ferring case—I referred to consternation—and as a result of that criticism the arguments in the Altmark case were reopened. There was then a battle royal. Some lawyers and some countries supported the ADBHU and Ferring cases, which they described as the "net" concept. Others argued that to treat public service obligations as being outside the remit of state aid rules would be to drive a coach and horses through those rules, and there needed to be a "gross" concept. I can see that my hon. Friend the Member for North East Somerset is clinging very tightly to the intricacies of these arguments.

Those supporting the Ferring case said that there could be no aid in cases where the state simply reimbursed the normal market price of the services of general economic interest which it provided, because that was very similar to those cases where the state simply bought goods and the remuneration paid was no higher than the market price. They said that if the other side—the "gross" side—won, the result would be that every single compensatory measure would have to be notified to the European Commission, which they said would be absurd.

The other side said, first, that the actions of a public authority could sensibly be compared with those of a private market operator only if the intervention by the state had an economic character. Here we come back to the intervention by my hon. Friend the Member for North East Somerset. That side's second point was that the financing of public services was an activity that typically fell within the exercise of public powers, because one could not really imagine a private operator embarking on such a financing activity on its own initiative. They said that if the European Union adopted the Ferring approach—the "net" concept—in practice nobody would know whether any given measure needed to be notified. That would be absurd. To my genuine shame, I have no idea on which side the United Kingdom found itself in this battle royal. Perhaps we were trying to defend the national health service from depredations of something or other, but I hope that the Minister can tell the Committee which side we were on in the run-up to the Altmark case and why. My hon. Friend the Minister knows far more about these matters than me; I am a tourist in these areas and am able only to flit lightly on the surface of this difficult and complicated area of law, leaping from lily pad to lily pad. I hope that my hon. Friend the Minister can go into it in the depth that it deserves so that we know exactly on what we are legislating.

I have rather shortened these arguments. I suspect that each of them took days, if not weeks or months. They sound a bit like the battle between the Big-enders and the Little-enders in "Gulliver's Travels", but they did have some importance because as a result of the change produced by the second answer—going from the "net" concept to the "gross" concept—there were substantial changes in the Commission's practices. Packages of state aid, for example, to state-aided public broadcasters in several parts of the European Union, were suddenly declared illegal. So these things did matter.

At the end of this epic struggle there was a compromise route—the Altmark case—on which the law of today is founded. The facts of that case are that a competitor sought the annulment of licences granted to the Altmark company to provide regional transport services because Altmark had shown that the routes on which it was providing those services had a loss of just over half a Deutschmark per kilometre, and it received compensation for this negative return. The competitor argued that these were illegal subsidies to provide services and that the licences were therefore illegal under German law.

Jacob Rees-Mogg: My right hon. Friend is taking us through an extraordinarily interesting area of public law. In the case to which he refers and in terms of its application to the national health service, does it require a complainant to object that the payment by the state is in breach of European law, or would it be a matter for the Commission to enforce? Does that bring us into the area of procurement and the effect that might have under these issues of competition?

Mr Arbuthnot: That is an interesting and important question. I have been a bit flippant from time to time during the course of these few short remarks and I do not know the answer. I hope that at some stage of the discussion, someone will be able to answer that question.

Jacob Rees-Mogg: I hope that somebody will because it goes to the heart of what is happening. If the clause suddenly brings the national health service under EU competition law and requires differences in procurement procedures between national health service hospitals owned and run by the Government and hospitals owned and run by other service providers, it could be fundamental to the future of the health service.

Mr Arbuthnot: My hon. Friend is right. If he is right in his assessment of what could happen, the safest thing for us to do is to accept the amendment and leave out the two paragraphs.

The national judges in the Altmark case asked the Court to decide whether compensation received by Altmark for providing these transport services contained illegal state aid under articles 73 or 87 of the European Community treaty, which are now articles 93 and 107 of the treaty on the functioning of the European Union.

I needed to tell you those facts, Mr Bone, because it could be argued that a transport case is different from a health one—and indeed it is, because transport services have several different articles devoted to them, specifically in the treaty on the functioning of the European Union, including articles 73 and 79. I shall not—you will be relieved to hear, Mr Bone—take the Committee through those, unless anybody insists that I do. The generally accepted view is that what was said in Altmark can be taken as the basis of the law on all services of general economic interest. The decision of the European Court of Justice in Altmark apparently also caused consternation. There were lots of astonished lawyers all over the place—I think that they ought to get a grip, frankly.

First, the European Court of Justice endorsed the net concept as laid down in that 1983 or 1984 case, ADBHU, which is answer No. 1, and the Ferring case, which is answer No. 3, but it also denied the presence of aid in compensation mechanisms only where all four conditions were met. In other words, it held that public service compensation did not constitute state aid within the meaning of article 107 of the treaty on the functioning of the European Union—which I have read and shall not read again—provided that: first, there is a clear definition of the public services to be discharged; secondly, the establishment of how the compensation is calculated should be done in advance, clearly and transparently; thirdly, there must be strict adherence to the principle of proportionality, meaning that the compensation should not exceed what is necessary to cover the costs incurred in the discharge of the public service obligation, taking into account the relevant receipts and a reasonable profit; and fourthly, the person or body intended to carry out the obligations should be chosen by a public procurement procedure or, if that is not to happen, the compensation should be limited to the costs that a typical undertaking, well run and adequately provided with the means to fulfil the public service, would incur in discharging those duties.

As Dr Sanchez Rydelski says in his book:

"Hardly any ruling in the area of European state aid control has ever triggered such an avalanche of comments in legal literature",

including, of course, his own comments. I hope that the hon. Member for Eltham will forgive me for saying that it is only right, given the "avalanche of comments" that followed the Altmark case, that we should, in deciding what we are going to legislate about, consider these issues in some detail.

Jacob Rees-Mogg: Before my right hon. Friend moves on from those important four points, the question that must arise is: how do we determine a fair price in a system that does not have any external competition and may have only a single supplier?

3.45 pm

Mr Arbuthnot: I shall come on to that. Let us assume that the Altmark furore has died down and that the commenting lawyers have gone back to earning their money and that the law has remained the same since the Altmark case. The working document produced in 2013 suggests that it has remained the same; after all that back and forth, it is probably a good thing too. However, if we want the national health service to be a service of general economic interest, does it meet the four Altmark criteria? That goes back to the question asked by my hon. Friend the Member for North East Somerset, because if it does meet the criteria, I suggest that it is already a service of general economic interest, and the words in the clause are therefore unnecessary. It is a settled principle of legislation that if the law already provides for something, it is confusing, duplicating, superfluous and complicating—and therefore expensive—to say it again.

If the national health service does not meet the four Altmark criteria, what good are the words in the clause? How much better it would be, would it not—you do not have to answer that, Mr Bone; it is a rhetorical question—to provide in legislation specifically for each of the criteria. It is much better for the Secretary of State to be given a clear set of duties than to be told, "You must produce a service of general economic interest," or, "You must be socially solid." Apologies; that was another joke. However, we have not come to that.

Jacob Rees-Mogg: While my right hon. Friend is still on that point, there is an obvious easy way of making the amendment function, which is to insert the words "notwithstanding the European Communities Act 1972". Then it would be a superior law and would override the ability of the judges in the Court of Justice of the European Union to strike it down.

Mr Arbuthnot: Crikey, would it? Would that work? My hon. Friend blithely says that that would override the 1972 Act; I am not sure.

Jacob Rees-Mogg: It would in terms of UK law at least; it might not in terms of EU law, but EU law applies in the UK only because of the European Communities Act 1972, as we reconfirmed it in the European Union Act 2011.

Mr Arbuthnot: Rather than agreeing automatically, as I am ordinarily tempted to do, with my hon. Friend, who knows so much more about these issues than I do, I shall simply say that I hear what he says and am interested in it, and I wonder whether it might not be simpler to accept my amendment and for him to add paragraphs (b) or (c). That would be a neat way of achieving what my hon. Friend wants without having the national health service dragged through the European courts in some great battle over the 1972 Act.

By the way, I apologise to my hon. Friend for saying that being socially solid was a joke, but it was because I cannot work out what adjective would arise out of the word "solidarity". I think he knows what I mean, but if anybody can enlighten me as to what it would be, I would be extremely grateful. Having said that, I will leave it as a piece of homework for the Committee. I would like to go through whether the national health service actually meets the Altmark criteria.

Sir Greg Knight: Has the promoter of the Bill given my right hon. Friend any indication in the margins of the Committee whether he is minded to accept any of these amendments?

Mr Arbuthnot: I do not think that the promoter of the Bill is particularly keen at the moment to speak to me at all. I have not received such an indication, but I am always willing to give way to the hon. Member for Eltham, for whom I have such a high regard.

Clive Efford: You are doing all right on your own.

The Chair: I would be minded to suspend the sitting for a short while if that would be helpful to the Committee in obtaining some agreement whether amendments could be accepted.

Mr Arbuthnot: I suspect that if the hon. Member for Eltham were to accept my amendment 1, clause 2, which deals with the regulations that clause 1 would require, might need to fall. It is perfectly possible that other provisions would go tumbling down like a pack of cards. I am content for the hon. Gentleman simply to accept my amendment, but I suspect that it goes to the heart of his Bill.

Mr Burns: May I seek clarification on the deal my right hon. Friend seeks to negotiate with the hon. Member for Eltham? Is he talking about a suspension for the rest of the day or just a tea break?

Mr Arbuthnot: My right hon. Friend suggests—

Clive Efford: I can bring to a close the discussion about adjourning to negotiate. There is no way I would accept amendment 1, so perhaps we can get back to the substance of the amendments.

Mr Arbuthnot: Indeed—

Mr Burns: Will my right hon. Friend give way?

Mr Arbuthnot: I cannot give way because I just need to answer that point; then I will come back to my right hon. Friend. I am extremely grateful for that clear statement of intent from the hon. Member for Eltham, which is what I expected.

Mr Burns: As we are using my right hon. Friend as a conduit for negotiations with the hon. Member for Eltham, are there any other amendments that he might accept in lieu of amendment 1?

Mr Arbuthnot: No doubt he will make that clear in his remarks on the amendments and clause stand part, but I have had no indication about it.

I want to consider whether the NHS meets the criteria from the Altmark case. First, a clear definition of the public services to be discharged is needed, and that brings up the question of what an entrustment is. I told the Committee it would need to get on top of that definition, and hon. Members will see why. I apologise for giving my hon. Friend the Member for South Basildon and East Thurrock the wrong information before, when I gave the paragraph number as 51; that relates to the European Union communication. Paragraph 46 of the working document states:

"An act of entrustment (see Communication para. 51 et seq.) is the act which entrusts the provision of an SGEI to the undertaking concerned and spells out the nature of the task as well as the scope and the general operational conditions of the SGEI. A public service assignment is necessary in order to define the obligations of the undertaking and of the State. In the absence of such an act, the specific task of the undertaking is unknown and fair compensation cannot be determined."

I am pretty clear—as is, I believe, everyone in the country—about what the NHS does, offers and is. It provides a comprehensive range of health services to everyone entitled to them—those legally resident here—and the great majority of the services are free at the point of delivery.

Sir Greg Knight: The Chair has been kind enough to say that we can have a clause stand part debate. My right hon. Friend just touched on something that bothers me about clause 1. Subsection (1) says:

"The Secretary of State must continue the promotion in England of a comprehensive health service designed to secure improvement…in the physical and mental health of the people of England".

However, we have no definition of the phrase "the people of England". My right hon. Friend said he takes it to mean people who are here lawfully, but it might go wider than that, to include people who should not be here at all.

Mr Arbuthnot: My right hon. Friend is correct, and I would hope that those who are not allowed to be here at all would, at the very least, be charged for services they accepted under the national health service.

Mr Burns: Perhaps I can help my right hon. Friend. The wording in the Bill is a direct repetition of that in clause 1(1)(a) of the Health and Social Care Act 2012, and I can confirm that it means the people of England who are eligible for free health care.

Mr Arbuthnot: I am grateful to my right hon. Friend, who knows so much more about this than me, as the Minister who took the Health and Social Care Bill through the House. I hope that what he says means that the national health service will be able to recover the costs of giving health care to those who are not entitled to it. The national health service is an excellent thing.

Mr Burns: Amendment 49, which was tabled by my hon. Friend the Member for North East Somerset, is crucial, because it deals specifically with this important issue.

Mr Arbuthnot: I am glad the issue will be dealt with.

I said everyone was pretty clear about what the national health service was, but I want to exclude the hon. Member for Eltham from that. That is because he got a bit carried away during his barnstorming Second Reading speech. At one stage, he said:

"To defend the NHS, one has to believe in the founding values that led to its creation. Our NHS treats everyone equally—from each according to their means, to each according to their needs."—[*Official Report*, 21 November 2014; Vol. 588, c. 547.]

[Mr Arbuthnot]

Actually, no, the national health service was founded on the principle not of each according to their needs, but of being available to everybody free, and that's the way we like it.

However, that does not deal with the important issue of whether what the Government do in their contracts with providers is adequate to meet the first Altmark criterion. Paragraph 47 of the working document asks:

"What types of acts of entrustment are considered to be adequate?"

We then discover that everything is pretty flexible. Paragraph 47 says:

"An entrustment in the sense of Article 106(2) TFEU"—

the treaty on the functioning of the European Union—

"and in the sense of the Altmark judgment only requires that the act of entrustment take the form of one or more acts having binding legal force under national law. The specific form of the act (or acts) may be determined by each Member State, depending among other things on its political and/or administrative organisation."

I therefore deem that the national health service meets the first Altmark criterion.

The second criterion is that the way in which the compensation is calculated—the question my hon. Friend the Member for North East Somerset raised—should be established in advance in a clear and transparent manner. We could argue that the Labour Government's catastrophic renegotiation of GPs' contracts failed that test. Leaving that aside, however, we know how the national health service is paid for, and it is all pretty clear and transparent.

4 pm

The third criterion is that there must strict adherence to the principle of proportionality: that is, the compensation should not exceed what is necessary to cover the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit. Again, one could argue that the renegotiation of GPs' contracts failed that test, but I do not suppose that the hon. Member for Eltham will be relying heavily on that argument.

Setting that aside for a moment, the example given in the working document of a service of general economic interest not being overcompensated arose in relation to the subsidies given in France to the financing of broadband infrastructure. We wondered how the French had such good broadband, and now we have discovered. It was decided to be okay in France, because the parameters for calculating compensation were precisely defined in the operators' business plans, and those plans were based on the specific data provided by the public authority.

Another reason why there was no risk of overcompensation in that case was that the public authority had required the operators who were to provide the service to set up an ad hoc company for that purpose, which would guarantee the neutrality of the service provider concerned. There were "better fortune" clauses as well, in case profits rose above a given level. All in all, I deem that we meet the third criterion of the Altmark case.

Clive Efford: Does not the Altmark case deal with state aid? It does not pertain to the NHS at all; the right hon. Gentleman is talking about something completely irrelevant. Under article 167, Altmark does not apply to the NHS.

Mr Arbuthnot: My understanding is that it does apply to the NHS, and that the criteria are very important to the way—

Clive Efford: The right hon. Gentleman is wrong, because Altmark refers to state aid to private companies. For instance, if the Government wanted to give money to Rover to build cars, the Altmark ruling would certainly apply, but it does not apply to the national health service. He is just filibustering.

Mr Arbuthnot: The hon. Gentleman and I are getting on so well—at least, I am getting on well with him—but I do not think that he is right about that.

Dr Poulter *rose—*

Mr Arbuthnot: My hon. Friend the Minister might disagree with the hon. Gentleman as well.

Dr Poulter: My right hon. Friend is making an important speech. Ever since 1948, the NHS has been a public-private partnership. GPs are small businesses in their own right; increasingly under the previous Government, private providers were involved in the NHS; and small and medium-sized businesses have always been engaged in the NHS supply chain, providing medical devices. I am sure that my right hon. Friend is right to highlight the fact that Altmark is an important judgment.

Mr Arbuthnot: I am grateful to my hon. Friend. That also relates to the point made by my hon. Friend the Member for North East Somerset about whether this is an economic issue. I am relieved to hear that I may be on the right track.

Mr Burns: I am sure that my right hon. Friend is also aware that a capital project funded by the Department of Health—for example, spending £35 million on a maternity scheme—could be considered Government state aid.

Mr Arbuthnot: Indeed it could. I will come to something else that relates to directive 2004/18/EC, that is also relevant, and that I hope will dispel the uncertainty that the hon. Member for Eltham might have caused in the minds of some Committee members. Before I do, however, I will discuss the fourth criterion. I still feel wounded by the charge of filibustering.

Mr Burns: Apologise!

Clive Efford: I have been asked to apologise; I am happy to, if the right hon. Gentleman can mention anything that makes the Altmark rulings relevant to this Bill.

Mr Arbuthnot: Although my hon. Friend the Member for North East Somerset and my right hon. Friend the Member for Chelmsford have both done so, I will also do so in just a moment, but first I want to get on to the fourth criterion under the Altmark case. I shall not be too long on this. The person or body intended to carry

out the obligations should be chosen by a public procurement procedure. My understanding is that in the national health service that is exactly what happens. Someone does not become a health care provider in this country because he is the brother of the Prime Minister.

There are also, according to the working document, which I tend to regard as pretty authoritative on this subject, separate rules under the Altmark case for health services. According to the working document, if the value of the contract exceeds a certain value, which triggers the application of the directive that I just referred to, the public service contracts will fall within the scope of the directive, but under article 21 of the directive, health and social services contracts are not subject to all the detailed rules of the directive. Only a very small number of its articles apply. Those require, in particular, that the technical specifications be laid down in accordance with the directive at the start of the procurement process, and that the results of the award procedure be published. The public authorities must also comply with the basic principles of the treaty on the functioning of the European Union, such as the transparency requirement and the obligation to treat economic operators equally, without discrimination.

My conclusion from all that is that if we want it to, the national health service already meets the Altmark criteria in spades—if that is an appropriate way of putting it—and if it does not meet the criteria, this clause is the wrong way to go about it. That is as much as I want to say about services of general economic interest. I apologise for having done no more than touch the surface of the complicated issues that the subject raises, but there are two more things that I need—

Jacob Rees-Mogg: Before my right hon. Friend moves on, could he say a little more on the case in relation to French broadband? The pricing mechanism used is of direct relevance to the national health service, because it seemed to be giving the provider of state aid enormous flexibility to determine the price. Does he think that that is likely to remain as flexible as it is?

Mr Arbuthnot: Who am I to second-guess the rulings on this issue of huge complication, when the people who wrote the articles that I have referred to say that the matter is unclear, and when chapter 8 of the document referred to in the Library's briefing says that it is uncertain? I do not know whether this will lead to changes in European Community law. I might have to look into that in the next few days.

I was saying that I needed to cover two more things. The first is this business of social solidarity and how it works, and the second is the requirement to provide for effective co-operation. Let us not forget that the draftsman of the Bill, skilled as he or she is, is requiring the Secretary of State both to act in relation to producing services of general economic interest, and to base his activities on social solidarity.

At an earlier stage of our proceedings, my hon. Friend the Member for North East Somerset referred to Scylla and Charybdis—incidentally he pronounced the "Ch" in Charybdis as in "watch", rather than in "loch". I wondered why; if he was going to do that, he might as well have pronounced "Scylla" as in "scullery", but he did not. What use, I ask rhetorically, would Scylla have been without Charybdis, or Charybdis without Scylla? Without the other, they would not have formed much of the basis of a legend, so they would have been about as much use as a chocolate teapot.

If the Secretary of State successfully works out what these clauses mean, and he does indeed produce services of general economic interest, but fails to base his actions on social solidarity—or even if he somehow did it the other way round and was socially solid all over the place but failed to be economically interesting—he, too, would be a chocolate teapot and would have let down the hon. Member for Eltham. I hope I am carrying the Committee and even the hon. Gentleman with me when I say that we must not let that happen.

Again, as with services of general economic interest, quite a bit has been written about social solidarity—not perhaps as much as about services of general economic interest, but quite a lot.

Clive Efford: Does the right hon. Gentleman have something to add about social solidarity, because I seem to recall him talking for over an hour about it this morning?

Mr Arbuthnot: Oh yes I have, because I did not refer to social solidarity in the context of European Union law and say why it affects European Union law. An article has been written by Professor Hervey, now the Jean Monnet professor of European Union law at the university of Sheffield school of law. When she was at the university of Nottingham, she wrote an article entitled "'Social Solidarity': a buttress against internal market law?" I need to explain how the issue of social solidarity ties into the issue of services of general economic interest. Clearly, Professor Hervey is a real expert on European Union law, in so far as it applies to health care and probably everything else as well—for all I know, she may be a fervent supporter of the Bill of the hon. Member for Eltham. All I am doing is praying in aid her expertise on the purpose of these two words in this Bill—"social solidarity". In her article, produced at the university of Nottingham, she summarises it as follows:

> "Recently the Court has begun to deal more explicitly with the potential problems which the supremacy of internal market law, reinforced by individual litigation, may pose for national social welfare systems. The Court has done so through articulating the principle of 'social solidarity', according to which restrictions on internal market law may be justified. The paper will consider whether 'social solidarity', as conceived by the Court, is an effective means of protecting social policy entitlements within the EU's multi-level system of governance."

This morning, I was giving the Committee the original provenance of the words "social solidarity" in relation to sociology. I now need to tie that concept into the European Community law that gave rise to the principle of services of general economic interest. In her introduction to the paper, on page 3, the professor appears to quote with some approval the words of Advocate-General Fennelly in the Sodemare case. He dealt with the thorny issue of what the words "social solidarity" mean.

4.15 pm

Sir Greg Knight: The promoter of the Bill has made it clear already that he will not accept amendment 1, but my right hon. Friend seems to be making a case for a definitions clause, in which all such matters could be resolved beyond peradventure.

Mr Arbuthnot: My right hon. Friend might want to table that, and it might solve some problems, but I hope—I may fail—I shall persuade him that the better course would be to omit the two subsections.

Advocate-General Fennelly says that

"the existence of systems of social provision established by Member States on the basis of the principle of solidarity does not constitute, as such, an economic activity"—

that is an important thing—

"so that any inherently consequent restriction on the free movement of goods, services or persons does not attract the application of Treaty provisions. Social solidarity envisages the inherently uncommercial act of involuntary subsidization of one social group by another. Rules closely connected with financing such schemes are more likely to escape the reach of the Treaty provisions on establishment and services. Thus, pursuit of social objectives on the basis of solidarity may lead Member States to withdraw all or part of the operations of social security schemes from access by private economic operators."

Professor Hervey goes into the case law in detail, considering whether member states' Governments will make a legislative response, which might be mediated through EU institutions, in particular the Council of Ministers.

At our last sitting, a couple of weeks ago, my hon. Friend the Member for North East Somerset said he thought Erasmus might have had something to say about social solidarity. He might well have done, but unlike my hon. Friend, I was not there to hear it. He will be pleased to know that whether or not Erasmus had something to say about it, according to Professor Hervey's example, the issues raised in relation to social solidarity have something to say about Erasmus—the scheme aimed at controlling the movement of European Union students within the EU, through the setting up of voluntary networks of educational establishments governed by bilateral or multilateral agreement. So Erasmus does have a part in our deliberations on the Bill—or did, as it is now called the Socrates scheme. I hope that my hon. Friend the Member for North East Somerset can enlighten us as to whether Socrates had anything to say about social solidarity, but I cannot.

Professor Hervey concludes her article by saying that if a European welfare model that can be protected is to be created, the concept of social solidarity must be more firmly articulated and embedded in the European Union's legal order.

Jacob Rees-Mogg: Is bringing social solidarity into the legal order a way of making it possible for member states to get round some of the regulations introduced by the European Union? They might say, "We can't do this because we have social solidarity." Is it weakening efforts to create a single market?

Mr Arbuthnot: My suspicion is that the aim is to strengthen the single market, but to allow sufficient flexibility within that market for operations such as the national health service to operate within the European Union. I have not considered that in the depth that I would have liked to have done in order to give a good answer to my hon. Friend. Perhaps that is something that some of my hon. and right hon. Friends might be able to consider. It is possible.

I said that social solidarity was a concept that must be more firmly articulated and embedded within the European Union's legal order. It is possible that, in his attempt to legislate, the hon. Member for Eltham is intending to do precisely that. Certainly, as I have said, he is an ambitious man. His plans for his Bill are ambitious, and I say that by way of praise.

If Professor Hervey's conclusion is that social solidarity needs to be more firmly embedded, as it is in the acquis communautaire, and more firmly articulated by the European Court of Justice in its application of European Community internal market and competition law, in view of the Altmark case the following decade—this article was written in 1999—I suppose we could say that that was exactly what happened. My objection to the inclusion of these words in the Bill is exactly the same as for the words,

"services of general economic interest".

My objection is this: first, the words are completely unnecessary. If anyone seriously doubts that the national health service is already a very solid pillar of social solidarity, all he needs to do is look at what has happened in recent months to Nigel Farage. My right hon. Friend the Member for Chelmsford raised this issue. Nigel Farage said that we ought to look again at the way in which the national health service was funded. He suddenly began to appreciate that he would be taken apart by his opponents, the press, his supporters and the voters if he continued down that line, so he backed off from it. Obviously, we know that that is what he actually thinks, but nevertheless he backed off.

The national health service is an icon, as I have already said, that we mess with at our peril. The hon. Member for Eltham will not succeed in suggesting that we are trying to privatise the national health service. First, we are not, because we are not stupid. Secondly, he knows we are not, because he knows we are not stupid. Thirdly, if we did, we would lose the election, and the public know that. They know that we know that, and they know that the hon. Member for Eltham knows that. We are not talking here about the privatisation of the national health service.

Mr Burns: May I point out that in July the NHS will have been in existence for 68 years? *[Interruption.]* It is 67 years from its inception, and 68 from the passing of the legislation to set it up. For more than half of that time, Conservative or Conservative-led Governments have been responsible for the NHS, and we have never sought at any time during that period to privatise it, because our commitment to an NHS free at the point of use for all those eligible to use it is not negotiable.

Mr Arbuthnot: My right hon. Friend speaks with fervour, passion and experience. He and I have been in the House of Commons for exactly the same length of time. I understand that I signed the book just a moment or two before him, but he need not worry about being Father of the House because I shall be leaving the House at this election. He is absolutely right. We will not privatise the national health service.

My second objection to the introduction into statute law of this concept of social solidarity is similar to my objection to the words,

"services of general economic interest".

If we introduce into law a requirement for the Secretary of State to ensure that the national health service operates on the basis of social solidarity, it has to mean something specific and precise. In deciding what to do, the Secretary

of State needs to know whether by choosing option A or option B, he will be obeying the law.

We have in this country that funny old custom of obeying the law. We obey—sometimes with excessive and obsessive zeal—the laws, even those that come from Brussels. We take pride in being a law-abiding nation and showing the others how to behave. In order to obey the law, we need to know what it is and what it requires of us. Secretaries of State are in the same position in this respect as every other person in the country. It could be argued that it is even more incumbent on a Secretary of State to obey the law because we politicians are in the position of making the law and we do not want to lay ourselves open to the charge of hypocrisy. Even though most people in the country cheerfully assume that all politicians are crooks, liars and hypocrites, by and large we are not. Let us not make it easier for them to say so.

Jacob Rees-Mogg: My right hon. Friend is making an important point. Can he give us any examples of when

"services of general economic interest"

would conflict with social solidarity?

Mr Arbuthnot: My problem is that they are general and vague concepts which, according to Professor Hervey, need to be introduced into the acquis communautaire. I do not think that they can properly translate into English legislation for the very reason that my hon. Friend hints at, namely that it is hard to work out precisely what they mean.

I will give an example. Let us suppose that the Secretary of State for Health one Monday morning comes into his office in the Department of Health and—if we leave in this Bill these words that he is required to

"ensure that the health service…operates on the basis of social solidarity"—

he will not know whether he has broken the law over the weekend. That of itself means that we would have passed a bad law. We would not have provided the Secretary of State with a clear blueprint of what he must and must not do.

If there are things that the law requires of us, that is fine; but there are things that we require of the law as well. One of those is certainty. Without certainty we are ruled by whim, by newspaper headlines and by forcing judges to tell us what we mean when we legislate. That is Parliament abdicating its job to others.

We are also ruled by caution. When faced with two choices, one of which is obviously within the law and one of which is in a grey area, the natural instinct of a Government Department is to avoid the grey area. It is right and proper that that should be so because we want to obey the law, but avoiding grey areas is not the best way to run a health service. Sometimes bold decisions need to be made, and this law would inhibit such bold decisions, and it is no answer to say that clause 2 provides for regulations. Again, that would mean Parliament abdicating its job to future generations of politicians, who would be putting key issues, which the nation should consider and which ought to be addressed in primary legislation, through a truncated procedure.

4.30 pm

Sir Greg Knight: Now that my right hon. Friend is coming to the end of his discourse, will he tell us what conclusions he has reached about clause 1? What would clause 1 achieve that is not being achieved without it?

Mr Arbuthnot: Clause 1 would achieve uncertainty, muddle, duplication and caution, and it would be a fundamental mistake. When my hon. Friend the Minister tabled, for the sake of clarity rather than for its selection, the amendment that clause 1 should not stand part, he was making a helpful indication of the clause's value. I look forward to discussing the issue of regulations under clause 2, because in that debate we can go into detail on the sorts of things that those regulations might cover.

To wrap up the whole argument on services of general economic interest and social solidarity, it is best to refer back to the Library briefing note on the Bill. I do not intend to read out the whole of chapter 8 of the book "Health Systems Governance in Europe: The Role of European Union Law and Policy." I have the chapter with me in case any hon. or right hon. Member wishes to read it for themselves, as I recommend. I will merely read the chapter's conclusion, which clearly establishes what a confused area of European Union law we are addressing. We fools should not rush in where angels fear to tread. Incidentally, the angels who wrote this chapter were Julia Lear, Elias Mossialos and Beatrix Karl, and they pay tribute, among other people, to Professor Tamara Hervey for her extensive comments on their drafts. The conclusion states:

"The only thing that is clear, based on the law presented here, is that each case must be analysed in detail. There are few bright distinctions between economic and social functions in mixed public and private health systems. Competition law will not necessarily apply, while the services of general interest exception will not always provide a safe haven, allowing Member States to distort or restrict competition when regulating health services. The Commission continues to pursue legal clarity through attempts to develop a coherent European framework for health care. However, Member States have demonstrated little political will to support any European health policy that will interfere with their domestic policies."

Is the Committee really sure that we know enough about what we are doing to start legislating at the fag end of a Parliament through a private Member's Bill, with no possibility of oral evidence and no chance of taking statements from the eminent lawyers who have written these articles about such a complicated and confused issue? I suggest we are not.

Then there is paragraph (c). The Secretary of State must

"ensure that arrangements between commissioners and providers…require effective co-operation".

As the Library puts it:

"Clause 1(2)(c) is intended to promote integration in health and social care services."

Whether it does or not, the Library is silent. All I can say is, "I ask you." What Secretary of State is going to stand in the way of effective co-operation between different providers under the Act, and between providers of health services and community care services? What Secretary of State is going to fail to regard that sort of co-operation as being one of his or her key responsibilities? The answer is that the only Secretary of State who would do such a thing would be one who would ignore this provision of the Bill.

[Mr Arbuthnot]

In summary—I am sorry I have been able only to dance over the surface of these issues—paragraphs (b) and (c) are unnecessary. They add nothing to the common good. They complicate the existing law with stuff that is difficult to interpret and hard to explain, even though, as the Committee knows, I have tried.

Clive Efford: I shall try not to take as long as the previous two speakers. I do not feel challenged in saying that. I might be comfortably home having spoken for less time than both of them.

I will start by saying that when we were talking about the services of general economic interest, my hon. Friend the Member for Foyle pointed out that we should be talking about the long-term service of economic interest. He is absolutely right because that is what we seek to do—to secure the service for the long term.

Clause 1 would place a statutory duty on the Secretary of State to ensure that the national health service operates on a basis of social solidarity and to

"ensure that arrangements between commissioners and providers of health services require effective co-operation between different providers under this Act and between providers of health services and providers of community care services".

I have my own reference to Durkheim. He defined organic solidarity as

"social cohesion based upon the dependence individuals have on each other in more advanced societies".

It is a concept that recognises that although individuals perform different tasks and often have different values and interests, the order and solidarity of society depend on their reliance on one another to perform their specific tasks. The NHS is the essence of a system of social solidarity because at different times we play different roles in supporting it. We are all taxpayers who fund it. We use the service as patients when we have medical need, and the system is based on doctors, nurses, managers and many other professionals using their skills to run the complex system.

At the core of the concept of social solidarity are the millions of paid and unpaid carers who support patients before, during and after health care professionals deliver their services. The concept of social solidarity is central to our vision of the NHS and should rightly be set out as the core of the Bill in section 1 of the National Health Service Act 2006. The new section 1 retains the ministerial responsibility of the Secretary of State to Parliament. That ministerial responsibility covers both the services in part 1 for which the Secretary of State has a duty to make arrangements and those other services where primary commissioning responsibilities lie with the board.

Before we start the debate on social solidarity and services of general economic interest, we need to go back to what the Bill seeks to achieve. As hon. Members will be aware, many people are calling for the repeal of the Health and Social Care Act. In fact, we are committed to do just that. We do not intend to introduce a top-down restructuring; we merely mean to remove those elements of the structure of the NHS, that have been imposed without any democratic mandate whatever, that have led to service managers and doctors constantly looking inward at the structure of the national health service, parcelling it up for a series of contracts and tenders and wasting millions of pounds on lawyers, accountants and advisers.

Incidentally, I made the point at Second Reading that whenever those on the Government Benches speak about the national health service they talk about the endless bureaucracy of the national health service and quote figures left, right and centre about how expensive it all is and all the waste that was created, but when you ask them the cost of this tendering process that we have imposed on our national health service, they say they do not collect those figures centrally.

Mr Burns *rose—*

Clive Efford: I will give way, but I will not give way many times because hon. and right hon. Members opposite have intervened on so many occasions that I cannot believe they have anything more to say.

Mr Burns: I am very grateful to the hon. Gentleman for giving way because, of course, he is the promoter of the Bill so he can give information to those of us who are simple seekers after information. In the light of what he has said about changing and removing the Act, is the Labour party committed to abolishing clinical commissioning groups and ending the commissioning by GPs of care for their patients?

Clive Efford: We will talk about the structures that will remain in place, but let me reassure the right hon. Gentleman and anyone who is looking in on this debate or reading the record that there is absolutely no intention to go into another top-down restructuring of the national health service. What we intend—the Bill indicates the direction of travel—is to cut out the heart of the Health and Social Care Act, which imposes market forces on our national health service in a way that has never been done before, not even under the previous Labour Government, who have been accused of going too far—an accusation that I agree with. My right hon. Friend the Member for Leigh, the shadow Secretary of State for Health, has also admitted that he feels we went too far down the road towards opening the door to private sector competition within the national health service. I think that we have gone too far down that road and it needs to be addressed.

Dr Poulter: On that point, it would be quite helpful if he would clarify that it was the previous Labour Government that introduced the Co-operation and Competition Panel to oversee the NHS. Will he confirm that, in the context of introducing private providers?

Clive Efford: I am happy to confirm that we moved towards competition rules within the national health service in order to provide additional capacity within the national health service. That is a completely different concept from what we are seeing now under this Conservative Government, with services being required to be restructured in a way that enables competition within the health service.

Andrew Gwynne (Denton and Reddish) (Lab): My hon. Friend is absolutely right. Also, it was our right hon. Friend the Member for Leigh, when he was the Secretary of State for Health, who reintroduced the NHS as the preferred provider.

Clive Efford: My hon. Friend is absolutely right. The focus of the Bill is to remove the capacity of the private sector to force its way in to contracting for NHS services. The right hon. Member for North East Hampshire was absolutely right when he described our national health service as a combination of a service of general economic interest and a service of social solidarity. That enables us to identify it as an entity providing social solidarity and a service for the public good and to bomb-proof it, as it were, against the ravages of the marketplace, so that any services contracted within the national health service between NHS contractors are not subject to competition or procurement rules.

Andrew Gwynne: My hon. Friend started his speech by talking about Durkheim, and we have heard a lot about the 19th-century definition of social solidarity, but I want to share a 21st-century definition:

"The NHS…is founded on a common set of principles and values that bind together the communities and people it serves—patients and public—and the staff who work for it."

That is on page 2 of the NHS constitution.

4.45 pm

Clive Efford: That definition of the national health service as a service that provides for the public good—a service of social solidarity—enables us to protect it from those who see it as a marketplace and as something on to which they can impose market regulations to require it to compete for services, with the sole intention of making profit, rather than of putting patients first. The fundamental change—

Mr Nuttall: Will the hon. Gentleman give way?

Clive Efford: Is the hon. Gentleman harassing me or asking me to give way?

The fundamental achievement of the Bill would be to protect our national health service by defining it as a service of social solidarity and a service of general economic interest, thereby protecting it from market forces. The right hon. Member for East Yorkshire said that the Bill is a litigants' charter, but it is the opposite. As the right hon. Member for North East Hampshire said, the NHS is currently open to a number of areas of European competition law that are likely to lead to litigation and legal challenges because no one knows what the impact of the Health and Social Care Act 2012 will be on the contracting processes within the NHS.

I have a paper from an eminent professor from Lancaster university, Liam Goulding, entitled "Is the NHS subject to competition law?", which was posted on 19 July 2013—after the Health and Social Care Act was passed. The paper's opening remarks state:

"The coalition government's plans for the future of healthcare in England, through the Health and Social Care Act 2012…herald fundamental changes to the NHS. By experimenting with a greater role for competition it is unclear to what extent EU competition law is applicable to the NHS."

That is under the current legislation. He goes on to say—the right hon. Member for North East Hampshire said a lot, but he did not get to this point—that the European Court of Justice

"excludes certain activities from the concept of economic activity on the basis of 'solidarity'. Entities carrying out a social rather than an economic activity, based on the principle of solidarity and not for profit, are not considered to fall into the term undertaking and, therefore, are not subject to competition law."

That is clear. That was the conclusion of the European Court of Justice. The idea that we are taking a leap in the dark towards the concept of social solidarity and towards making the NHS a service of general economic interest is not founded.

When the right hon. Gentleman went off on a tangent about the Altmark case, it was not relevant to the National Health Service. Altmark is about state aid funding private companies; it is of no relevance to the NHS. By identifying the NHS as a service of general economic interest, we put it outside state aid rules. Even though, in a sense, it may be a single market, what we are effectively doing is protecting any entity within the NHS from being open to competition. If they contract with one another, they can do so on the basis of an NHS contract without having to comply with any competition rules. However, the NHS cannot be identified solely as a non-economic entity because there are, and always have been, areas where it contracts with the private sector, as the Minister alluded to earlier. Therefore, if the commissioners of services contract with someone outside an NHS contract, competition rules will apply. For anyone who remains within the confines of the NHS, those rules will not apply. That is what the Bill is designed to do, which is why it contains the reference to both a service of general economic interest and a service of social solidarity.

Andrew Gwynne: My hon. Friend makes a very important point, which was one of the key dividing lines during the consideration of the Health and Social Care Act, and is why the Opposition are concerned about the section 75 regulations in that Act. Some of what we have said is now coming home to roost, in that a number of integrated care organisations are seeking opt-outs from section 75 arrangements.

Clive Efford: That is absolutely right, and that is why the Bill and the proposed repeal of the Health and Social Care Act are greatly welcomed by people in the NHS. I do not intend to accept any of the amendments. Several of them deal with the words "social" and "solidarity", and it is quite remarkable how the word "social" is like a red rag to a bull for certain people. We have mentioned Europe. The right hon. Member for North East Hampshire took his life in his hands by talking French while standing close to the hon. Member for North East Somerset, but I think we have dealt with that.

As for the amendments tabled by the right hon. Member for North East Hampshire, I do not think we need to deal with what is meant by

"pursuant to one or more universal service obligations",

because the Bill takes care of that. We are dealing with the national health service, so there is no need for that amendment. The right hon. Gentleman has tabled several amendments to do with social solidarity, which I will not return to now, because I think I have covered that issue.

Amendment 40, which has been tabled by the hon. Member for North East Somerset, would prevent the Secretary of State from directing people in their personal conduct. As I said in an earlier intervention on the hon.

[Clive Efford]

Gentleman, I wonder whether he understood what he was voting for when he supported the 2012 Act. As a result of the Act, public health is a matter for local authorities, and that is something that I actually support. My view is that public health issues are better dealt with at local government level, and we get better co-ordination under health and wellbeing boards. Health and wellbeing boards already do the things proposed in his amendment, and I do not seek to amend anything to do with them. If he does not like elements of the Health and Social Care Act concerning the nanny state or the intervention of local government in the lives of people who might like chocolate, such as the right hon. Member for North East Hampshire, he might like to pursue that in his own private Member's Bill.

Jacob Rees-Mogg: With regard to the private Members' ballot, I am with my right hon. Friend the Member for North East Hampshire; I always hope desperately that my name will not come up, because I feel that some people might be moved to speak at great length if ever I got a Bill.

Clive Efford: Perhaps the hon. Gentleman could do something that was acceptable to those on both sides of the House, rather than seek to put right a fundamental wrong, which is what I seek to do with this Bill. The hon. Gentleman has tabled amendment 42. Taking things on the hoof when dealing with legislation can have unintentional hidden consequences. But on the face of it, when he is adding the words:

"subject to consultation with relevant local government bodies",

as somebody who is very favourable to local government bodies, I would be quite happy, at some later stage of the Bill, when we finally get out of here, to sit down and talk to him about it. However, at this moment in time, I am afraid that I am not minded to accept the amendment.

Mr Burns: Why not?

Clive Efford: Basically because of the reason I just gave. Accepting things without proper consideration of—[Hon. Members: "Oh!"] Hang on a minute. Accepting things without proper consideration of their consequences is not good. However, I will not stand here and say, "I don't think he's got a point." Discussing things at local government level can lead to efficiencies at local level, and I am sympathetic to the point that the hon. Member for North East Somerset has tried to put forward.

Mr Burns: The hon. Gentleman is a reasonable man and his comments just now show that there is a common interest between Members on both sides of the Committee about this issue, in that we both believe local government has a crucial role to play, as has been exemplified under the 2012 Act with the local health and wellbeing boards.

I say to the hon. Gentleman once again, "Don't be tribal. Accept the amendment tabled by my hon. Friend the Member for North East Somerset, because it is reasonable and it will help the delivery of services."

Clive Efford: I am not minded to accept the amendment because, as I said earlier, I am not seeking to amend the parts of the 2012 Act that relate to the responsibilities of local government, and the hon. Member for North East Somerset is attempting to introduce something that clearly relate to that. The issue would perhaps be better dealt with by tabling an amendment that related to that area of local government responsibility, because I can see that, as a result of the amendment, there would all be sorts of consequential changes to other parts of the Bill and I am not seeking to complicate it. Its purpose is quite clear; as I said before, it takes a scalpel and cuts out the heart of the privatisation process of our NHS.

Amendment 49 is unnecessary, because the clause refers to the recuperation of charges where those charges can be levied. What the hon. Gentleman is seeking to add with that amendment is therefore unnecessary, because the clause refers to that issue.

As for replacing "social solidarity" with "cohesion", various amendments reveal that the hon. Member for North East Somerset is seriously offended by the word "social" and its connection with the word "solidarity". He is also obviously offended by mutual co-operation; I suspect that he crosses himself every time he goes past the Co-op. Having said that, I am not minded to accept any of the amendments that he has tabled and I will now sit down.

Mr Burns: It was a pleasure to listen to the hon. Member for Eltham, because he gave some clarification of some of the definitions in clause 1. I was also deeply impressed by the forensic speech of my right hon. Friend the Member for North East Hampshire. However, I hope that he will forgive me if I do not go down his route, because he has dealt with those issues, particularly competition policy vis-à-vis Europe, so diligently and in such detail that it would be repetition for me to do so, and I fear that I would then fall foul of you, Mr Bone, which is the last thing I want to do this evening.

I want to adopt a broader-brush approach to a number of the amendments to clause 1 that have been tabled and to which I have added my name, although in the case of many of them I did so because I viewed them as probing amendments. However, for reasons that will become apparent during my remarks, I have grave misgivings about some amendments but I think others would enhance and improve the Bill. Clause 1 is in many ways a repetition of clause 1 of the 2012 Act, though there are serious differences when it comes to proposed new section 1(2)(b) and (c), and that is one part about which I have misgivings.

5 pm

I believe that the purpose of the drafting of the 2012 Act was to put down the duty of a Secretary of State to promote a comprehensive health service—an aim that I do not believe anyone in the Committee would disagree with. That was against the backdrop of removing political control of and interference in the day-to-day running of the NHS. What the Act does, which the Bill seeks to fairly substantially destroy, is to take away the political interference of the Secretary of State and politicians in the day-to-day running of the NHS and to empower those who are best at providing health care in this country—the doctors, clinicians and others who work on a day-to-day basis in the NHS.

Clive Efford: Would the right hon. Gentleman care to comment on Monitor interfering in the proposed restructuring of head and neck cancer surgery in Bristol? Its report states that:

"We concluded that there is likely to be a benefit arising from the timely and effective transfer of specialist consultants required to deliver a model of care that includes a head and neck cancer, ENT and OMF ward; an increased number of clinical nurse specialists; a treatment room available 24 hours a day; and, consultants with different expertise operating in adjacent theatres."

However, the report went on and said that,

"the merger removes important competitive constraints for elective head and neck, ENT, OMF, urology and symptomatic breast care services in the absence of other competitors",

and that it was against the plan. Monitor interfered in local clinicians restructuring their service. It accepted that the restructuring would improve the service for patients but because it removed the essential element of competition, Monitor did not approve the local clinicians decision making. How does the right hon. Gentleman justify that?

Mr Burns: As the hon. Gentleman knows, Monitor is there with an important role to ensure—

Clive Efford: To privatise.

Mr Burns: The hon. Gentleman says to privatise. As has been said so often on these Benches and in the Chamber over all the years that the Conservative party has had stewardship of the NHS, we utterly reject privatisation. We are committed to a health service free at the point of use for all those eligible to use it. If the hon. Gentleman goes back to the 2012 Act, one of my proudest acts was in persuading the Secretary of State to put clause 1 in the Bill, which inserted new section 1(4) in the National Health Service Act 2006:

"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."

That reaffirms in this country's primary legislation the commitment to a free health service.

This has been a decent and engaging debate, and I do not want to be churlish, but where that paragraph refers to,

"except in so far as the making and recovery of charges is expressly provided for",

it was the Labour party under Hugh Gaitskell which introduced prescription charges and charges for dental care.

It was the Labour Government under Tony Blair in 1998-99 who ensured that any costs to the NHS as a result of a road traffic accident were charged to the patient, although the patient did not pay for it because their car insurance would pay for it.

Opposition Members therefore have to be very careful when they bandy around this trite, political slogan of privatisation, which bears very little relation—in my mind, no relation—to reality. We as a party do not believe in the privatisation of the health service. I do not think that the Labour party does either, even though it did introduce charges for some services in the NHS after the initial concept by Nye Bevan. I would gently remind the hon. Gentleman that Nye Bevan, Harold Wilson and John Freeman resigned from Attlee's Government over the imposition of those charges.

Liz McInnes (Heywood and Middleton) (Lab): The right hon. Gentleman talks about reality. My reality six months ago, before I became the MP for Heywood and Middleton, was working for the NHS. I was also a trade union rep, and I spent an enormous amount of my time negotiating with management about trying to keep contracts in-house. Since this Government came into power, I have spent the past four years fighting against the privatisation of the services in the hospital trust where I used to work. The right hon. Gentleman's reality is not my reality.

Mr Burns: I say to the hon. Lady in all caution that I am prepared to look at this on a non-party political basis and based on what is in the best interests of the NHS, rather than throwing around slogans that do not bear much resemblance to reality.

If we are talking about introducing competition and what the Opposition would call privatisation—although I would not—let us talk about Hinchingbrooke hospital. There have been a lot of myths about it. I will say, particularly to the shadow Minister, that if Members want to see the facts of it and how the Labour party came a cropper on it—I do not usually draw attention to my triumphs in the Chamber—I would suggest they go to November 2011. At that time, the current shadow Secretary of State for Health, who was in Leeds or Manchester, directed the hon. Member for Leicester West (Liz Kendall) to put in for an urgent question on Hinchingbrooke hospital. It was quite clear at the time of the question that she was unhappy at being put in that position.

The shortlist of bidders to run Hinchingbrooke hospital was drawn up on 10 March 2010. I am sure that the significance of that date will not be lost on the Opposition, because it was about two months before the 2010 general election, so the current shadow Secretary of State, the right hon. Member for Leigh (Andy Burnham), was the Secretary of State at the time. The three bidders that he shortlisted were all private companies.

Dr Poulter: My right hon. Friend is making an excellent speech, as always. We have heard a lot about the NHS preferred provider policy. How does he think that fits in with the points he has just made, given the context of the Bill and, indeed, what it is trying to do to current legislation?

Mr Burns: I think it provides a fig leaf for the shadow Secretary of State to cover up his actions as the Secretary of State, given his changed position within the Labour party from an über Blairite to a left-of-centre leadership candidate in the future. He needs to justify what he did by coming up with this slogan of—

The Chair: Order. I am struggling to see how this has anything to do with clause 1.

Mr Burns: I am grateful to you, Mr Bone, and I apologise profusely if I was led astray by the Opposition. The basic point I was trying to make is that clause 1 is determined—as are the other clauses—to put a stake through the heart of the 2012 Act and undo all the good work being done through GPs being able to commission care for their patients and freeing up the NHS from day-to-day political interference. I will make a little progress because I want to get to the amendment so as not to fall foul of Mr Bone again.

[Mr Simon Burns]

I added my name to amendment 1 as a probing amendment. As I said to my right hon. Friend the Member for North East Hampshire, I did not understand what on earth "general economic interest" and "social solidarity" in proposed new section 1(2)(b) meant.

Clive Efford: I explained.

Mr Burns: The hon. Gentleman says that he explained, but so did my right hon. Friend the Member for North East Hampshire, and with far greater detail, analysis and forensic skill. I was convinced by my right hon. Friend's arguments and the way he exposed the contents of the proposed subsection and the impact—or lack of it—that it would have if it became legislation. To be fair to the hon. Member for Eltham, he put a gloss on his interpretation. It was at variance with my right hon. Friend's interpretation. I am afraid that when it comes to the bottom line, if I had to choose between the two analyses, I would have to take that of my right hon. Friend, for its depth and for intricately taking apart why the proposed provision would be totally inadequate. I support the removal of paragraph (b).

Paragraph (c) would

"ensure that arrangements between commissioners and providers of health services require effective co-operation between different providers under this Act and between providers of health services and providers of community care services."

Again, I cannot disagree with that. I have long been a supporter, dating back to the 1990s, of far greater integration of health and social care, and far more liaison, discussion and working together within the health service to have pathways of care that are not damaged or hindered by fragmentation.

Andrew Gwynne: I am pleased that the right hon. Gentleman just said that. Why does he think that so many potential integrated care organisations are seeking an opt-out from his section 75 regulations?

Mr Burns: If I could just develop my original point, it will become apparent why what is in the current Act is the right way forward. In the past—this is not a party political point, because it happened under Conservative as well as Labour Governments—health and social care worked in silos. There was far too little talking together to break down those barriers and provide a seamless pathway of care for patients, which, quite clearly, was to their detriment.

In the mid 1990s, when my right hon. Friend the Member for Charnwood (Mr Dorrell) was Secretary of State, work began to try to break down those silos, to have greater integration and a more seamless provider of service. To their credit, the Blair Government and then the Government of the right hon. Member for Kirkcaldy and Cowdenbeath (Mr Brown) carried on that progress in a positive and proper way. The 2012 Act continues that, but it also involves local government far more, in particular—although not exclusively—in the provision of social care. That is why the creation of the health and wellbeing boards under the 2012 Act is so important, because it gives local stakeholders, such as local authorities and local health services, direct involvement in identifying and providing the necessary health care for the needs of local areas. We will see variations around the country in priorities for health care because of democratic and social factors. That is crucial.

5.15 pm

Andrew Gwynne: The right hon. Gentleman has still not answered the question. I am very supportive of health and wellbeing boards—they are probably the one good thing that came out of the 2012 Act—but why do these integrated care organisations seek to opt out of section 75 regulations, which, after all, are only three years old?

Mr Burns: In fairness to the hon. Gentleman, he would not expect me to be able to comment on each individual decision of each organisation. When such organisations do seek to opt out, whether that is justified has to be looked at.

On more integration and less fragmentation, amendment 42, which my hon. Friend the Member for North East Somerset tabled, would actually improve and enhance the Bill. He suggests that at the end of clause 1(2)(c), which deals with the arrangements between commissioners and providers of health services, we should add

"subject to consultation with relevant local government bodies".

I was heartened to hear the hon. Member for Eltham say—I hope I am not misquoting him, but I am sure he will be the first to correct me if I am—that he is broadly sympathetic to that amendment, but he does not think it is appropriate to accept it because that would have ramifications in other parts of the Bill, which would require further amendments. He also said he wanted to discuss the amendment further to ensure that what was proposed was workable and beneficial, but there is no time for that and this is not the appropriate place to make such changes. I think that is a fair assessment of his view—

Clive Efford *rose—*

Mr Burns—but he is about to tell me whether it is or not.

Clive Efford: That is not entirely inaccurate, but the amendment may not be necessary. Perhaps the right hon. Gentleman can tell us that, because he dealt with the 2012 Act in Committee. He may not have dealt with the clauses on health and wellbeing boards, but a requirement to consult at local level with relevant bodies might already be in place, because that seems like a sensible thing to do, so the amendment might be unnecessary.

Mr Burns: Up to a point, the hon. Gentleman is certainly right: I did not deal with that part of the Bill—the right hon. Member for Sutton and Cheam (Paul Burstow) did—but I am familiar with the point. When I say that he is correct up to a point, insofar as the health and wellbeing boards are concerned, he is absolutely right, because they are driven by county councils or metropolitan local authorities. However, paragraph (c), as I understand it, is not simply between health and social care, even though that it is an important element, because it says:

"ensure that arrangements between commissioners and providers of health services require effective co-operation".

Unless I misunderstand the paragraph, it does not simply deal with social care; it also deals with health care. Of course, health and wellbeing boards also seek to identify and meet the needs of the health service locally, but local government will have another role, because they will have a view on some of the commissioning that CCGs are doing, for example.

Clive Efford: The right hon. Gentleman is making my point for me. I pointed out that such things are open to interpretation. They often do not appear as they do on the surface. His interpretation is different from mine. That is precisely why I am resistant to it at this time.

Mr Burns: I do not think we have different interpretations. I believe the hon. Gentleman is absolutely right when he says there is a critical role whereby local authorities are the driving force when it comes to the health and wellbeing boards and the greater integration of health and social care, but paragraph (c) talks about

"arrangements between commissioners and providers of health services".

That is a wider interpretation, because it includes the provider of health services, rather than simply social care services. There is an argument that local government should be able to offer its views more. I do not see the reluctance to add that to the Bill.

Jacob Rees-Mogg: I thought it might be useful if I explained what I was trying to do with the amendment. It is very simple: even if, later in the existing legislation, there is the requirement for consultation, this is a new duty, a replacement duty, that is being created. It says the Secretary of State "must ensure", and therefore it may not be subject to previous consultations required in earlier legislation. Members will understand the law of implied repeal, and therefore I think it is important to be specific.

Mr Burns: I appreciate my hon. Friend's clarification, which is extremely helpful. I say once again that I believe that my hon. Friend's amendment is both relevant and needed, and I would certainly support it if he were to press it to a Division later in our proceedings.

I would like to deal with one or two other amendments, although not in detail, because of the work of my right hon. Friend the Member for North East Hampshire on the definitions of "general economic interest" and "social solidarity". It is simply not necessary in this legislation. In the original Act, clauses 1, 2 and 3—in fact, up to clause 22—give a comprehensive explanation of what we expect the NHS to deliver to the people of this country, without the interference of politicians on a day-to-day basis. But proposed new section 1(3) in the hon. Gentleman's Bill says, and rightly so:

"The Secretary of State retains ministerial responsibility to Parliament for the provision of the health service in England."

That is a direct crib from the 2012 Act, and rightly so, because the Secretary of State for Health must have an overarching responsibility for the provision of a comprehensive health service. That is why we put it in the Act—and, presumably, why the hon. Gentleman has put it in his Bill.

Where we may have a difference is in the way we do it, because we have divorced the NHS from day-to-day political interference. We have ensured that a mandate is given to the NHS by the Secretary of State, who is accountable to Parliament, because that mandate has to published and can be debated in this House, despite the debates—I will not use the word "tedious", but I will describe them as "long"—during Committee. The Labour party could not understand that if a report is published, it has to be presented to Parliament and it can be debated in Parliament—on the Floor of the House or in Westminster Hall—and that is holding the Secretary of State to account. The subsection that the hon. Gentleman has repeated in his legislation maintains that, and that is absolutely right. The Secretary of State and the Government of the day provide over £110 billion a year and rising in a protected budget with a modest real-terms increase each year for the NHS in England, so we have to have control over what we expect the NHS to deliver to patients for that money. That is why we do it.

Andrew Gwynne: I know that the right hon. Gentleman genuinely believed, when he was pushing through the 2012 Act, that he was freeing the NHS from the political interference of the Secretary of State. He must have been very disappointed over the winter A and E crisis that the Secretary of State was on the phone to hospitals that missed the four-hour target.

Mr Burns: No, I am not disappointed at all, because what a Secretary of State does is provide money for the NHS to provide services. He provides the mandate to the NHS that says what we expect, and we expect the NHS then to provide those services and deliver them. There will be times when we have to remind the NHS what is expected of it and that it has to provide that. The short answer to the hon. Gentleman is that no, I am not at all disappointed. When it comes to the dramatic increase in the number of people going to A and E in the last year and particularly in the last few months, despite the strain on a work force who work often in difficult circumstances, I am pleased that they have worked magnificently. We have to ensure that standards are maintained and improved, so I am glad that the hon. Member for Eltham has kept that provision in the Bill.

I turn to amendment 41, tabled by my hon. Friend the Member for North East Somerset. It leaves out "general economic interest" on page 2, line 2 and inserts

"that ensures value for money".

If there is a grammatical problem with that, as he rightly says, it can be tied up if we ever get to Third Reading. However, that does not take away from the premise behind the amendment. Any person with an ounce of common sense will accept that the NHS has to ensure value for money. If we get value for money and cut out waste and inefficiency, as the Nicholson challenge has been doing over the last four years, that means that the money saved does not go back to my right hon. Friend the Chancellor of the Exchequer's pocket; it is reinvested in health care within the NHS in England. That is a win-win situation for the NHS and for patients, so it is more realistic and certainly more sensible to have in the Bill the provision of my hon. Friend the Member for North East Somerset that ensures value for money, rather than this nebulous, highly intricate terminology "general economic interest". As my right hon. Friend the Member for North East Hampshire so excellently explained, that expression is, in many ways, meaningless, whereas the amendment tabled by my hon. Friend the

[Mr Simon Burns]

Member for North East Somerset would actually address an ongoing problem within the NHS. Regardless of who is in power, there is a constant drive to get better value for the money that is made available for health care. One of the main ways that can be done is through efficiency savings and reducing waste, which has been all too prevalent in an organisation that is so large and has so much money made available to it. I will support the amendment if it is pressed to a Division.

5.30 pm

That gets me to amendment 38, which was also tabled by my hon. Friend the Member for North East Somerset. The amendment would replace the phrase "social solidarity," which is included in the clause heading and sets the tone for the remaining subsections, with the words "medical necessity." If I had drafted the amendment, rather than simply appending my name to it, I would have preferred the term "medical need," but I will not argue and split hairs with my hon. Friend.

Dr Poulter: I am sure that my right hon. Friend will go on to talk about this but, if we retained the words "social solidarity" is there not a concern that groups that object—for very wrong reasons, in my opinion—to the NHS prioritising the care of our armed forces veterans could take legal action in the courts?

Mr Burns: My hon. Friend makes an extremely good point. No one wants to place the NHS in that position. It is a waste of money, it is time-consuming and it is distracting. The title of the clause is: "Duty on the Secretary of State to promote comprehensive health service based on social solidarity." That honestly sounds like something out of Stalin's Russia. It is bizarre. The amendment would mean that the Secretary of State has a duty to promote a health service based on medical necessity, which is far more relevant and far more comprehensible to patients across the country. Patients want a health service that is effective, efficient and addresses their medical needs and necessities. They do not want nebulous "social solidarity." If we went into any hospital in the country and stopped to ask every third person, "Do you want a health service based on social solidarity?" they would look at us as if we had come from the planet Zog. They would say, "We want a health service that treats us with the finest possible care, based on our medical needs and necessity."

Clive Efford: Will the right hon. Gentleman give way?

Mr Burns: I could not resist.

Clive Efford: If the right hon. Gentleman were to wander into a hospital to ask people whether they wanted their national health service to be defined in a way that protects it from private companies demanding the right to tender for services, I think they would want the health service to be defined in such a way. That is what social solidarity does when combined with a service of general economic interest.

Mr Burns: I am extremely grateful to the hon. Gentleman for that intervention. Let me tell him a story. During the 1990s, before new Labour came into power, one of the criticisms was of waiting times and waiting lists. One of the things that John Major did was to ensure that the NHS block purchased care mostly, although not exclusively, for hip replacements and cataract operations anywhere that had spare capacity, which was mostly private hospitals. In my constituency of Chelmsford, we have an excellent national health service hospital, Broomfield hospital, which is part of the Mid Essex hospital trust. The quality of care there is excellent and the staff who work there are fantastic, but our waiting lists and in particular our waiting times were too long and, by today's standards, unacceptable. I am not here to defend them. What the Mid Essex hospital trust did was block purchase from the private hospital in Chelmsford, so that NHS patients could go to the private hospital to have their cataract operations and their hip operations free of charge.

My constituents who went there were absolutely thrilled with the quality of care they got and the fact that they were being operated on and their medical conditions were being dealt with far more quickly than they were led to believe. That practice was going on up and down the country, and I see nothing wrong with it. When I said to constituents, "Did you mind that you were going to Springfield hospital, which is private, to have it done?", they said, "No. The quality of care was fantastic. It was free"—in accordance with the basic premise of the NHS—"and we had it done quicker."

The hon. Member for Eltham came into this House in 1997. He might be able to repudiate this as well, although I will be surprised if he does, but Tony Blair continued that practice with a vengeance, as did the right hon. Member for Leigh when he was a Minister of State and Secretary of State at the Department of Health. No Labour Members at the time were making speeches downstairs in the Chamber saying, "This is disgraceful. This is privatising the health service." What they were saying was, "This is getting quality care to our constituents quicker than it might have done. We are bringing down waiting times, which is to the benefit of patients, and it is free of charge." There was no criticism of that from the Labour party and, funnily enough, there was no criticism of that from Conservative Members, because we believed that it was right—it was providing proper, swift, quality care for patients, and that is what the NHS is all about.

Clive Efford: The right hon. Gentleman glosses over the tens of thousands of people up and down the country who were waiting longer than 18 months when we came to power in 1997. That was absolutely eradicated under the Labour Government. I agree with him: in many respects that was done by buying in extra capacity. I referred to that earlier and said that I did not object. I did, however, vote against the creation of foundation hospitals, which opened the door to this marketplace within our national health service. The idea that the financial performance of a hospital can be put before its medical performance and that that can cause a hospital to fail and be left to fail on its own cannot be in the long-term interests of patients. That was one of the fundamental things that I felt was wrong with the direction of travel when we were in government, and I voted against it.

The right hon. Gentleman has described a perfectly sensible safety valve to ensure that people do not wait. That is how we achieved the 18-week waiting time. We said to consultants, "We will not wait around for you

anymore. We will not leave people languishing on your waiting lists. If you are not going to do it, we will go down the road and purchase that extra service at NHS tariffs."

Mr Burns: In one way, I am grateful for that intervention, but in another way I am slightly puzzled. I understand that imitation is one of the highest forms of flattery, but the hon. Gentleman, in his previous intervention, accused us of privatisation, and I was just putting him straight. I am fascinated that he voted against foundation hospitals. Obviously he is not a Blairite. Clearly the right hon. Member for Kirkcaldy and Cowdenbeath did not persuade him to come off the fence and not rebel against his own Government. It would be interesting to know what Alan Milburn thought of him. One can guess.

Clive Efford: If you can find anyone who cares.

Mr Burns: Well, that is the hon. Gentleman's view, and I certainly am not going to intrude on private grief, but I must warn him that there is still a strong strand of Blairite politicians within the Labour party. He is obviously on the more neanderthal wing of the party, or the old Labour wing. Before I—

The Chair: Order. Mr Burns, you have been tempted away from clause 1. Would you like to get back to it?

Mr Burns: I apologise, Mr Bone. I was led astray by the breathtaking contradictions of the hon. Member for Eltham.

To return to the original point, the most important thing for patients is that their medical needs are dealt with as quickly as possible, within the core premise of the national health service and its core principles and foundations. That is what the 2012 Act ensures. The hon. Gentleman has made no secret of the fact that he basically wants to destroy the 2012 Act. He has certainly said it here today; I think he said at one point that he wanted to repeal it. There are problems with getting rid of it. Think about it: if we repeal the Act, CCGs will immediately go. There is no answer—*[Interruption.]* The shadow Minister nods his head in a negative way. Let me explain something logical to him. If the 2012 Act is abolished, CCGs go.

Dr Poulter: The abolition of the 2012 Act is of great concern. The Act greatly facilitated the voluntary sector and social enterprises contributing to the NHS, bringing into it considerable expertise that we know benefits patients and working more synergistically with our health service. They can be commissioned to provide services. Does my right hon. Friend agree that, if the Bill were passed, it would be hugely damaging to the contribution made to the NHS by many voluntary sector organisations?

Mr Burns: Yes. My hon. Friend the Minister raises a valid point that I suspect Opposition Members, who are muttering like a Greek chorus, have not fully taken on board. The voluntary sector— *[Interruption.]* Sorry, have you finished?

Clive Efford: I was having a conversation with the Minister.

Mr Burns: I was just checking. I would not want to intrude on your conversation.

The voluntary sector is a vital component of the provision of care in the NHS, and it always has been. The Minister made the point in an earlier intervention—many people might be oblivious to this—that 95% of GPs in this country are private small businesses. They do a fantastic job, but they are. Similarly, a significant proportion of mental health care has been provided excellently by the voluntary and charitable sector. To the best of my knowledge, nobody has complained about either of those care providers. Frankly, without them, the NHS would not be able to function with the high quality and skills that it does. They are two pillars of the NHS. So it makes somewhat bogus the knee-jerk reactions about privatisation. The NHS works with a range of providers to deliver quality care for patients, and it always has.

Jacob Rees-Mogg: There is also a fundamental misuse of the word "privatisation" for a political end. Privatisation means selling an asset owned by the Government into the private sector; it does not mean the Government buying services from the private sector. Otherwise, every time the House of Commons bought a pencil, it would be privatisation of the House of Commons. It is an absolutely nonsensical use of language.

Mr Burns: My hon. Friend excellently makes the point. He is absolutely right. What I find so difficult to stomach is that that is how the NHS operated prior to 2010 as well, but some Opposition Members are in denial about that. That is sad. It is also sad to try to turn the NHS into a party political football before a general election.

5.45 pm

Ms Karen Buck (Westminster North) (Lab): The right hon. Gentleman is constructing a windmill for the sole purpose of tilting at it. If he thinks that everything that he has just described as being correct in the way in which the NHS approaches services in the public, private and voluntary sectors was right before 2010, why did he need the 2012 Act?

Mr Burns: I am sorry, may I just recap, as I am completely baffled by that intervention? I think the hon. Lady asked why, if I thought everything was right before 2010, I left 2012 out. I have not.

Ms Buck: Why did the right hon. Gentleman need the 2012 Act?

Mr Burns: That is self-evident. We needed it because, first, we wanted to free the NHS from constant political interference by the Secretary of State and other politicians; secondly, we wanted—*[Interruption.]* If the hon. Member for Eltham listens for a minute, he will learn something. We wanted to allow GPs to commission care for their patients because GPs are best qualified to determine what sort of care and the quality of care that patients need, not a PCT that was full of bureaucrats and was divorced from—*[Interruption.]*

The Chair: Order. I know that the Committee is making a lot of progress, but hon. Members are getting a little fractious.

Mr Burns: I do not want to be fractious, Mr Bone. This Committee has been conducted in a civilised and reasonable way. But, in my defence, I must say that I get frustrated with the misunderstanding—to put it kindly—of Opposition Members who are so excited in the run-up to a general election that they want to forget everything that happened before 2010 and to rubbish everything that has happened since, even as they fail to recognise the fact that the NHS has a protected budget and so has had a real-terms increase in funding, and that the NHS is treating more patients, year on year, than ever before.

Dr Poulter: As always, my right hon. Friend is making a very good speech. He may want to reflect on the words of Lord Warner, a Minister in the previous Labour Government, who said, in the context of the 2012 Bill:

"Perhaps I may say a few words about the vexed question of competition, which is not privatisation, is integrally linked with extending patient choice and is not incompatible with service integration."—[*Official Report, House of Lords,* 11 October 2011; Vol. 730, c. 1548.]

Mr Burns: My hon. Friend gives us a telling quote from a former Health Minister under the previous Government. I am slightly surprised that the Minister was not shouted down by the Opposition as he gave that telling quote—although the muttering is beginning—as some of them shouted down the name of Alan Milburn, as if he had been completely written out of Labour party history. I have to tell them that if Alan Milburn was looking at the Bill, I am not convinced he would support it; however, I am convinced that there are certain amendments tabled by my hon. Friend the Member for North East Somerset and my right hon. Friend the Member for North East Hampshire that Alan Milburn would find logical and would think were a natural progression for maintaining health care quality in this country.

Ms Buck *rose—*

Mr Burns: I will give way. It is nice to see the hon. Lady suddenly taking part in the debate.

Ms Buck: We are actually talking about the health service for the first time in two days of Committee sittings. The right hon. Gentleman just argued that the 2012 Act was necessary so as to put GPs at the heart of the commissioning process. Why did the Act cost £3 billion in reorganisation when all it actually needed to do was put GPs in the majority in the primary care trusts?

Mr Burns: I do not recognise the £3 billion figure, but—*[Interruption.]* The shadow Minister, the Mr Angry of the Labour Health team, says that everyone else does, but everyone else does not recognise the figure. I can see at least eight Government Members who would not accept it.

Getting back to the more serious part of the intervention by the hon. Member for Westminster North, she forgets the savings that have been made under the Nicholson challenge by cutting out waste and getting rid of bureaucrats so that we can reinvest in the health service.

Clive Efford *rose—*

Mr Burns: I will give way once more, but then I must make progress.

Clive Efford: The right hon. Gentleman is trying to conclude! He said that he did not recognise the £3 billion figure, but I think it came out of his own impact assessment, provided by the Government.

Mr Burns: The hon. Gentleman is wrong, because of course—*[Laughter.]* Hon. Members might want to listen for a change and learn something. The impact assessment provided for the Health and Social Care Bill, with which I was involved, certainly did not show a price tag of £3 billion. That figure was concocted at the time by people who were not friends of the Bill and it has stuck because if something that is factually incorrect is repeated enough, sooner or later people will come to believe it.

To finish the point that I was making to the hon. Member for Westminster North, she forgets the savings made under the Act and through the efforts of the NHS. Those savings were then ploughed back into patient care by cutting out waste and an unjustifiable layer of bureaucracy.

Amendment 49, tabled by my hon. Friend the Member for North East Somerset, is also important. Since I have had the good fortune to be called before my hon. Friend, I will speak to his amendment as I interpret it from the amendment paper and from how it fits into the Bill, without having had the benefit of his eloquence in explaining it. I am sure if he catches your eye, Mr Bone, he will not only explain his amendment in greater detail, but correct any inaccuracies on my part or add greater knowledge to the subject.

My hon. Friend intends to add to,

"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",

which is a core tenet of the principles behind the NHS, the phrase:

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

I have considerable sympathy with that, although on reflection—I hope that my hon. Friend will not be offended or take this as a criticism—I wish that he had not put "immigration status" in, but instead put "not being eligible for free care in this country", because the amendment should not only deal with people with immigration status. The NHS has a problem, which is that some people vis-à-vis their immigration status are accessing free NHS care when they should not be entitled to it. Other people, however, are also doing so and they have nothing to do with immigration status, such as those here on holiday. There is evidence that some people are deliberate health tourists, although I do not want to exaggerate the extent of it, and they come here simply because they know they can get treatment in the NHS free that they cannot get in their own country, or cannot get treatment in their own country to the same standard and quality as that provided by the NHS.

It is a wider problem that needs to be tackled, because it costs the NHS a lot of money. It is difficult to make an accurate assessment of exactly how much it is. The

figure that I usually see bandied around is about £250 million a year. That is a modest figure that undervalues the cost to the NHS. I suspect that it is probably nearer £1 billion, although, as I say, it is difficult to get accurate figures.

Stephen Metcalfe: My right hon. Friend is making some interesting remarks. He said that the figure is perhaps somewhere between £250 million and £1 billion. When he was in the Department of Health, did it explore how that money might be collected and what steps were taken to enable that to happen?

Mr Burns: My hon. Friend raises a valid point. There was a culture in the NHS where, by and large, it did not bother even to attempt to do that. In my constituency in 2008, we were fortunate enough to host the world scout jamboree. However, 117 attendees were stricken ill with diarrhoea and vomiting and they all went to Broomfield hospital for treatment. I understand that, to be able to attend that jamboree, one of the provisos was that everyone attending from outside the United Kingdom had to have private health insurance. I made some inquiries and it turned out that about 70 were entitled to free care because of reciprocal agreements between Britain and the countries that they came from. It was decided, rightly, not to seek to recoup the cost relating to one of them, an American, because they tragically died. But until I looked into it and started asking questions, the NHS had no intention of sending a bill to the others. Even then I thought it was fatuous to send a bill when they had returned to their countries, because of course who would bother to pay the bill when they received it? The truth is, nobody did. That is wrong, particularly as they had private health insurance. There was a culture in the NHS that I am sure existed when we were last in government, as well as during the last Labour Government, where the NHS, by and large, did not bother.

Of course, we have a moral duty to provide A and E to people who travel to this country and have an accident or an emergency, just as we will benefit if we travel to other countries, but—

Stephen Metcalfe: My right hon. Friend said, "if we travel to other countries", but if travelling in another country we would expect to pay. Often, those from abroad who have an accident while here also expect to pay. So it is just a question of putting the mechanism in place, surely.

Mr Burns: My hon. Friend is right regarding many of the people who come to this country. However, for other people—my hon. Friend's amendment deals with this—having health insurance or thinking that they have got to pay for health care is the last thing on their mind. Although finding a means to make sure that people who are not entitled to free health care in this country make a contribution to the health care they get has to be treated sensitively, it has to be treated effectively.

There is another problem—

The Chair: Order. I am sorry to interrupt the right hon. Gentleman during his speech, but we have been sitting for quite some time now, so I am going to suspend the sitting until 6.25 pm.

6 pm

Sitting suspended.

6.25 pm

On resuming—

The Chair: It might be helpful for me to say that if the Committee is not adjourned in the next two and a half hours, I will probably suspend the sitting for an hour so that we can have an evening meal.

I think that Mr Burns was about to conclude, but I do not know whether it was his opening remarks or his speech.

Mr Burns: I think "conclude" is a trifle optimistic, although I am in your hands, Mr Bone. I was about to come to my concluding remarks on the amendment tabled by my hon. Friend the Member for North East Somerset relating to people paying for health care if they did not fit the criteria for a service free at the point of use for all those eligible to use it. However, I want to speak to another amendment after that.

Jacob Rees-Mogg: Just before the sitting was suspended, I wanted to ask my right hon. Friend about one concern that I had about the amendment. From his expert point of view, can he guide me as to whether the costs of putting in a system to ensure that people were charged would be proportionate to the revenue that would be generated through charging them?

Mr Burns: My hon. Friend raises an important point. Logically, it would be ludicrous to put in a system to collect charges that cost infinitely more than the money to be collected. That would be a waste because it would deprive the NHS of valuable resources that could otherwise be spent on health care, looking after patients. If my hon. Friend will bear with me, I will come on to explain how I believe that could be done. There is a variety of ways, and I will share with him a range of ideas.

When the sitting was suspended, I was discussing the provision of care at hospitals and ensuring that people who are not eligible for free health care make a financial contribution to their care. Another key area is GP practices. If someone is in this country on holiday or for business, or possibly here illegally or whatever, they will often need health treatment but not necessarily in a hospital, so they will go to a GP, because the health system in this country is such that GPs are the first port of call for people who have not suffered an accident or emergency. If some cannot be treated in a GP practice, they are referred to a consultant at a hospital.

Mr Arbuthnot: My right hon. Friend is covering an important issue, namely whether to charge those who are not entitled to this country's free national health service. I understand that one concern about charging is that it would introduce a bureaucracy for which doctors, GPs and hospitals are not geared up. Did my right hon. Friend experience that problem when he was a Health Minister?

Mr Burns: My right hon. Friend raises an important point. There is certainly a potential problem in that it could be very bureaucratic to instigate charges for people who are not eligible for free treatment. Nevertheless, I

[Mr Simon Burns]

am sure that the Minister will correct me if I am wrong, but I believe that there is nothing in the law to prevent dentists from charging if someone misses an appointment. I know that that is slightly different and, since we do not hear of many dentists who use that facility, it might suggest that it is a time-consuming and potentially expensive way of enforcing a system.

6.30 pm

Mr Arbuthnot: My right hon. Friend is gracious, as ever, but dentists have a way of charging, because nowadays it is quite difficult to find a dentist, even under the national health service, who does not charge. Certainly, I had a crown replaced about a week ago by a national health service dentist and it cost me many hundreds of pounds.

Mr Burns: Of course my right hon. Friend is right, but, as he will appreciate, when the NHS was set up by Nye Bevan dental services were never a fully integral part of the national health service covered by the criteria of "free at the point of use". There was always an element of charging, or certainly from the early years. I think it was Hugh Gaitskell who introduced the idea of dental charges in his famous, or infamous, Budget, depending on your point of view, in early 1951. So there has always been a tradition in this country for dental services that patients, regardless of their origins, will make a financial contribution and so will the NHS. However, there is a problem with GPs, because many people who are not eligible for free NHS treatment will visit a GP if they believe that it is a relatively minor complaint, or because that is the pathway to a consultant, who can then look in greater detail at the potential medical condition.

Certainly, from my own experience of talking to people, GPs by and large rarely make any check as to whether the person they are seeing is eligible for free NHS treatment. I believe that is a significant problem, particularly in some of our larger cities and particularly in London. I remember a GP at a lunch talking to me in great detail. She was a GP in central south London and she said that the number of patients who would come was a significant problem. It was quite clear that they were not eligible for free NHS treatment and yet, because they are professional, GPs will not turn people away. They will look at them, but it is at the expense of someone else, because it costs money and time. I do not think that is the right way forward.

Jacob Rees-Mogg: The question I pose to my right hon. Friend is, how would the check be carried out? What would be the requirement of a GP? Would the GP be expected to guess whether people were eligible? Would they ask non-residents for their passports? I would be nervous if this became an argument for identity cards or anything of that kind.

Mr Burns: I can see where my hon. Friend is coming from. I do not think one would need an identity card and I certainly would not be in favour of that. I think that the majority of patients that a GP sees are registered with that GP and when the patient is registered there should be a mechanism just to double-check that they are actually eligible for free NHS treatment. That would be simple.

There are a number of ways in which people can prove that they are a British citizen or a citizen who is eligible by dint of their status in this country or the fact that they are here working in a bona fide way. They can make the GP practice aware of their status when they register. That does not deal, though, with people who have come from outside the area, because they are staying with friends or for whatever reason, or have come to this country on holiday, on business or whatever and need to see a GP. In that situation, I think that one should have a mechanism whereby one can check—whether it is by asking to see their passport or checking where their home address is—what their nationality is and why they are in the country. All or some of those things may be the way to establish it. Rather than saying we cannot do it, we should look at the issue. I know the Department of Health is doing that and has issued some statements about it.

Mr Nuttall: On the point of identity, I have considerable professional experience. I spent many hours studying the matter. The difficulty facing a GP in these circumstances is not just the question of obtaining what purports to be identity but matching the document presented with the person. That can really only be done by photographic identity or more technically nowadays by biometric identity.

Mr Burns: Of course a passport would help. It should be borne in mind that anyone who employs someone has to check their immigration status to ensure they are legally allowed to work in this country. Similarly, starting from April this year, anyone in the private house rental sector has to make checks to ensure that any potential tenant is allowed to be in this country, so I am sure that one can work out a system.

Mr Nuttall: At first sight, that does seem the simple way forward, but I can assure my right hon. Friend that in practice an individual will turn up and say that they have lost their passport or that they have had to send it to the Home Office for some reason. That is the difficulty.

Mr Burns: That certainly is the case with passports. I am sure there are other ways to ascertain whether—

The Chair: Order. I have followed this line of argument for some time, and I see no relevance to clause 1. If there is, perhaps we can get back to it.

Mr Burns: No, this is on amendment 49. I am sorry, Mr Bone, because I do not want to test your patience, but I thought it was in order for amendment 49. I would be grateful for your guidance.

The Chair: I think the point has been made quite adequately. We are pushing it a little bit here.

Mr Arbuthnot: On a point of order, Mr Bone. We are having a clause stand part discussion now. Subsection (4) says:

"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."

My right hon. Friend is talking about the practical difficulties of recovering those charges from those people who are not entitled to free health care. I hope, Mr Bone, that you might exercise some leniency in relation to that important point.

The Chair: I am grateful for that point of order, which I am not entirely sure was one. The issue is that I have listened at some length to this and I am getting fed up. It is not germane to the Bill and we are going to make some progress. Mr Burns.

Mr Burns: I am grateful, Mr Bone, but saddened that I have made you fed up. That was not my intention. I will say briefly that another way in which one could seek to enforce amendment 49, if it became law, is to take up an idea that has been floating around that people should have insurance or an indemnity before they enter this country—although, of course, that would not cover people who had illegally entered the country. So as not to test your patience any more, Mr Bone—

Sir Greg Knight: Will my right hon. Friend give way?

Mr Burns: As long as my right hon. Friend does not lead me into temptation and test the patience of Mr Bone any further, because I do not want to do that.

Sir Greg Knight: I do not think that I have ever tested the patience of Mr Bone. My right hon. Friend said a few moments ago that he agrees with the thrust of amendment 49, but he criticised the wording, which has left the Committee in the air. Is he advising the Committee to support amendment 49 or not?

Mr Burns: My right hon. Friend makes a valid point. Obviously, I did not express myself well enough at the beginning of my comments. I will do so briefly now so that we can move on. The amendment is absolutely right in principle, but it is too narrowly drawn, because it contains the phrase,

"by virtue of his immigration status."

I am not a lawyer—although there are some lawyers in the Committee who may be able to advise me—but I fear that, because the amendment is so narrowly drawn, it will not include people who have come here on holiday or are here on short-term work contracts. From my very rudimentary knowledge of the law, I do not think that either of those groups would be considered immigrants.

Jacob Rees-Mogg: I think "immigration status" does include people here on holiday, because they either require a visa or are under a visa waiver scheme—they are none the less immigrants into this country. Likewise, people who are on short-term work contracts have some degree of immigration status; otherwise they could not be here.

I should have liked to widen the clause, but if it had introduced a new charge on people—even on British people—it would have required a money resolution, which, as we know, the Bill does not have.

Mr Burns: I am grateful to my hon. Friend for that clarification. I support his amendment in principle, but it needs some clarification and further work. I hope that we will be able to return to this issue on Report to get it right, so that we can improve and enhance this flawed Bill.

Amendment 43, which is in the name of my hon. Friend and to which I added my name, is a probing amendment. It seeks, in clause 1(3)—

The Chair: Order. I remind the right hon. Gentleman that amendment 43 has not been selected, so I am afraid he cannot speak on it.

Mr Burns: I am grateful for that, because I was going to make the simple point that I think it is irrelevant. I am therefore thrilled that you have not selected it, Mr Bone; you obviously share my view.

Jacob Rees-Mogg: As we are debating clause stand part, can my right hon. Friend, as a former Minister, give his understanding of how ministerial responsibility would apply in this context?

Mr Burns: Yes. We dealt with that issue in the Health and Social Care Bill Committee, and, as I said earlier, I am afraid that the Opposition made a big meal of the whole thing. They seemed to think that the 2012 Act would remove from the Secretary of State the responsibility for the performance of the NHS in this country, which, of course, was nonsense. As I explained then—to help my hon. Friend, I will explain it again now—the Secretary of State retains ministerial responsibility to Parliament for the provision of the health service in England, as rightly stated in both the hon. Gentleman's Bill and the 2012 Act. The 2012 Act removed from the Secretary of State and Ministers the ability to directly interfere politically, on a day-to-day basis, with the running of the health service. It gave the responsibility to the health service, which is far better qualified and more knowledgeable about running the health service on a day-to-day basis, meeting the requirements of patients and providing the care they need.

6.45 pm

However, that is done by the Secretary of State issuing a mandate to NHS England explaining what the Government expect the NHS to deliver in patient care for England in return for the £110 billion-plus that the Government make available to it. When the legislation talks about ministerial responsibility, it means that the mandate is published; it is a transparent document, and rightly so. It is presented to Parliament and can be debated in Parliament, on the Floor of the House if the Government or the Opposition wish to have a debate on it.

Clive Efford: I wonder whether the right hon. Gentleman heard the programme "File on 4" in November last year, which did an investigation into the privatisation of the national health service. It asked about contracts that had been let and asked questions of NHS England and the Secretary of State. The answers that came back

[Clive Efford]

were: "These are matters for local commissioners, not for the Secretary of State or NHS England." That is the difference.

Because of the powers that we will give to the Secretary of State to provide guidance, the Bill will return accountability to Parliament. Government Members should be delighted about that. The Bill would restore the Secretary of State's accountability for providing a national health service to Parliament, so that Members of Parliament can ask questions and get answers. That is what the 2012 Act took away.

Mr Burns: The short answer to the hon. Gentleman's first question is no, I did not hear the programme. I am certainly not going to comment on his interpretation of the programme without having listened to it myself because his interpretation may be deeply flawed. That was highlighted by his constant repetition of "privatisation", which I have to say is becoming a little tedious. How can I get it through to his brain, to put it politely, that we are not privatising the health service? As I said earlier, the NHS is 67 years old this July. For a majority of those 67 years, a Conservative Government or a Conservative-led Government have had the stewardship of the NHS and we have not privatised it. We did not try to privatise it under the late Baroness Thatcher, and we never will privatise it because we do not believe in that.

The hon. Gentleman conveniently forgets what I said before. If he looks at the times that charges have been imposed on patients in the NHS—dental charges, prescription charges, spectacle charges and charges for road traffic accidents—it was not a Conservative Government. It was not Anthony Eden, Harold Macmillan, Margaret Thatcher or the right hon. Member for Witney (Mr Cameron) who imposed those charges. It was Hugh Gaitskell, Clement Attlee, Harold Wilson and Tony Blair.

Andrew George (St Ives) (LD): On a number of occasions, the right hon. Gentleman has defended or explained the line that the Conservatives have not endorsed and would not endorse privatisation, and then moved on to the issue of charging and the fact that it is free at the point of delivery, with certain exceptions. May I suggest that he is confusing two completely separate issues? One is the bodies that deliver the health service itself. There has clearly been a shift over time, under both parties' Administrations. Increasingly, private sector providers of what was previously an NHS with a public sector ethos have been running those services. That is quite a different point from the one about how and when private individuals are charged for access to certain aspects of the NHS.

The Chair: Order. Just before the right hon. Gentleman replies, I am getting the sense that interventions are turning into speeches and that speeches are getting longer. Perhaps hon. Members could shorten both.

Mr Burns: I am grateful—

Clive Efford: On a point of order, Mr Bone. We have been discussing this set of amendments to clause 1 for nine hours, and have made no progress whatever. It is quite clear that Government Members are determined to talk the Bill out. I do not think that I can call on my hon. Friends to stay any later just to listen to the dreadful dirge that we are hearing from Government Members. Therefore, may I move the Adjournment of the sitting?

The Chair: It might be helpful to the Committee if I say that unfortunately I cannot take that motion while another Member is on his feet. If that Member were to sit down, I could take it.

Mr Burns: I cannot refuse an offer like that, so I will be brief. Out of politeness, may I respond to the hon. Member for St Ives? I do not know when he was out of the room but, as I explained earlier and obviously passed him by, ever since Nye Bevan set up the NHS, 95% of GPs have been private small businesses. That is, by his definition, not mine, privatisation. A significant amount of mental health care in this country has been provided by private providers, charities and voluntary organisations. Since the early 1990s, to deal with waiting times and waiting lists, the NHS has commissioned care from the private sector to help patients, free at the point of use.

I imagine that the hon. Member for St Ives will not thank me for saying this but he, a Liberal Democrat MP, is part of the coalition—I know what he is going to say—and his party joined us in putting through the 2012 Act—*[Interruption.]* I know he didn't and I knew that he would say that. His party joined us in passing the 2012 Act because it was in the best interests of the NHS to be able to continue to develop, improve and enhance patient care.

In conclusion, I have explained the amendments that I support, those that I think are ill thought out, and some that need fine tuning. When there are votes, I will vote along the lines that I have explained to the Committee.

Ordered, That the debate be now adjourned.—*(Clive Efford.)*

6.53 pm

Adjourned till Tuesday 3 March at twenty-five minutes past Nine o'clock.