PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

NATIONAL HEALTH SERVICE (AMENDED DUTIES AND POWERS) BILL

Sixth Sitting

Tuesday 3 March 2015

(Morning)

CONTENTS

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

£5·00

PBC (Bill 018) 2014 - 2015

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

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor's Room, House of Commons,

not later than

Saturday 7 March 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: Sir David Amess, † Mr Peter Bone, Mr Jim Hood, Dr William McCrea

† 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 3 March 2015

(Morning)

[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.*)

9.25 am

Question again proposed, That the amendment be made.

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

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

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

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

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

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

Amendment 41, in clause 1, page 2, line 2, leave out "general economic interest" and insert

"that ensures value for money".

Amendment 78, in clause 1, page 2, line 2, after "interest", insert

"pursuant to one or more universal service obligations".

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

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

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

Amendment 42, in clause 1, page 2, line 8, at end add

"subject to consultation with relevant local government bodies".

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

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

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

Amendment 81, in clause 2, page 2, line 16, leave out "solidarity" and insert "cohesion".

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

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

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

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

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

Mr David Nuttall (Bury North) (Con): It is a great pleasure to resume our consideration of this important Bill and to do so under your chairmanship, Mr Bone.

This group of amendments comprises 18 separate amendments that can be broken down into 11 separate sub-groups, on the basis that they have been tabled by different members of the Committee and that they deal with different aspects of the Secretary of State's duties.

I pay genuine and heartfelt tribute to my hon. Friend the Member for North East Somerset and my right hon. Friend the Member for North East Hampshire for tabling the amendments. Both should be congratulated on diligently addressing what will rightly be seen as the problems in clause 1, which essentially restates the Secretary of State's duties in the National Health Service Act 2006, as amended by the Health and Social Care Act 2012. They have come to separate conclusions about how best to improve the clause, but they should nevertheless both be congratulated.

At this early point, it is worth commenting on what we are trying to do. First, I remind members of the Committee of my entry in the Register of Members' Financial Interests. I am on the roll of solicitors, albeit that I no longer practise. I also remind them of my reliance over many years on our national health service, as well as that of members of my family, several of whom are being treated this very day by our wonderful doctors and nurses.

Jacob Rees-Mogg (North East Somerset) (Con): I am grateful to my hon. Friend for explaining his interests. The issue was brought up in the debate last week. My interests, which I referred to, mainly involve investment management, and none of my investments are in the United Kingdom.

Mr Nuttall: I am grateful for my hon. Friend's confirmation of that. He made an interesting point in an earlier sitting, when he said that none of us really knows how investments on our behalf may have been made. We should all bear that in mind, but that aside I have no further interest to declare.

My right hon. Friend the Member for North East Hampshire and my hon. Friend the Member for North East Somerset have taken the Committee through their proposed amendments to the clause in some detail, although I felt that one or two of the later amendments in the group in the name of my hon. Friend the Member for North East Somerset were dealt with fairly superficially.

I look forward to his being able to enlighten the Committee further about those specific amendments later in our proceedings.

Mr James Arbuthnot (North East Hampshire) (Con): I am sorry to say that having read the report in *Hansard* of my own contribution, I felt that I failed to get to the heart of the matter with my amendments. I hope that my hon. Friend the Minister will be able to do so in his remarks on the clause.

Mr Nuttall: I am most grateful for that clarification.

Sir Greg Knight (East Yorkshire) (Con): Will my hon. Friend give way?

Mr Nuttall: I will give way, then I will finish with the previous intervention.

Sir Greg Knight: I am not sure that the previous intervention was a clarification, because I am now totally baffled. My right hon. Friend the Member for North East Hampshire appears to be inviting the Committee not to vote for his amendments.

Mr Nuttall: I am not sure I took the earlier intervention in precisely the way that my right hon. Friend did. I took it to mean that we would need to hear from the Minister to enlighten us further.

Mr Arbuthnot: I cannot understand how my right hon. Friend the Member for East Yorkshire took that impression from my intervention. I was not advising the Committee to reject my amendments—I firmly believe in them; I simply did not think I had really got into why precisely my amendments were as correct as I believe them to be.

Mr Nuttall: I am grateful to my right hon. Friend for clarifying that point, because I do not want any member of the Committee to be in any doubt about the sincerity with which he tabled his amendments. I am sure that he did all he possibly could to convince the Committee of the good sense of his amendments.

Mr Simon Burns (Chelmsford) (Con): Does my hon. Friend agree that my right hon. Friend the Member for North East Hampshire is being rather harsh on himself? I thought that when he spoke to his amendments he outlined them forensically and certainly convinced me of their merits.

Mr Nuttall: I am rather surprised that my right hon. Friend appears to have reached a conclusion about the amendments of my right hon. Friend the Member for North East Hampshire without having listened to my contribution. With the greatest respect to my right hon. Friend the Member for Chelmsford and his great experience in such matters, although at this early stage of the morning sitting he may feel persuaded by the contribution of my right hon. Friend the Member for North East Hampshire, there are two sides to every story, and once he has heard my remarks, my right hon. Friend the Member for Chelmsford might change his mind. I don't know. There is quite a number of amendments, and on some of them we might be of like mind and on others we might be of a different mind.

Jacob Rees-Mogg: I merely make the technical point that we cannot vote on any of the amendments until they have been put formally. My right hon. Friend the Member for North East Hampshire might decide, having listened to the wonderful oratory of my hon. Friend the Member for Bury North, that he does not want to press the amendments.

Mr Nuttall: This is absolutely right. I am grateful to my hon. Friend for making that clear. Returning to the intervention by my right hon. Friend the Member for North East Hampshire, the key point is that we need to hear from the Minister about the Government's position on the amendments tabled by my hon. Friend the Member for North East Somerset and my right hon. Friend the Member for North East Hampshire.

At our last meeting we heard from the promoter of the Bill, who—in my respectful submission—dealt with the amendments rather perfunctorily. There are 18 amendments divided into 11 groups, and by my calculation he spent roughly two minutes on each sub-grouping. In those circumstances one can be forgiven for reaching the conclusion that the promoter and his hon. Friends on the Committee, many of whom we have not heard from substantively during the course of these proceedings, perhaps have less faith and belief in the amendments they are proposing to the 2006 Act and the 2012 Act than may at first appear.

When we heard from the hon. Member for Eltham, he rather gave the game away when he referred to the "ravages of the marketplace". He let the cat out of the bag. While I am talking about cats, I do not know if anyone else heard the shadow Minister, the hon. Member for Denton and Reddish, speaking in the debate yesterday, but I would like to pass on my commiserations and condolences about Delilah.

Mr Burns: Who is Delilah?

Mr Nuttall: For members of the Committee who are not aware, the shadow Minister's cat Delilah escaped and sadly lost its life. He mentioned that in a debate yesterday, and it came into my mind as I spoke, because I did not want to upset him by using the phrase "let the cat out of the bag". I mean that genuinely, because I know how I would feel if our pet dog escaped and was injured.

I return to the substantive point about the ravages of the marketplace. I have not had a chance to check whether those words appear in *Hansard*, but I wrote them down contemporaneously when the promoter of the Bill uttered them in this very room seven days ago. They go to the heart of what this Bill is about. It is not about what I am concerned with, which is trying to secure the best outcomes for patients. In my book, that is the only thing that matters. It does not matter to me, and I am sure it does not matter to my constituents, whether the treatment they receive is provided by someone directly employed by the NHS or someone whom the NHS has employed to provide that service for them. When my constituents need medical attention, they are

[Mr Nuttall]

concerned that they receive the best medical attention that the nation can reasonably and properly afford, and that the treatment be provided free at the point of need, and most of our constituents—99.99%—believe that that is what they already receive.

In my experience, there has not been a sudden rush, since the 2012 Act was passed, of people saying, "Good grief, Mr Nuttall, it isn't half time we brought back those nice primary care trusts. I felt much safer when we had a PCT." I used to say to the one or two people who contacted me during the passage of the Health and Social Care Bill, "Look, whatever the Bill might do to the structures, if you are ill you will still go to see your local doctor in the same way you always have. If your doctor cannot prescribe a solution to your problem, he will refer you to a consultant at the hospital who will use their experience and medical training to try to resolve your problem." That was the position before the 2012 Act, and it is the position today.

There is an ideological disagreement over the nature of health care provision—that is the real problem. I tried to intervene on the hon. Member for Eltham—I apologise if he thought I did so too aggressively—to inquire whether it was his proposition and that of others supporting the Bill that there should be no private provision in the NHS. If so, that is an ideologically sound position.

Jacob Rees-Mogg: If there is to be no private provision, is that going back to Labour's clause IV? Must hospital bed and blanket manufacturers be nationalised? Is it going back to socialism red in tooth and claw?

Mr Nuttall: I am grateful for that intervention from my hon. Friend. My view is that he is right; that would be a return to pure socialism. That is an honourable position to take, though not one that my hon. Friend and I would agree with. I think properly managed competition cannot be matched; that is the best way forward. Purely socialist solutions do not match the advantages that can be achieved by different organisations competing with each other to achieve better outcomes.

9.45 am

Stephen Metcalfe (South Basildon and East Thurrock) (Con): I am listening carefully to my hon. Friend. He has just arrived at a key point. Without some form of competition and the ability to test in the market, how can it be known whether there is value for money for the people who contribute to and support a national health service? Surely it must be possible to identify what represents value for money.

Mr Nuttall: My hon. Friend touches on another amendment in the group about what constitutes value for money. Amendment 41 would replace the words "general economic interest" with the words "value for money". I am not sure whether it is a particularly helpful phrase in the context of provision of health services. We may as well deal with the matter now, as I was going to talk about it on amendment 41, so I am not using up any extra time.

Stephen Metcalfe: On a point of clarification, which phrase is my hon. Friend referring to—"value for money" or "general economic interest"?

Mr Nuttall: I will make it perfectly clear. Under amendment 41 to subsection (2)(b), tabled by my hon. Friend the Member for North East Somerset, the Secretary of State would have to make sure that the health service was a public service that, rather than delivering services of "general economic interest", ensured "value for money". It would also be one that operated "on the basis of social solidarity", assuming that no other amendments were accepted.

That is the amendment about which my hon. Friend intervened. He raised the question of value for money, and it is a difficult concept to introduce into the national health service. What is value for money in health terms? A monetary value cannot be put on someone's health. That is the problem.

Clive Efford (Eltham) (Lab): The intervention by the hon. Member for South Basildon and East Thurrock suggested that only competition—the marketplace—can achieve an efficient NHS and the value for money he wants. The hon. Gentleman did not respond to that; does he agree with that point?

Mr Nuttall: I was going to come on to precisely that. The hon. Gentleman is right to remind the Committee of the intervention, and I am grateful to him for bringing me back to that point. Competition can drive down price, but it can also drive up quality. It is not purely about the cost. That is the key point when we think about health.

Clive Efford: This is a fascinating discussion. So a qualified consultant would be more effective in their profession if they were in a marketplace and in competition, rather just desiring to achieve the best outcome for their patients?

The Parliamentary Under-Secretary of State for Health (Dr Daniel Poulter): *rose—*

Mr Nuttall: The Minister wants to intervene as well, so I will deal with the hon. Gentleman after I have taken the Minister's intervention.

Dr Poulter: My hon. Friend may wish to expand on the point that clinicians are surely in the best place to understand which services are in the best interest of patients. Sometimes there are a number of different providers of services that can offer better care for patients. It is important that those are chosen on the basis of the clinical decisions of those running clinical commissioning groups.

Mr Burns *rose—*

Mr Nuttall: I shall give way to my right hon. Friend and then deal with all three interventions together.

Mr Burns: Does my hon. Friend also agree, in answering the hon. Member for Eltham, that there is non-financial competition between consultants, through choose and book? Patients can look at the performance and achievements of a consultant and then choose which one they wish to treat them. That introduces a form of non-financial competition to the system.

Mr Nuttall: The contributions from the Minister and from my right hon. Friend the former Minister contribute to my answer to the promoter of the Bill. Competition should not be seen purely in terms of economic outcome. People can compete to see who can deliver the best quality of outcome. Consultants may have different skills. For example, a doctor might say, "Look, Mr Bloggs is fairly young but he is quite go-ahead; he does one or two cutting-edge things which he has read about in America; you could go with him. Or you could go with Mr Jones. He has been around much longer; he has not taken up these American ideas; he has different, tried and tested techniques that we have been using in this country for years". It is nothing to do with money. The patient will then have a choice between the younger consultant who has brought in some cutting-edge skills from America and the older consultant who is, perhaps, using more tried and tested techniques. That is just one example of how the patient can choose between two competing consultants within the health service. Some people may call this competition.

Jacob Rees-Mogg: In this competition there is no absolute. Somebody like me would probably go for the tried and tested, for the older consultant who could be relied upon, while a radical like the hon. Member for Eltham would go for the new and untested.

Mr Nuttall: I could not possibly say. I can quite believe that my hon. Friend might go for the tried and tested, but I would not like to say whether the promoter of the Bill would go for the radical.

Clive Efford: The question for me, as a lay person wanting to be treated by an expert, is how do I decide. I have to rely heavily on the advice of the clinician, so the idea of competition between consultants and choosing through choose and book is actually very limited. That is not the sort of competition we are talking about. The hon. Member for South Basildon and East Thurrock was talking about a market competition that drives efficiency in the national health service. That is a completely different approach to the national health service than we have seen before and that is what the Bill is about. It is that that I was asking the hon. Gentleman to comment on.

Mr Nuttall: It is all very well talking about these concepts of competition in abstract terms, but as I demonstrated in that example, they are of value only when one looks at the actuality and the detail. On the hon. Gentleman's first point, I am not sure whether it is difficult for a patient to make up their mind. One of my guiding principles is that I always trust the individual. It is rather patronising to assume that a patient is incapable of making those decisions.

Andrew George (St Ives) (LD): The hon. Gentleman says that we should look at the actuality and the detail. The fact is that the choose and book system was chosen by the Labour Government, which perhaps is often overlooked. In an area like mine, the reality is that my constituents who are waiting for an elected procedure often will choose the place that can treat them most quickly. What often happens is that consultants who are working both in the public and private sector strangely find themselves in a position where they can see the patient sooner in their private work than when they are working for the NHS. Therefore driving patients into the arms of private sector companies is not really a choice on the basis of quality or outcome, but on when patients can be seen. Does the hon. Gentleman not share my concern that in fact we have a skewed market, in which the private sector is camped on the front lawn of the NHS, cherry-picking the easy work and skewing the way that the market works in order to drive patients into private sector companies?

Mr Nuttall: The hon. Gentleman made an unusually long intervention. *[Interruption.]*—No, I do not mind. I was listening carefully and thought it was useful, because he put forward the opposite point of view, which is that somehow, in providing services, the private sector is damaging the central core of the NHS. I do not take that view. We are dealing again with the preliminary point that I wanted to make about securing the best outcomes, which runs throughout the Bill. I do not think that a patient will be that bothered whether they are treated by a "private company" or by someone employed by the national health service.

Dr Poulter: On my hon. Friend's point about a publicly funded health service, of which we are all proud, he may wish to reflect on the comments made on the 2012 Act by Lord Warner, a former Labour Health Minister.

"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 Nuttall: Those are wise words indeed. I am sure that all Labour supporters will sign up to the generality of the Bill, because in essence this is Labour trying to differentiate itself on the matter of the NHS. In truth, that passes most people by. The reason most people are satisfied with our NHS is that, on the whole, it provides a darn good service. We can all argue about the detail, but that is the reality.

10 am

In recent weeks, we have seen the Labour party doing its job, as we would expect it to. If a target is not absolutely met, members of the Labour party will jump up and down and say, "Oh, look, it's only 93%." If it was 95%, they would not jump up and down, because the target would have been met. Actually, 93% is very good, and 95% is very good, because those are demanding targets. As we all know, statistics can be made to prove anything.

We all want our national health service to provide the best possible outcomes for patients. Harnessing the power of the private sector can only drive up standards and provide better outcomes for patients, and that is all I want. I want the best possible outcome for my constituents; I am not interested in ideological attacks on a state-owned monopoly or a purely private sector organisation. The national health service has been around for 70 years, and that is not going to change.

Sir Greg Knight: My hon. Friend has rather left the Committee on the edge of its seat, because he has not reached a conclusion on amendment 41, which he has not signed. Is he coming down in favour of "value for money" or "general economic interest"?

Mr Nuttall: The short answer—I will always try to give short answers where appropriate—is that I have come down in favour of neither "value for money" nor "general economic interest", because neither is particularly helpful, to be frank with my right hon. Friend. The term "general economic interest" is included in proposed new section 1(2)(b). I do not think it should be there, which is why I support amendment 1, tabled by my right hon. Friend the Member for North East Hampshire. However, I can understand why, if proposed new paragraphs (b) and (c) are to remain in the Bill, my hon. Friend the Member for North East Somerset tabled amendment 41 to tease out what is meant by the term "general economic interest" and whether it would be better to use the term "value for money".

Mr Arbuthnot: To be clear, my hon. Friend is saying not that he disapproves of value for money, but that he does not think it is appropriate to insert the term in this legislation at this point. Is that right?

Mr Nuttall: There are certain aspects of the health service where it would be foolish for anyone to say we do not want to get the best value we can from the infrastructure. If we were having a new hospital built, for example, we would want to make sure that it was being built in the most economical way possible. We would want to put it out to tender and get the best quote for the job. Some would call that value for money but, in terms of the actual delivery of medical services, that is where the term gets rather messy. It is very difficult to assess when you are treating an ill patient what is and what is not value for money.

Several hon. Members *rose—*

Mr Nuttall: I shall give way first to my hon. Friend the Member for North East Somerset.

Jacob Rees-Mogg: I am grateful to my hon. Friend for allowing me to intervene. Of course I agree with him that life is above any price—value for money when saving life cannot apply. However, that is not quite to say that it does not apply to any part of the provision of medical services. For example, a generic drug is cheaper than a branded drug, but it has exactly the same composition, so I think value for money can go further than my hon. Friend allows.

Mr Nuttall: I am grateful to my hon. Friend for reminding me of that point. He is absolutely right. There are some circumstances where the public would expect the national health service to use a bit of common sense and say, "Look, why are you buying drug A when drug B is exactly the same except that it does not have a particular brand name? We should be buying drug B; that is value for money". That is how the public will talk about it.

Stephen Metcalfe: Following the point made by my hon. Friend the Member for North East Somerset, value for money is a difficult concept to introduce when referring to people's health. However, we have to do it. NICE does it all the time. It evaluates drugs and different parts of the country will decide whether or not different drugs are available. Only today we have heard that some cancer drugs are available in England but not under the Administration in Wales. Someone somewhere is always making a value judgment about treating people.

Mr Nuttall: Again, my hon. Friend is absolutely right. Ultimately, our national health service is constrained by the resources available. It is, I would venture to say, the elephant in the room. It is something which no political party likes to mention. If we are being honest with the public—it is one of my touchstones of political life that we need to be honest with the public—we need to say to them, "Look, whichever party is in power, you might want to add £1 billion here or £1 billion there but ultimately there is a finite amount of resource available".

It is our responsibility as politicians to ensure that the framework is put in place to allow those who have medical expertise to determine how best to deploy those resources among those who seek treatment to secure the best outcome for as many as they can. I am the first to agree that that is not an easy task and it is not a task which many people would be happy to take on. I can well understand why some of those within the health service constantly give the impression that they want more resources, because it will make their task a little easier. Every bit of extra resource they get makes that decision-making process easier but, ultimately, we come back to the same stumbling block.

Stephen Metcalfe: The point I want to make, which my hon. Friend has already made very well, is how do we test whether we are using those resources to the best of our ability if we do not have some way of evaluating or testing value for money, to see whether service A is being provided in a reasonably cost-effective manner and to ensure that moneys saved in that area can be redeployed elsewhere within a health service that is spending £2 billion a week on our behalf?

Mr Nuttall: There are two answers to that. First, that is why the NHS has managers. We can all make political points by saying that we need to cut down NHS bureaucracy and get rid of the managers, but nobody ever suggests that we get rid of all the managers in the NHS; of course not. We need people—administrators—within the NHS to do precisely that task and to ensure that someone is adding up the numbers and carrying out an evaluation of one service in comparison with another. That goes on all the time in our NHS; of course it does.

The second answer is the view of the public; I think they will let us know if there is not value for money. As I said a moment or two ago, by and large the public think they are getting a good health service. Of course they will say they are concerned about the NHS. However, I think that they are concerned that somehow, because of all the political noise they hear about the NHS, they should say, "Oh, well, I'd better say I am concerned about the NHS, because I'd hate it to disappear and I rely on it." Everyone values their health, perhaps more than anything else. So, understandably, when people are asked, "What are you concerned about?", they will say, "Oh, well, I'm concerned about the NHS." When people say they are concerned about the NHS, that is short-hand for saying, "I'm concerned about my health. I do not want to get ill and"—if they are ill already—"I want provision to be there, as it has been throughout my life",

unless they are a particularly elderly person who remembers life before the NHS. There are one or two people who still remember life before the NHS, but not many of our constituents are in that position.

People want that health care to remain, and that is what I would say about amendment 41, which I have been encouraged to discuss earlier than I had perhaps imagined. Nevertheless, it is important that we have dealt with that substantive issue straight away.

Having dealt with that intervention at some length, because it also took me neatly into discussing amendment 41, I will now go back to amendment 38. It has been tabled by my hon. Friend the Member for North East Somerset and it is linked with amendments 39, 50 and 52. This sub-group of amendments deals with the issue of "social solidarity", as opposed to "medical necessity". That is all within the context of section 1 of the 2012 Act and the Secretary of State's duties.

The Secretary of State is required, under the existing provision,

"to promote comprehensive health service",

and added on to that are the words, "based on social solidarity." My hon. Friend's amendment would change those words to "based on medical necessity."

The other amendments—amendments 39, 50 and 52—make the same change to the phrase "social solidarity" on the other occasions when it appears in the Bill. They are essentially consequential amendments.

10.15 am

In order to understand what the term "social solidarity" is all about and why it is in the Bill, it is important to look at what the purpose of section 1 was in the first place. It was there to set out an overarching statement about whether the Secretary of State should promote or provide the health service. This was essentially the argument when the 2012 Bill was going through Parliament. Coming back to something I said a minute or two ago, I note that for all the arguments about the Labour party going to repeal the 2012 Act, that provision would still be there. That ground has been ceded. I have to second-guess the promoter of the Bill here, but I think I am right in my view of this. I am sure he will tell me if I am wrong.

Instead, it appears that the concern in inserting new paragraphs (b) and (c) into the provision is to try to deal with the impact of the private sector, for want of a shorthand phrase. That is fair enough, and that is what the Labour party is concerned about. It is concerned not so much about the legislation in this country, but about the impact of European Union legislation.

Mr Arbuthnot: I have been looking at clause 2, which states:

"The Secretary of State shall exercise his powers under this Act to promote the health service as an efficient service based on mutual cooperation and social solidarity".

I wonder whether my hon. Friend might get on to the question of whether clause 1 is simply duplicated in clause 2, so that clause 1 is not necessary at all. I hope that he will be able to deal with that point.

Mr Nuttall: I am grateful to my right hon. Friend for mentioning that. I have linked amendment 38 to amendments 39, 50 and 52. My right hon. Friend is absolutely right to point out that in fact amendment 50 amends clause 2. I am not in any way making a point about the grouping, but it is a matter of fact that amendment 50—and, I suspect, amendment 52—relate to clause 2. That is a very important point. The points which I am going to make would apply equally to clause 1 and clause 2, but I accept that amendments 50 and 52 actually relate to clause 2 of the Bill rather than clause 1. Such was the argument about the nature of this change: whether the Secretary of State should simply promote a national health service, or whether they should provide the relevant services. When the 2012 Bill was being scrutinised, crucially, the provision that became section (1)(4) was inserted. It said:

"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."

There it is; it is in existing legislation that services provided as part of the health service in England must free of charge.

Mr Burns: My hon. Friend makes an extremely important point. If memory serves, that is the first time that it has been in legislation for some time, and it was deliberately done to stop any disinformation by the Labour party with ridiculous claims of privatisation. However, it does not stop it misrepresenting the situation on a daily basis.

Mr Nuttall: It is worth noting, as we are looking at the Secretary of State's duties in connection with this group of amendments, that the existing legislation states that our national health service and the services that are part of it must be provided free at the point of delivery. Ground was achieved in the 2012 Act, and it is now the accepted reality that national health services are not provided directly by the Secretary of State; they are provided by NHS bodies. All that the 2012 Act did was seek to make our legislation more truthful and accurate. Who can argue with that?

Mr Burns: At the core of the 2012 Act was our commitment in the last general election that we would free the NHS from day-to-day political interference by politicians, and give the day-to-day running of the NHS to the NHS itself, through NHS England.

Mr Nuttall: I am grateful to my right hon. Friend for that intervention because that is the reality of the situation. We must never forget that. Essentially, the debate on the changes to the Secretary of State's duties introduced by the 2012 Act was over whether the Secretary of State should be required to provide NHS services, when the reality was that responsibility for the commissioning and provision of services belonged to NHS bodies and not the Secretary of State.

Clive Efford: I do not follow what the hon. Gentleman is saying. If we look at the recent crisis in accident and emergency, there was clearly a central directive from the Secretary of State to deal with it. *[Interruption.]* The right hon. Member for Chelmsford wants to answer for the hon. Gentleman, but perhaps the hon. Gentleman can do so himself. Will he explain why the Secretary of State is not responsible for services at that level when that was clearly handled by the Department of Health?

Mr Nuttall: I shall answer, then give way to my right hon. Friend the Member for Chelmsford. The reality is that, crucially, the Secretary of State is still involved: no one has ever suggested that Parliament has been taken out of the process completely. Members of Parliament rightly have the opportunity at Health questions to question the Secretary of State for Health and Health Ministers about what is going on in our NHS, because it is still paid for by public money. If the Secretary of State sees that his intervention is needed, the public would expect him to intervene.

Mr Burns: My hon. Friend is absolutely right. The reason for such intervention is that, although NHS England is responsible for the day-to-day running of the NHS, the Secretary of State has overarching responsibility and, because we give so much money to the NHS, he issues a mandate about what he expects the NHS to deliver for the people in this country in return for the money. He is effectively exercising his responsibility under that mandate.

Mr Nuttall: I am grateful to my right hon. Friend: he answers the point fairly and squarely.

Clive Efford *rose—*

Mr Nuttall: The hon. Gentleman might not like it—

Clive Efford: The hon. Gentleman seemed to argue that the thrust of the 2012 Act was to remove political interference from the NHS, but now he and the right hon. Member for Chelmsford are arguing the opposite, saying that there should be political intervention when it is absolutely necessary.

Will the hon. Gentleman comment on this point? The Secretary of State tried to close one of my local A and Es, having said before the general election that he would not do so. Is that political interference? The local people did not want that A and E to be closed.

Mr Nuttall: There are a number of points here. I will come back to the amendments, but the promoter of the Bill is leading me down a side alley of debate, where I am happy to follow him. In answer to his question about his local hospital, that is a matter in the local reconfiguration of services. That is my understanding.

Clive Efford: Actually, no. *[Interruption.]* As the Minister is trying to mime to the right hon. Member for Chelmsford, the Secretary of State appointed the chief executive and dismissed the board, and a report recommended the closure of Lewisham A and E. The Government were prevented from closing that A and E after a judicial review.

Mr Nuttall *rose—*

The Chair: Order. Although this is a silly statement to make, I would like to make some progress on the Bill. Although that was a legitimate example, we should not go too much into the detail.

Mr Nuttall: I will wrap it up as quickly as I can, Mr Bone. Rather than guess what the Minister wants to say, I think we should hear from him directly.

Dr Poulter: My hon. Friend will recognise that the difficulties experienced in that part of London were created by the Secretary of State in the previous Government, the right hon. Member for Leigh (Andy Burnham), who signed off damaging private finance initiative deals. That was the root cause of the difficulties faced by the hospitals in south-east London. The 2012 Act supports greater autonomy for the operation of the NHS.

Mr Nuttall: There we have it. I thought it would help to hear from the Minister, and we have been able to nail that straight away.

Let me return to the other point made by the hon. Member for Eltham in his intervention, which was directly related to the Secretary of State's duties. He asked whether we were contradicting ourselves. All I say is this: if he and his colleagues felt that the pre-2012 position was preferable, why does the Bill not provide for the Secretary of State's duties to be changed so that the word "provide" appears in it? I ask rhetorically, because it could have happened.

Jacob Rees-Mogg: I have a feeling that "provide" was not used because that might have involved expenditure, which might have required a money resolution. It is probably careful wording.

10.30 am

Mr Nuttall: We may have got to the nub of the matter. That may well have been why "provide" was not included. Heaven forbid that the Bill ever reappears, but if it does, that word might appear. As I said, if that is the view of the Bill's supporters, that is fair enough. Although I do not agree with it, it is an honourable position to take.

I have given the background on the words "social solidarity". We then ask ourselves why those words appear. As I understand it, they have never appeared in our legislation before. They are not part of our statute book. As ever, we are helped in our quest for the truth by our friends in the House of Commons Library, who state:

> "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."

That is very straightforward. Those who support the Bill are not too concerned about the situation in this country—everyone accepts where we are at—but they are concerned that European Union law may override English law. The changes in the Bill therefore try to introduce European Union legal terms to our statute book.

Clive Efford: I should cheer the hon. Gentleman up with this point, because the Bill would do the opposite to what he argues. It would prevent European Union competition and procurement rules from applying to NHS contracts. The Bill would restore the sovereignty of our Parliament over our national health service, which is something that even the hon. Member for North East Somerset could support.

Mr Nuttall: se I entirely agree that this country should be in charge of its national health service.

Jacob Rees-Mogg: Indeed, I fundamentally support the reassertion of our sovereignty, not just over our health service, but over all aspects of our lives. The Bill, however, would not do what the hon. Member for Eltham argues, because it would be justiciable before the European Court of Justice without a "notwithstanding" clause. He needs a "notwithstanding" clause to make his Bill effective.

Mr Nuttall: We will come on to this, but that is exactly the road we are going down.

Sir Greg Knight: Has my hon. Friend had any indication from the promoter of the Bill that he has taken legal advice on whether, should the Bill become law, it could be struck down by some unelected, faceless European judge?

Mr Nuttall: The short answer is that I have had no such clarification on that point. In view of the Bill's importance, it would have been wise and prudent to seek such advice before bringing it forward.

Mr Arbuthnot: Speaking as a raving Europhile, I want my hon. Friend to be aware that many of my best friends are European judges. While they may be unelected, they do have faces.

Mr Nuttall: I am extremely relieved to hear that.

Jacob Rees-Mogg: How can my right hon. Friend the Member for North East Hampshire be sure of that? Has he not tested for masks and things like that?

Mr Nuttall: I know not whether my right hon. Friend has tested whether they are wearing masks. One assumes that they are not. One is relieved to hear that they are not faceless but they are, nevertheless, European. I am a simple soul. My constituents would not be very happy about all this being brought before the courts. They do not want money that could be spent providing better health care to be spent debating the finer points of EU competition law. Crucially, they do not want money that could be spent on our NHS, providing care and treatment to ill patients, being spent on pointless legal actions in this country or, even more worryingly, in the European courts. The problem is that the Bill makes that more likely.

Although I entirely accept the submission expressed by the promoter of the Bill that it is his intention to put our NHS beyond the reaches of EU competition law, that does not mean that it would not be justiciable before the European courts. The fact that we have used language that, as I will establish in a moment, is directly lifted from EU law and the EU's case book does not mean that it will not be justiciable in the European courts.

What is solidarity? I can only give my view. Some have suggested that solidarity is a form of unity based on interests, objectives, standards and sympathies; that it refers to the ties in a society that bind people together; and that the term is generally used in sociology and philosophy. What it is doing in a Bill about our health service?

Jacob Rees-Mogg: In his comments so far my hon. Friend has mainly been saying that the aim of the Bill is to stop the NHS being, in the terms of the Labour party, privatised—a misuse of that term but let us use it for the time being. Does social solidarity actually do that? Does it achieve what the Labour party wants to achieve, which is stopping private providers selling their services to the NHS, or is it too woolly for that?

Mr Nuttall: I am grateful to my hon. Friend for that intervention because he opens up an interesting question indeed. I am certainly not convinced that simply inserting the phrase "social solidarity" and placing a legal duty on—not just requiring—the Secretary of State to promote a health service based on social solidarity achieves that. There is a difficulty with the term because it has not been used before in our laws. It is also worth noting in passing that the term is not defined as it could have been defined in the Bill.

The Chair: Order. We listened for probably two hours to a speech on the definition of social solidarity, from Mr Rees-Mogg if I remember, some dim and distant years ago. We are not going to have another debate on the definition of social solidarity.

Mr Nuttall: Mr Bone, I will listen to your speeches and I entirely accept that the mover of the amendment went into that subject, as did my right hon. Friend the Member for North East Hampshire. But I would, without opening a debate on the meaning of solidarity, draw the Committee's attention to the fact that article 35 of the charter of fundamental rights of the European Union is in chapter 4 of that charter, which is headed "Solidarity". When the judges of the European Court see that word, their ears will prick up and they will understandably look to their charter, under which they are working, and will read, in article 35, that:

> "Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities."

They will put those two things together and reach the conclusion that it is within their ambit to be able to determine whether or not an applicant for justice before their court is in the right place and whether or not they have the power to determine a case brought before them.

I note what you say, Mr Bone, about the exact definition of the term "social solidarity"; we have heard a lot about it. I can sum it up with one sentence: it is a sociological term that means different things to different people. That is probably the best way to look at it.

Dr Poulter: On that point—we have heard a lot about social solidarity and Mr Bone is correct in his ruling about the philosophical basis of the term—there are potentially some practical implications for the health service in implementing such a term. It may depend on the political persuasion of a particular Government as to which health services should or should not be prioritised—if you had a left-wing Government, for

[Dr Poulter]

example, they may not want to prioritise the care of our armed forces and veterans. I do not know whether my hon. Friend would agree with that.

Mr Nuttall: That is a good point. Of course it works either way—if the country was in a time of war and the nation was pulling together against a common enemy, how would a pacifist be treated? Would they be regarded as not being part of the social solidarity of the nation? Of course, it is all very well for us to say, "These things will never arise," but that is the nature of legal cases. One need only look through our case law to realise that it is the odd things that arise in human life that arrive at the doors of our courts.

10.45 am

Having ascertained this morning and, as you rightly said, Mr Bone, in previous sittings what might be meant by the term "social solidarity"—the answer is that we do not know—we can ask what we mean by the term "medical necessity". That is new territory for the Committee. Is something medically necessary only if it is required to keep a patient alive? What happens if something is not required to keep them alive but simply to improve their quality of life? Is that still medically necessary? It might not involve anything physical at all; it might be psychological or emotional. Is that medically necessary? Either way, is the term "clinically necessary" any better?

What, for example, would be the situation if someone could walk but could not run? Would it be medically necessary for them to have an operation to enable them to run? Those are genuine questions about whether something is medically necessary. We are helped in our definition—

Liz McInnes (Heywood and Middleton) (Lab): The hon. Gentleman says that his question about an imaginary operation to help somebody who can walk but cannot run is genuine. He must be aware that there is no such operation, and that he is wasting everybody's time.

Dr Poulter *rose—*

Mr Nuttall: I will give way to the Minister.

Dr Poulter: The question about the operation picks up on exactly the point that I raised about veterans. Prioritising the provision of Genium knees for veterans has meant that some who have lost their limbs can now run. The point that my hon. Friend is making is absolutely pertinent.

Mr Nuttall: I am grateful to my hon. Friend the Minister. Of course these are real questions. Every day, people face such decisions. That is the reality of medical life. People face decisions about things without which they will still survive, but which are about the quality of their lives.

Mr Burns: Does my hon. Friend accept that decisions of that nature will be taken on a clinical basis by the clinician treating the patient?

Mr Nuttall: I think that my right hon. Friend is right. Not only is he right; that is exactly how it should be. It is not an easy concept for us as politicians to wrestle with. We are not there, and we are not medically trained, with the exception of my hon. Friend the Minister. One thing that I said earlier was that I look forward to hearing his comments, particularly on the point about amendment 38, because he will be able to testify from his own personal experience that the points I am making are genuine, as he highlighted just now in his intervention.

In America—I know that people jump up and down whenever we mention America in the context of health care, because theirs is a different system—terms must be defined as well. The term "medical necessity" is frequently used in America: it is found in insurance policies, it has often had to be determined by the courts, and medics, as people like to call them, often have to wrestle with it. I do not know whether my hon. Friend the Member for North East Somerset had the American definition in mind when he drafted the amendment, but it is worth looking at one particular definition:

"Medical necessity is an intuitive concept and not one that can easily be described in scientific terms. The importance for the physician is to be able to discern whether a given service is medically necessary at a given point in time, and if not it probably will not be a covered service."

Jacob Rees-Mogg: I had not considered the American definition, but it is very helpful, because we want an intuitive health service where clinicians understand what is necessary and do what they think is right, rather than one where a long list is laid down by the faceless bureaucrat friends of my right hon. Friend the Member for North East Hampshire.

Mr Nuttall: There is also guidance from the American College of Medical Quality, whose members define themselves, incidentally, as

"a group of healthcare professionals passionate about medical quality issues and committed to improving the health care system."

Jacob Rees-Mogg: I am afraid that has lowered my opinion of them. People who use the word "passionate" when they mean they have a modest enthusiasm for something abuse the English language in such a way that their comments should not be read into *Hansard.*

Mr Nuttall: I stand apart from them, and I am simply using their definition, which is that medical necessity

"is defined as accepted health care services and supplies provided by health care entities, appropriate to the evaluation and treatment of a disease, condition, illness or injury and consistent with the applicable standard of care."

That is just one suggestion, and there may be others. The difficulty is that, even with that definition, this comes back to the personal choice the medical practitioner has to make. That is where we are on this. No matter whether we say "social solidarity" or "medical necessity", we ultimately come back to a provider—hopefully, a medically qualified one—having to take a decision on what is best for an individual patient. Of course, the individual patient will always think they should be given every possible help with their problem.

Mr Burns: I am confused by my hon. Friend's comments. Surely, every decision on someone's medical well-being has to be taken by a clinically qualified person.

Mr Nuttall: I hope it has. Nobody is suggesting that such things be parcelled out to a third party; we are not parcelling this out to bureaucrats—that is the key thing.

Jacob Rees-Mogg: There is a fundamental difference between social solidarity and medical necessity, and it is a fundamental difference between conservatism and the Labour party. The term "medical necessity" refers to the needs of the individual; social solidarity is about the collective, and someone may decide not to proceed with treatment because they are putting the collective ahead of the individual.

Mr Nuttall: I am grateful for that clarification, which probably indicates why my hon. Friend tabled amendments 38, 39, 50 and 52. Quite rightly, he focuses on the needs of the individual, which links to the point that I was making. To an individual, the needs of the collective are irrelevant. An individual is not particularly interested that there might be 100,000 other people with the same condition or other, more serious conditions. They are concerned about their own problem, no matter how small or insignificant it might be.

Clive Efford: The term "social solidarity" is not there to interfere in any way with individual decisions about treatment. It is a way of defining the national health service in order to ensure that patients' needs are put first, not the needs of competition. That is what was behind Monitor's decision to refuse the reorganisation of Bristol's head and neck cancer surgery, which removed the essential element of competition. That is what Monitor said, and that is what we are turning on its head—the fact that the national health service will put patients first, not competition.

Mr Nuttall: That assumes that it would not be beneficial to patients. Looking beyond that to the rationale for the decision, someone has decided that it would be beneficial for patients. That is the key arbiter. The hon. Gentleman might come to a different conclusion.

Clive Efford: The hon. Gentleman was clearly not listening when I made my brief contribution at the previous sitting. This is what Monitor said:

"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".

Monitor concludes that there is likely to be a benefit. However, it also says that

"the merger removes important competitive constraints for elective head and neck, ENT"

and OMF services. It was the competition element—not the benefit to patients—that led Monitor to conclude that this should not go ahead.

Mr Nuttall: The point I was making was that that itself may be a bigger benefit. Monitor is not saying that there are not some benefits to the service remaining as it is, but that there is a bigger benefit in the decision taken. The converse would be that Monitor was taking a decision that was not in the interests of patients. I submit that it was in the interests of patients and in the greater good. Patients' interests should be the only requirement for anyone involved in the health service. It is entirely consistent with that for Monitor to have reached that decision in that particular case.

I was merely responding to an intervention from the promoter of the Bill. I did not voluntarily go down that particular alleyway into a specific case, which I know is dear to his heart. I know that he has only patients' best interests at heart, as I do. I hope that those remarks about social solidarity and medical necessity have advanced the argument a little further.

Andrew Gwynne (Denton and Reddish) (Lab): I have listened carefully to what the hon. Gentleman has said about social solidarity and whether he considers it more important to view the needs of the individual than the collective. I just put it to him that the two should not be seen as mutually exclusive. I put to him the definition that is in the NHS constitution. It refers to both of these things when it says:

"The NHS is founded on a common set of principles"—

we all agree with that—

"and values that bind together the communities"—

the collective—

"and people it serves"—

the individual—

"—patients and public—and the staff who work for it."

That, surely, is social solidarity.

11 am

Mr Nuttall: If that is the promoter's view of what social solidarity means, he could, of course, have included it in the Bill, or even in the explanatory notes, neither of which he chose to do. Therefore, the Bill and the explanatory notes remain silent as to the definition of the term. It was entirely right that members of the Committee sought to clarify the terms "social solidarity" and "medical necessity", because we do not want the courts to be put in the invidious position of having to second-guess what this legislation is driving at. For my own part, as I will say in connection with one or two of the other amendments in this group, I take the view that we would be better off without these terms in the Bill at all, but reverting to the Bill as it was without these amendments, which add nothing to the ability of our NHS to provide my constituents with the treatments which I believe they deserve and which I think, in very large part, they receive already under our national health service.

That deals with amendments 38, 39, 50 and 52. Amendment 37, which is a stand-alone amendment, amends clause 1, page 1, line 12, in that it adds at the end of that line,

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

This amendment was tabled by my right hon. Friend the Member for North East Hampshire, who is not in his place at the moment.

Mr Arbuthnot: I am.

Mr Burns: Hampshire is.

Mr Nuttall: It was tabled by my hon. Friend the Member for North East Somerset, but supported by my right hon. Friend the Member for North East Hampshire—ah, he is back. I am very glad to see him back in his place because I was about to say that when I read this amendment, I thought that it should be included in virtually every Bill. There should always be a requirement that where duties are placed on the Secretary of State they should be placed and exercised in such a way as to be compatible with the freedoms of the people of England and without imposing upon them any extra regulatory burden.

What was my hon. Friend driving at when he tabled this amendment? My interpretation is that he was driving at the prevention of the growth of the nanny state. He stated it more bluntly in amendment 44, which was not selected, and which says,

"it shall not be a duty of the Secretary of State to establish a nanny state."

I accept that we are not debating that, but we are debating whether it should be the duty of the Secretary of State not to impose additional regulatory burdens. Unfortunately, there is some evidence that over the past few years—even within the past five years—the Secretary of State has sought, for reasons best known to the Secretary of State and Ministers, to impose additional regulatory burdens on the people of this country. The point is simply this: who should be responsible for a person's health?

Jacob Rees-Mogg: While this debate has been going on, another silly example of health fanaticism has come up. Some expert has suggested that parents wrap up little bits of fruit and vegetable and hide them round the house for the children to find and eat with excitement in place of chocolates. That seems so extraordinarily barmy that it is important to control officialdom so that they do not make us have rotting fruit all round our houses.

Mr Nuttall: That is just another example of nanny knows best.

Jacob Rees-Mogg: She often does.

Mr Burns: We have caught our hon. Friend on the horns of a dilemma.

The Chair: Order. I think the hon. Member for North East Somerset said "Nanny knows best" from a sedentary position. I do not think we are trying to debate that, but at least it is now in *Hansard*.

Mr Burns: I slightly diverge from my hon. Friend the Member for Bury North, because I believe that the NHS does have a responsibility to educate people about their health and behaviour. Would he say that it was wrong to have the AIDS adverts in the late 1980s, which brought people's attention to the problems with AIDS and explained ways in which to minimise people becoming HIV-positive?

Mr Nuttall: No, I would not. There is a difference in the case of something that is new, as that was, which people could not be expected to know about, because it was something that even the doctors were finding out about. It had never been on the public's radar. It was entirely right at the time to spend public money alerting people as to the dangers of the disease and how terrible it was, and what, to the best of medical knowledge, could be done to try to minimise the risk of contracting the disease.

Mr Burns: Does my hon. Friend think that the nanny state is involved in the current adverts, particularly those on commercial radio, drawing to people's attention the ways in which they can check whether they are suffering from cancer?

Mr Nuttall: The adverts are not telling people how to live their lives. That is not really what we are driving at here. I would differentiate informing people how to check whether they have a particular illness from telling them whether it is a good idea to have one chocolate bar or two. It is a fundamentally different style of advice.

Stephen Metcalfe: I am listening carefully to the points that my hon. Friend is making. I have some sympathy with them, but is it not incumbent on the Government to share evidence that a particular course of action will damage someone's health? I do not believe that they should legislate, but such information should be made public, and people should be aware that two bars of chocolate are likely to increase their weight, whereas one bar might enable them to sustain their weight.

Mr Nuttall: We are getting to the crux of the argument here. The problem with all this is that it is a question of whether the experts know as much as they make out they know. All too often, over time, medical expertise seems to come up with a different answer.

Sir Greg Knight: If we look at the wider picture, we are discussing amendments to clause 1, which concerns the duties of the Secretary of State. Accepting amendments 37 and 40 would tell the Secretary of State that he has a duty not to give unsolicited advice. As a result, if it comes to his knowledge that there is a danger of disease, such as AIDS, from a particular course of action, he would not be able to tell the public. He would have to come back to Parliament to amend the law so that he can tell the public about the latest development in health issues. Is not that a totally unacceptable position in which to put a Secretary of State? Does that not make us less likely, if we look at this responsibly, to accept amendments 37 and 40?

Mr Nuttall: It comes down to the specifics. As we heard in an earlier intervention, if, for example, the advertising relates to AIDS or how best to check whether one may have a particular cancer, no one would query that.

Jacob Rees-Mogg: I do not think our right hon. Friend is reading the details of amendment 40, which simply says that

"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".

This is not prohibiting the Secretary of State from telling people about dangerous diseases. AIDS would not be affected by this provision. It is a question of telling people about the disease; they can then decide for themselves how to modify their behaviour.

Mr Nuttall: I am grateful to my hon. Friend. As I have been dragged—moved—along to amendment 40, I will deal with it at the same time, so that the Committee is aware that we are dealing with both amendments together

Mr Burns: I think that, unusually, my hon. Friend the Member for North East Somerset is wrong about amendment 40. It clearly states:

"nor provide unsolicited advice on diet or behaviour".

That would cover the AIDS advert drawing to people's attention the dangers of the disease and suggesting ways of changing behaviour to minimise the risk of getting infected.

Mr Nuttall: Does my right hon. Friend the Member for East Yorkshire want to comment?

Sir Greg Knight: I am grateful for the offer to intervene, but I think my right hon. Friend the Member for Chelmsford encapsulated my argument perfectly.

Mr Nuttall: I give way to my hon. Friend the Member for North East Somerset.

Jacob Rees-Mogg: Although I accept there is a nuance in this, I think it perfectly possible for the Secretary of State to warn about a disease and that it might be caused by certain behaviour, without telling people that they have to change their behaviour. It is about trusting individuals to behave responsibly on the basis of the information they have.

Mr Nuttall: I am grateful to my hon. Friend, the draftsman of amendment 40, for drawing the Committee's attention to the detail of the wording.

Andrew Gwynne: For once, I am in agreement with the right hon. Member for Chelmsford. He is absolutely right: the exact definition in this amendment would have prohibited the Secretary of State from engaging in the very successful public information exercise in the 1980s, because it is obviously not just about highlighting the risky behaviour of unsafe sex, but promoting the use of condoms and other measures.

Mr Burns: And it is about needles.

Andrew Gwynne: And needles. He is absolutely right—they are obviously risky in terms of transmitting HIV/AIDS.

Mr Nuttall: We have heard from the draftsman of the amendment that that is not how he feels the phrase should be interpreted. It specifically states that the Secretary of State should not

"provide unsolicited advice on diet or behaviour".

11.15 am

Mr Burns: It does not matter what, according to my hon. Friend the Member for North East Somerset, the intention behind the amendment is; what matters is what the law actually says. All I am suggesting is that because the amendment categorically states that the Secretary of State must not

"provide unsolicited advice on…behaviour",

there is no leeway in interpretation. The drafting is clear-cut.

Mr Nuttall: I give way to my hon. Friend the Member for North East Somerset.

Jacob Rees-Mogg: My right hon. Friend the Member for Chelmsford is not reading the whole of the clause, which states:

"nothing in this section shall be interpreted as entitling or requiring the Secretary of State to direct…nor provide".

Therefore, it is a question of entitling or requiring. It does not mean that the Secretary of State cannot follow through the consequences of what causes the disease to spread.

Mr Nuttall: I give way to my hon. Friend the Member for South Basildon and East Thurrock.

Stephen Metcalfe: I am concerned that the amendment would prohibit a Secretary of State from advising on smoking, for example. My hon. Friend said that advice changes over time, and indeed it does. As we have discovered more, we have learned how bad smoking is. I am concerned that the amendment would mean that we make no comment on the dangers of smoking, or that we ban it. At the moment, smoking is still lawful.

Mr Nuttall: I am grateful to my right hon. and hon. Friends for those interventions.

Sir Greg Knight: My right hon. Friend the Member for Chelmsford has done an excellent demolition job on amendment 40. Is he now, like me, in a state of bafflement as to why he is one of its sponsors?

Mr Burns: May I answer that?

Mr Nuttall: I am waiting to hear what my right hon. Friend has to say about that.

Mr Burns: My hon. Friend need not wait any longer. If my right hon. Friend the Member for East Yorkshire had listened to my speech last Thursday before he sought to make that cheap point, he would have heard me say that I added my name to a number of the amendments, which are probing amendments, to find out more about the thinking behind them. That is why my name appears on them. I made it clear during that seminal speech that I would not be supporting the amendment.

Mr Nuttall: I am extremely grateful for that clarification; it is nothing less than I would have expected from my right hon. Friend. The real clarification of amendment 40

[Mr Nuttall]

is found in the subsection it seeks to reform. The amendment would add proposed new paragraph (c), which has to be read in conjunction with the first two lines and the previous two paragraphs. It states:

"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, and…in the prevention"—

so we have already got that in there—

"diagnosis and treatment of physical and mental illness."

I submit that any court would look at the amendment of my hon. Friend the Member for North East Somerset not in isolation but in the context of subsection (1) in its entirety. It would read the words that I just read to the Committee and conclude that the interpretation of those words, which has been so clearly set out for us by—

Andrew Gwynne: Can the hon. Gentleman explain how the Secretary of State can prevent something such as HIV without also spending public funds on information—the hon. Gentleman calls it propaganda—or providing unsolicited advice on behaviour?

Mr Nuttall: I would not call it propaganda. The Secretary of State could easily continue to do that on the grounds that he could argue, quite rightly, that it was to prevent physical illness, under paragraph (b). That is the grounds that the Secretary of State would use.

Everybody knows what I and my hon. Friend the Member for North East Somerset are driving at here: it is the progress of the nanny state—if I can use that shorthand term—and the desire of Government to try to determine what is best for the people of this nation.

Clive Efford: The amendment is clearly a libertarian amendment. It is about complete freedom of choice. How far would the hon. Gentleman go with that? Would he, for instance, advocate the legalisation of class A drugs and allow people the freedom of choice to determine whether to take them?

Mr Nuttall: The promoter has raised a question which has been raised with me many times.

The Chair: Order. I am glad it has been raised many times because we are not going to hear about it. This is going too wide. We are not having a debate about drugs.

Mr Nuttall: It has not been raised in this Committee before.

Jacob Rees-Mogg: On a point of order, Mr Bone. Could you clarify your ruling? Do you mean illegal drugs? Pharmaceuticals may be relevant to the debate.

The Chair: Yes. I wish I could make it "drugs" but, unfortunately, I mean illegal drugs.

Mr Nuttall: If I may just deal with it in a very few words.

The Chair: No. Absolutely not.

Mr Nuttall: In that case, I will deal with it outside the Committee. The promoter will understand that it is not that I desire not to answer his intervention, but that it has been ruled out of order, so I cannot go further down that path. I will be happy to do so outside the confines of the Committee.

Let me go back to my point. We all know what my hon. Friend the Member for North East Somerset was driving at in tabling this amendment. In recent years, there has been a tendency for Secretaries of State of all parties to prescribe how individuals should live their lives. I will be open and honest: this is not something one can simply lay at the door of the previous Labour Government. In my opinion, the present coalition Government have shown themselves all too eager in this regard, sometimes in entirely illogical and inconsistent ways. I question whether it damages the more important role medical practitioners have in trying to encourage individuals to live in a healthier manner, which I entirely agree is a sensible thing to do. However, when Government and, through Government, medical practitioners—

11.25 am

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

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