

Lord Owen makes impassioned speech in House of Lords debate to annul National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013

*Moved by **Lord Hunt of Kings Heath***

- That a humble address be presented to Her Majesty praying that the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013, laid before the House on 11 March, be annulled on the grounds that they do not implement the assurances given by Ministers to Parliament during the passage of the Health and Social Care Act 2012 that NHS commissioners would be free to commission services in the way they consider in the best interests of NHS patients (SI 2013/500).

Relevant document: 33rd Report from the Secondary Legislation Scrutiny Committee.

Lord Owen: My Lords, the noble Lord and I served together in the Department of Health many years ago, and he will remember that his then boss, Barbara Castle, warned in the 1975 referendum about the impact of the European Economic Community, as it was then called. I thought she was greatly exaggerating the challenge, but it was interesting in that campaign that the allegation that the European Economic Community contained within it the capacity to interfere in the National Health Service was specifically denied.

As I understand the last two speakers, a great deal of justification for this regulation comes from an obligation under EU legislation to go in the direction that we are presented with-competitive tendering, potentially in all aspects of NHS care. Why is this not being done in Scotland, Wales and Northern Ireland, all of which are in the European Union and all of which ought, if this is so compelling, to be under this obligation? Why is it not being done in Finland, Denmark and other countries? Why was specific provision made in the European Union for people to exempt publicly provided services? Why did successive Governments argue that the National Health Service was not going to be covered by EU legislation?

The last speaker's intervention was painful for many of his colleagues on the Labour Benches, and it is probably right that we should be discussing, as has been already suggested, the 2010 regulations as they affected PCTs. Were they driven by EU legislation? The Minister knows that I tried

to get from him through a freedom of information request the advice on which the Government's legislation was founded, because I felt that we were not being told the truth behind our relationship with the European Union. It was very difficult to hold this debate without knowing the actual legal advice. I hope we will get that. I do not want go too far into all these issues in this debate, but underneath it there is a fundamental question. The National Health Service, as it was conceived, had a substantial element of public provision within it. There then came the provisions of the internal market, which I thoroughly supported and have always believed was necessary. Doctors had to be more conscious of costs. The whole health service had to be aware that it was making considerable economic decisions, often involving budgets of millions of pounds. There had to be a mechanism for cost comparison as a simple measure of good management.

In this regulation we are presented with the full impact of the 2012 Act. It has been hitherto denied, but within this Act is the potential-and I agree somewhat with the remarks that it will take some years for it to evolve-to have a fully marketised National Health Service. If that is the choice, the people of this country should be told about it. They should know that this is the direction in which we are going.

I will now deal with the regulations. We have had the fiasco in which our own scrutiny committee on statutory instruments has been highly critical not just of the statutory instrument that has been withdrawn but of the present one. The committee has also felt that the regulations have not been understood and have had sufficient consultation. We do not even have the consultative document, which we are told is so important, in front of us today. Maybe that is a good thing because it focuses our mind on the legislation. What is the law? That is why subsection (5) is so difficult for many people.

Let me say here what Help the Hospices and Marie Curie Cancer Care think about this. They say:

"The Regulations as they are currently worded will mean that competitive tendering could become mandatory in all but the most exceptional circumstances".

I stress the word "could". We cannot leave this as an open question. They say:

"Given the burden of having to put each individual service out for tender"-which has been mentioned-

- "CCGs will tend to bundle services together to put out for contract, as currently happens in local government".

Quite apart from the fact that the comparison between local government and the NHS does not stand up for one moment, they are right-this, again, has been said-that bundling will take place. The problem for charities and for small funded organisations is that if contracts are bundled, this could put them out of the reach of the voluntary sector providers, which by their very nature are providers of specialised care- unless they are going to be embraced by the bundled commercial companies, and many people think that that is the direction in which we are going.

The charities say:

"If voluntary sector providers are forced out of the market then this could have a negative impact on patients and the communities they live in".

Most of us have heard of the hospice movement in our localities, which has brought about a massive change in attitudes in the health service that has been very beneficial. Most of us have also had experience of the effect and the value of the Marie Curie foundation. Are we seriously just to ignore these charities when they come forward with these views? Are these changes politically motivated? Are they driven by some ideological persuasion? Are they committed to what was being experimented with in 2010, 2012 and now 2013? We are warned by many professional people, particularly public health doctors, of the effect of these changes.

We have looked at the NHS over many years and pride ourselves on it. It is not perfect, it never was, but it still provides a hugely cost-effective rationed health service and is popular. Why is rationing popular under the NHS? One reason is that it is democratic. People feel that in the general sense it is fair. However, we are now being asked to put all these decisions to an unelected quango. We are now accompanied by a letter that tells us when we can expect to get answers from Ministers and when we will have to have answers from quangos. Is this a change in the NHS? You bet it is. Is this the health service that Aneurin Bevan conceived of? Is this the idea that I thought the Labour Party was wholly, absolutely and totally committed to?

The charities go on to say:

"The problem hinges around the use of the word 'capable' in Section 5 of the Regulations".

They are right to say that. They fear that,

- "'capable' will be interpreted narrowly to mean only that a provider is able to provide the service within the budget set out by the

commissioner. This means that ... There will be few if any services where there is only one capable provider ... Providers will feel confident to regularly challenge CCGs' commissioning decisions ... Without legal cover to award contracts without advertising, CCGs will simply put all services out to competitive tender to avoid challenge".

Lawyers in this area tell me that of course they should be opposing this legislation, but in terms of their own financial development-the income that they are going to get-they are of course wholly in favour of it. Consultancies in healthcare are straining at the leash in the United States to come over here and make profits that they cannot make even under some of the HMO arrangements in the US. For 18 years I was on the board of a massive healthcare company in Chicago, and it used to watch the NHS. My wife is American, and she still thinks the NHS is the best thing that she found in coming to this country.

I warn this House: do not think that this is a minor step. If this goes through, the NHS as we have seen it, believed in it and persuaded the electorate that we support it, will be massively changed. It will take five, 10, 15 or maybe 20 years, but unless we pull back from his whole attitude there will be no National Health Service that any of us can recognise, and tonight I feel one feeling only: overwhelming sadness.