

LORD OWEN SPEAKING IN THE SECOND DAY OF THE DEBATE ON
SECOND READING OF THE HEALTH AND SOCIAL CARE BILL,
HOUSE OF LORDS, 12 OCTOBER 2011

Amendment to the Motion

*Moved by **Lord Owen***

As an amendment to the above motion, at end to insert, "and that a Select Committee shall be appointed to examine and make recommendations to the House on the issues raised by the 18th Report of the Constitution Committee, namely the Government's and Parliament's constitutional responsibilities with regard to the NHS, in particular to clarify (a) the extent to which the Secretary of State remains responsible and accountable for the comprehensive health service, and (b) individual Ministerial responsibility to Parliament, and to report on the extent to which legal accountability to the courts is fragmented; that this House requests that the services of Parliamentary Counsel be available to the Committee; and that the Committee shall report no later than 19 December 2011."

Lord Owen: I shall try to be as brief as I can, but it is worth reminding the House that the procedure which I am advocating is not without precedent. On 8 March 2004 on the Constitutional Reform Bill, a Motion was moved by the noble and learned Lord, Lord Lloyd of Berwick, to leave out after,

"a Committee of the Whole House",

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and insert "a Select Committee". I cannot avoid a little teasing by saying that the noble Earl, Lord Howe, voted for the Motion. Indeed, before he starts laughing, so did the Leader of the House, the noble Lord, Lord Strathclyde, and the noble and learned Lord, Lord Mackay of Clashfern, a man I have the utmost respect for and who has given a very compelling speech, voted for it too.

Lord Mackay of Clashfern: If I may say so, that was about committing the whole Bill to a Committee of the whole House and it is not, I think, a precedent for what the noble Lord is advocating now. It was quite different.

Lord Owen: I do not want the noble Lord, Lord Newton of Braintree, to escape either. Let me deal with that question. If we had moved this amendment regarding the whole Bill, everybody would have said that it was a blocking mechanism. Everybody would have said that we were effectively voting against Second Reading. It will not, I hope, have escaped the notice of noble Lords that I did not vote against Second Reading. Were I ever to vote against a Bill in this House, it would be after we had examined it and it is that examination which is now the question. Can we improve the Bill? So we entered into discussions to find a new way of dealing with it—it was done by my noble friend Lord Hennessy—and, to cut it very short, we reached a basic agreement on Wednesday night. We were asked to let the Government take this into consideration and we waited. In retrospect, we should probably have put the Motion down on Wednesday night.

We met again with the Leader of the House at 3 o'clock on Monday. The Leader of the House said, perfectly reasonably, that he could go along with this as long as he knew that the Bill would not be delayed. My noble friend and I said we thought it was absolutely reasonable that to protect the business of the House they wanted this Bill before the new Session. We had already made it clear that this would have to be reported out from Select Committee by 19 December, and that was acceptable. The clerks tell me they have to report it out. They may say they want more time but there has to be a report. So I think we have dealt with one of the problems.

The other problem was that we were not able to commit the House to the other date, which was when it would come out of the House. The shadow Leader of the House has made it very clear that if this Select Committee procedure went through, this Bill would finish its processes and come out by the middle of January. She was also generous enough to say that she would go along with a timetabling Motion that would not detract from the

days given to debate on this. As far as possible, I thought it was understood that it would not detract from the days that were overall given to this House. It is for her to say, of course, because these are not matters that a Cross-Bencher can or should be involved in. However, it is reasonable for this House to explain that it needs a lot of consultation and a lot of time for this Bill. I am not going to get into the timing directly-maybe the shadow Leader would like to.

I would like to explain a little bit more about the thinking of my amendment and deal with the point about it being exceptional. When that Constitutional **12 Oct 2011 : Column 1717** Reform Bill was referred, parliamentary counsel was made available to it. That is why in this Motion, and again it was discussed, we ask-because we can only make a request, but the noble Earl, Lord Howe, made it pretty clear that he would support it-that the services of parliamentary counsel would be made available.

Let me deal with the question of whether this is a better procedure than just leaving it to the normal procedures of the House, on the Floor. The most reverend Primate was correct when he argued why a Select Committee procedure would be the best way. A number of amendments need to be made to the Secretary of State's powers and they have to be connected. It is a very complex and very long Bill. It is worth saying that this needs very careful study.

Now, what is this issue? The third leader in the *Times* today is entitled:

"The Bedpan Problem: Who's in charge of the NHS?"

We all know the famous remark made by Aneurin Bevan that if a bedpan is dropped in a hospital corridor the reverberations should echo around Whitehall. We all know that this is an issue that has long faced the NHS, since 1948, and we all know that increasingly, with its complexity, size and the changes in medicine, the Secretary of State for Health could never manage the health service. I have made it clear that I think this problem has to be dealt with and some adjustment of what is said, even in the 2006 Act, might not be unreasonable, but it would have to

be coherent; it would have to be put together by parliamentary draftsmen who know the Bill. I think that would cut down the amount of time we might wish to spend on the Floor of the House on this particular issue. Goodness knows, there are a number of other issues that will need a lot of time to give this full coverage.

Those noble Lords who genuinely think that they will get more out of a procedure on the Floor of the House should look at what happened to the amendments that were moved in Committee in the House of Commons on this question. Not a single one was accepted in the initial stages; it was only when the pause took place. That is already unprecedented. I agree there should not be delay but a matter of a week or two is a little rich coming from a Government who are responsible for taking it out of Committee in the House and having a long consultation. I praise the work of the forum.

The medical profession has had a good go at this Bill and I am not complaining about that. I do not want to be on the Select Committee myself. The work should be carried out by people with a legal frame of mind and a constitutional frame of mind who are used to looking at a Bill as a whole and trying to bring some coherence to it. That is what lay behind the thinking of myself and my noble friend noble friend Lord Hennessy.

This is not a delaying measure. If I was opposing the amendment, I would be saying that it was a delaying measure but it is clearly not. Two dates have been agreed. If it goes to a Select Committee, it has to report back by 19 December and if it goes to the Floor of the House simultaneously that will not cause delay. The shadow Leader of the House has given her word

12 Oct 2011 : Column 1718 that in those circumstances-she stressed "in those circumstances"-the Bill would come out by the middle of January. There is no delay so let us not have that argument. It is a perfectly fair argument for people who wish to spend time on the Bill purely on the Floor of the House. I believe that this proposal would supplement the scrutiny of this Bill.

There is another issue I wish to draw attention to, particularly for those who have not been in the debate. We need to remember

that an all-party Select Committee of this House unanimously reported to this House its concerns about this Bill. Those words and its concerns are reflected in my amendment. They are not my words-they come directly from the Constitution Committee. We also had on the morning of the debate a letter from the noble Earl, Lord Howe, which should be read by those who think that by using normal procedures changes will be made on this issue. He said about the Bill,

"the Government does not believe that this in any way diminishes ultimate ministerial accountability or responsibility for the NHS. Indeed we believe the measures set out in it strengthen and make accountability and responsibility clearer than it has ever been. We do not consider any amendments necessary to put this matter 'beyond legal doubt'".

You have to be a super-optimist if you think that you are going to get great changes. Only the weight of an all-party and probably unanimous Select Committee will give the weight to make this change.

2.15 pm

Lord Ashdown of Norton-sub-Hamdon: I apologise to the noble Lord and the House for not being here yesterday to listen to the debate. A member of my family spent yesterday in the care of the National Health Service and I felt it was more appropriate that I was with her than here.

The case by the noble Lord that lies behind this amendment is that a Select Committee is better than the Floor of the House in dealing with a Bill that comes to us which is defective in certain ways. He draws a comparison with the House of Commons but surely that does not take into account that the House of Commons is not constructed as we are constructed and does not have the same role as we have. Our role is as a revising Chamber. I say to the honourable Gentleman-forgive me, I mean the noble Lord-that I find it difficult to understand why a Select Committee of which few of us can be members will be better at holding this Bill to account than dealing with it in the circumstances of this House where all of us can be involved.

Here is the question. If it is the noble Lord's case that a serious and complex Bill brought to us in a defective manner from the House of Commons is not able to be dealt with on the Floor of this House but must go to a Select Committee, what on earth is our function?

Lord Owen: It would have been easier if the honourable Gentleman-I mean the noble Lord; I am used to thinking of him in another place-had been able to spend the time here and heard the debate. I do not want to delay the House. I gave way to him because, as a former Leader of the Liberal Democrats, it is important **12 Oct 2011 : Column 1719** that his voice should be heard but this is a question for the House as a whole and I do not wish to delay any longer. I leave this for the judgment of the House.

Baroness Royall of Blaisdon: My Lords, I crave the indulgence of the House to confirm one point that was clarified by the noble Lord. I do not advocate any timetabling Motion: that would not be appropriate for the House. I give the assurance that, were the noble Lord's amendment to be agreed, my Benches would wish the Bill to be out of Committee by mid-January. However, if the amendment is not accepted, it will be right and proper for the usual channels to discuss the appropriate number of days needed in the light of this excellent Second Reading debate. I cite the excellent speeches made by many noble Lords, including the wise words of the noble Lord, Lord Walton of Detchant, who spoke before me last night and who said that enough time must be given. He is absolutely right. I have no intention of delaying the Bill. My intention is to ensure that there is proper agreement between the usual channels on the appropriate amount of time that the Bill needs in Committee.

Earl Howe: My Lords, I will make three very brief points. The provisions that the noble Lord, Lord Owen, asks us to send to a special Select Committee affect the entire Bill. The twin-track approach that he advocates carries a major risk: the potential disconnect between the special Select Committee and the Committee of the whole House. The Select Committee might recommend amendments to parts of the Bill that have already been debated by the Committee of the whole House. The result

could be that, notwithstanding the offer made in good faith by the noble Baroness, Lady Royall, we could see a slippage of the timetable of the Bill that would be most unwelcome.

I repeat my assurance that I am entirely open to considering the concerns that have been raised about the issue and to make any necessary amendment to put it beyond doubt that the Secretary of State will remain responsible and accountable for a comprehensive health service.

2.22 pm

Division on Lord Owen's amendment.

Contents 262; Not-Contents 330.

Amendment disagreed.