

LORD OWEN SPEAKING IN THE REPORT STAGE OF THE HEALTH AND SOCIAL CARE BILL, WEDNESDAY 8 FEBRUARY 2012

Report (1st Day)

3.36 pm

*Relevant documents: 18th and 22nd Reports from the
Constitution Committee.*

Motion

*Moved by **Earl Howe***

That the Report be now received.

Lord Owen: My Lords, before the House agrees that the Report should be received, I would like to raise some important constitutional questions. On 4 April, the day the Prime Minister and the Deputy Prime Minister embarked on their "listen and explain" experience and the legislation was paused, I wrote to the then Cabinet Secretary, Sir Gus O'Donnell-now of course the noble Lord, Lord O'Donnell-and raised with him the fear that, because of the long drawn-out legislative process, discussion of the Bill in this House could be pre-empted. I also told him that I had consulted the clerks in Parliament and it appeared that there was no written convention that guides the Government on what is or is not acceptable to take in advance of Royal Assent. Obviously they cannot implement the legislation in full.

Many of my concerns since then have been more than justified. I received a letter on 7 April from the then Cabinet Secretary that said:

"The Treasury guidance on 'Managing Public Money' sets out how, in some circumstances and if ... conditions are fulfilled, departments can incur expenditure on the measures contained in a bill prior to Royal Assent. In addition, a department may take steps to prepare for implementation using existing statutory powers. I have therefore discussed your concerns with Una O'Brien, as Accounting Officer, in the light of this guidance. She has confirmed"-

this is important-

"that the work currently underway is taking place under the broad powers of the Secretary of State and NHS bodies under existing legislation. For example, the arrangement of PCTs into management clusters and the creation of pathfinder consortia are possible under existing powers in the National Health Service Act 2006. In addition, some of the changes currently taking place would be required regardless of the Health and Social Care Bill. For example redundancies in PCTs reflect the longstanding challenge, which pre-dates the Bill, to deliver up to £20bn of efficiencies across the NHS over the next four years for reinvestment in frontline services".

As a result of that, there has been broad acceptance in this House that on these controversial questions, some of which are already agreed, the Government are proceeding under existing legislation.

On 16 September I was informed by the chairman of the Constitution Committee that that committee had briefly discussed the pre-legislative disappearance of PCTs, and had in front of it my correspondence with the Cabinet Secretary, which I had made available to Professor Tomkins, one of its advisers. I was asked whether I would provide more information about changes that had been introduced following Second Reading of the Health and Social Care Bill but prior to it coming to the House of Lords. I enclosed an up-to-date document in great detail that had been sent out for consultation by the Midlands and East Strategic Health Authority, which I thought gave a pretty clear indication

8 Feb 2012 : Column 261 of the anticipated massive changes to the whole architecture of the NHS, many of which seem as if they will be introduced despite the fact that the full legislative process was continuing.

I also drew attention to a speech that had been made in the other place by a Member of Parliament that had again raised the question of whether it was proper to stop the legislation when so much was already being done and so much pre-emption had occurred. Today I have written to the Constitution Committee on this question because an MP drew my attention to a letter that

says that people,

"are absolutely terrified of the chaos that will apply if the Bill is dropped altogether now. Restructuring is a nightmare, un-restructuring could be even worse!".

On today's "World at One", the chief executive of the Foundation Trust Network warned of a no-man's land if the Bill did not go through.

This raises pretty big questions for legislation that is still to go through all its stages in this House, and it is a matter of great concern to this House when it considers reform. These conventions will become very much more important if we have an elected House of Commons-which of course we have-and an elected House of Lords, which I personally would like to see. There is no question that these conventions are important.

There are two important points here. First, the House should be aware of the fact that the Constitution Committee is seized of the problem and may well wish to make judgments on it. Secondly, we should not feed the idea that legislation can reach us but we cannot do anything about it because it has already been pre-empted. Whatever our views on the Bill, and it is controversial, it is important on democratic grounds that we maintain the position that legislation does not have full authority until it has gone through all its processes. That point needs to be reaffirmed. We should give no comfort to the opposite view in what we say in this House in the remaining stages of the legislative process.

Later intervention

Lord Owen: My Lords, I shall not detain your Lordships, but the noble Lord, Lord Hennessy, has asked me to speak on his behalf. I find no reason to disagree with anything that has been said, particularly by the noble Baroness, Lady Jay.

The Minister and I are going to disagree on substantial parts of the Bill-and a profound disagreement it is-but right from the moment when the noble Lord, Lord Hennessy, and I negotiated with him, he always accepted that this was an important

constitutional and parliamentary point. He expressed readiness to enter into a novel arrangement, which we very nearly reached, but instead it has come around by another mechanism. At all stages, he has treated all of us, Peers and the House itself, with the greatest respect, courtesy and diligence. For that, I thank him on behalf of everyone.