



House of Commons
Justice Committee

Constitutional Reform and Renewal

Eleventh Report of Session 2008–09

*Report, together with formal minutes, and oral
evidence*

*Ordered by the House of Commons
to be printed 21 July 2009*

HC 923
Published on 29 July 2009
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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1 Background and introduction

1. We welcome the current interest in constitutional reform shown by all the parties. Over the past ten years the Government has introduced a range of constitutional reforms, some of them, such as devolution, radically changing the way in which the United Kingdom is governed. Despite carrying through such major reforms and now generally accepted changes, the Government has not developed any consistent process for constitutional reform. Whether this is a reflection of the United Kingdom's famously unwritten constitution, or the lack of a settled endgame, is open to argument. However, it is clear that 'unfinished business' has been the enduring motif of many of the strands of constitutional renewal. The expulsion of most hereditary peers without further reform of the House of Lords, devolution to Scotland, Wales and Northern Ireland without further reform in England, the shifting policies in relation to regional governance and the Lord Chancellorship, the moribund Constitutional Renewal Bill, and, most recently, the rush to bring in legislation on parliamentary standards and the rash of other ideas for change, suggest short term expediency rather than strategic vision.

2. These policy areas are so fundamental that we have sought to highlight some of the problems, pitfalls and dangers of unintended consequences arising from understandable but hasty action in reaction to public anger over recent events. However welcome the Government's responsiveness to the public mood, appropriate mechanisms should be established for constitutional reform in the United Kingdom as there is a real danger of embracing solutions that bring further problems. We have reported on the Parliamentary Standards Bill already in this light and we will return to the detail of the latest proposals as and when they fully emerge.¹

Constitutional reform and renewal

3. Speaking in the House of Commons on 10 June 2009, the Prime Minister made a statement in relation to parliamentary and constitutional reform.² There is no doubt that this announcement was, in part at least, a response to public debate occasioned by recent publicity about Members' allowances and expenses. The Prime Minister asserted that: "all of us have the humility to accept that public confidence and the battered reputation of this institution cannot be repaired without fundamental change".³

4. The statement included a reference to a range of proposals and potential areas for parliamentary and constitutional reform which can be broadly divided into three categories. Firstly, the creation of an Independent Parliamentary Standards Authority to reform the way Members' resources are dealt with; secondly, the creation of a Parliamentary Commission (now Select Committee) to review the balance of power between the executive and Parliament in terms of initiating parliamentary proceedings and

1 Justice Committee, Seventh Report of Session 2008–09, *Constitutional Reform and Renewal: Parliamentary Standards Bill*, HC 791

2 HC Deb, 10 June 2009, cols 795-799

3 HC Deb, 10 June 2009, col 795

managing parliamentary business; and thirdly, a wide range of proposals for constitutional reform, including new ways for the public to participate in parliamentary activity.

5. In responding to the Prime Minister's statement on 10 June 2009, Rt Hon David Cameron MP, Leader of the Opposition, argued that the proposals failed to address "the central question that we believe should lie behind any programme for constitutional reform: how do we take power away from the political elite, and give it to the man and woman in the street?" He suggested other proposals, including local referendums and citizens' initiatives.⁴ While welcoming the Prime Minister's proposals for the creation of a Parliamentary Standards Authority, Rt Hon Nick Clegg MP, Leader of the Liberal Democrats, was "dismayed that the Prime Minister is completely silent on the issue of party funding".⁵

6. The Prime Minister's statement and the responses to it represent the tip of an iceberg in terms of the on-going work, discussion and debate on constitutional reform which has taken place within the three main parties over recent years. In 2006, the Conservative party set up the Democracy Taskforce which has since made recommendations in response to the West Lothian Question, on the reform of Parliament (including a reduction in the number of Members of Parliament), and on the role of the executive.⁶ The Liberal Democrats have suggested potential reforms including: the decentralization of the government of England, fixed term Parliaments, a citizen's assembly on electoral reform, a reduction in the number of MPs by 150 and Peers by 300 and a procedure to enable voters to bring about a by-election where a member has been proved, after due process, to have committed a serious breach of the House rules.⁷

7. Writing in *The Guardian* on Wednesday 17 June, Rt Hon Michael Wills MP, Minister of State, Ministry of Justice, identified that much of the immediate response to the Prime Minister's statement had focused on the proposals for parliamentary reform and the creation of the Parliamentary Standards Authority. However, he emphasized that effort and resources were required to deliver the other reforms in order to "produce the radical constitutional reform our democracy now so desperately needs".⁸

8. Following the Prime Minister's statement, the Ministry of Justice published a press notice which gave a further indication of how some of these proposals would be developed. Rt Hon Jack Straw MP, Secretary of State for Justice and Lord Chancellor, said:

4 HC Deb, 10 June 2009, col 800

5 HC Deb, 10 June 2009, col 803

6 For example see:
http://hcl1.hclibrary.parliament.uk/Other_orgs/Conservative_Party/West_Lothian_Amended_2008.pdf;
<http://www.conservatives.com/pdf/dtfpaper.pdf>; http://www.conservatives.com/pdf/DTF_Sofa_Government.pdf

7 HC Deb, 10 June, col 803. See: www.epolitix.com/latestnews/article-detail/newsarticle/lord-tyler-creating-a-legacy-for-constitutional-reform/ and www.libdems.org.uk/www.libdems.org.uk/media_centre/100-day-plan-enabling-legislation-for-a-referendum-on-av-273538224;show.html. See also policy paper 83, *For the People, by the People*, September 2007. Other ideas for parliamentary reform are outlined in the House of Commons Library Standard note, PC05110 *Suggestions for possible changes to the procedure and business of the House- a note by the Clerks*, 18 June 2009.

8 "Michael Wills urges Cabinet not to backtrack on Attorney General", *The Guardian*, 17 June 2009

“The creation of a Parliamentary Standards Authority and an MPs’ code of conduct will continue the fundamental reforms we have already delivered to increase the accountability and transparency of Parliament.

“We are holding cross party talks on this matter, the first of which will take place today, and we will proceed urgently with legislation to restore the public’s trust in MPs, politics and Parliament.

“The government published a draft Constitutional Renewal Bill last year which includes measures aimed at surrendering prerogative powers to Parliament. This has been subject to wide consultation. We intend to introduce a final Bill to the House before the summer recess”.⁹

Building Britain’s Future

9. Further to the Prime Minister’s statement of 10 June, a White Paper, *Building Britain’s Future*, was published on 29 June 2009. The Government identified a “crisis of trust in British politics”¹⁰ and gave an indication of its intended process for pursuing constitutional reform, setting out a “plan to build ... strong democratic foundations ... based on the principles of far greater transparency and openness, accountability and the further redistribution of power from the hands of the few, to those of the many ... This new settlement cannot be determined by politicians alone; it must be developed in dialogue with the British people”.¹¹

10. In order to achieve this new settlement, the Prime Minister has established and chairs the “Democratic Renewal Council”.¹² The Government said that the Council will “ensure a sustained focus at a senior ministerial level on the task of democratic and constitutional renewal ... at the heart of this will be greater openness and transparency in the workings of Government and Parliament”.¹³ The Council was further described as the mechanism by which the Government would formulate its position and drive forward its agenda. It was “by no means exclusive and ... was [not] the single source of wisdom on this subject”. However, it remains unclear how this body, entirely made up of Ministers, is any different from previous incarnations of Cabinet sub-committees on the constitution and whether the usual practice of strict confidentiality in relation to Cabinet sub-committees would apply. The proposals approved by the Democratic Renewal Council are outlined in chapter four of this report.

9 www.justice.gov.uk/news/newsrelease100609a.htm

10 Prime Minister, *Building Britain’s Future*, Cm 7654, June 2009, para 1, p. 27

11 *Ibid*, paras 5-7, p.27

12 In a No. 10 press briefing on 9 June 2009, the Prime Minister’s spokesman said that the Prime Minister would chair the meetings of the Democratic Renewal Council (which would meet regularly) and that the following people would attend; Jack Straw, Harriet Harman, Lord Mandelson, Alistair Darling, David Miliband, Alan Johnson, Hilary Benn, Douglas Alexander, John Denham, Shaun Woodward, Baroness Royall, Jim Murphy, Peter Hain, Michael Wills, Nick Brown and Steve Bassam (the Lords Chief Whip - to attend when Lords issues were discussed).

13 Prime Minister, *Building Britain’s Future*, Cm 7654, June 2009, para 18, p. 29

The Draft Constitutional Renewal Bill

11. The proposals outlined in the Prime Minister's June statement and expanded upon in *Building Britain's Future*, are in addition to the provisions of the Draft Constitutional Renewal Bill. Following the *Governance of Britain* Green Paper, the *Draft Constitutional Renewal Bill* was published on 25 March 2008. It was considered by a Joint Committee which reported on 31 July 2008.¹⁴ The draft Bill included a wide range of provisions, of varying constitutional significance, including the reform of prerogative powers, the civil service and the role of the Attorney General, and also included measures for the scope of protests in Parliament Square. The Joint Committee concluded:

“We recognise that the Draft Bill is a first step in a wider programme of reforms to the constitution planned in the Green Paper. There are many significant reforms outside the scope of this Draft Bill. It would be regrettable if the passing of this Bill prevented further progress in other fundamental areas of reform ...”¹⁵

12. The *Constitutional Reform and Governance Bill* was published on Monday 20 July 2009¹⁶. The Bill makes provision for ending the hereditary principle in the House of Lords, reform of the civil service and in relation to demonstrations around Parliament Square. Since the publication and consideration of the draft Bill, the debate and agenda for constitutional reform has moved on significantly. In this context, the Bill appears limited.

13. Furthermore, some crucial provisions which were included in the draft Bill have not been included in the Bill, for example, the provisions relating to the role of the Attorney General. We published a report, *Draft Constitutional Renewal Bill (provisions relating to the Attorney General)* in June 2008. The Government published its response to our report on the on 20 July 2009.¹⁷ It said that “significant, necessary reforms to the role of Attorney General can be achieved without the need for legislation”.¹⁸ It also pointed to a new protocol to be agreed between the Attorney General and the Directors of Public Prosecutions, the Serious Fraud Office and Revenue and Customs Prosecutions on their respective responsibilities which is intended to “improve relationships, guarantee prosecutorial independence while ensuring an appropriate degree of accountability and to improve transparency about the relationship”.¹⁹

14 Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill*, HL 166-I and HC 551-I, Session 2007-08, 31 July 2008

15 Ibid, para 381

16 Previously the Draft Constitutional Renewal Bill

17 Attorney General, *The Government's Response to the Justice Committee's Report on the Draft Constitutional Renewal Bill (provisions relating to the Attorney General)*, Cm 7689, July 2009

18 HC Deb 20 July 2009, col 106WS

19 We note publication of the 'Protocol between the Attorney General and the Prosecuting Departments' on 21 July 2009 which sets out “how the relationship is to work in practice, to safeguard the independence of the prosecutors while enabling the Attorney to be properly accountable to Parliament and the public.” The new protocol makes it clear that the Attorney General will not be consulted in any case which concerns an MP or peer or where there is a personal or professional conflict of interest, other than when her decision is required by law.

14. In our report, we expressed concern that “the draft Bill does not provide for a clear split in the [Attorney’s] role to create a non-political legal adviser and refer the political duties to a minister in the Ministry of Justice”.²⁰ In its response the Government stated:

“The Government’s settled view is that the Attorney General should remain the Government’s chief legal adviser, a Minister and member of one of the Houses of Parliament, and that the Attorney General should continue as the Minister responsible for superintending the prosecuting authorities”.²¹

15. We welcome the fact that the Attorney General now only attends Cabinet when matters affecting her responsibilities are on the agenda. Nevertheless, we are disappointed that the Government has rejected our concerns over the difficulty of combining the political and legal roles of the Attorney General. We welcome the fact that there has been a degree of open public debate between Ministers on this issue,²² and it should remain an issue for further public debate and consideration. To assist that process we believe that the Government should make a fuller and clearer statement explaining the view it has taken on the role of the Attorney General.

Conclusion

16. We recognise the appetite in many quarters for fundamental constitutional change and welcome the Government’s renewed focus on constitutional reform and renewal in response to this. We are surprised by the limited provisions in the Constitutional Reform and Governance Bill, and fear that this may be a missed opportunity to make progress in some areas of reform. Any programme introducing fundamental change should be carefully constructed and aimed at a coherent outcome taking into account the widest possible range of views.

20 Justice Committee, Fourth Report of Session 2007-08, *Draft Constitutional Renewal Bill (provisions relating to the Attorney General)*, HC 698, para 40

21 Attorney General, *The Government’s Response to the Justice Committee’s Report on the Draft Constitutional Renewal Bill (provisions relating to the Attorney General)*, Cm 7689, July 2009, p. 2. See also Patrick Wintour, *The Guardian*, 17 June 2009

22 See “Michael Wills urges Cabinet not to backtrack on Attorney General”, *The Guardian*, 17 June 2009

2 Our Inquiry

17. There is little evidence in the material published to date that the inter-relationships and interaction between the individual proposed reforms (outlined in the *Constitutional Reform and Governance Bill* and *Building Britain's Future*) have been thoroughly explored by the Government, or that their relationship to the major constitutional reforms which have been introduced since 1997 have been considered in depth. This is not a new phenomenon. In our recent report, *Devolution: a decade on*, we identified the Government's lack of a strategic vision for the constitution,²³ and in previous reports, we have noted the Government's seemingly ad hoc approach to constitutional reform.²⁴ Furthermore, the Joint Committee on the *Draft Constitutional Renewal Bill* also concluded that it was "difficult to discern the principles underpinning" the disparate nature of the proposals included in the draft Bill.²⁵

18. In July 2007, we published a special report welcoming the *Governance of Britain* Green Paper. While we acknowledged the legitimate interests of other select committees in examining specific proposals included in that Green Paper, we said that we would "take responsibility for scrutiny of the overall process of constitutional reform".²⁶

19. We decided to continue our oversight of this initiative by launching an inquiry into constitutional reform and renewal, with a view to:

- assessing the overall purpose and goals of proposed reforms;
- outlining and commenting on the merits and pitfalls of specific proposals as they emerge; and
- identifying further proposals for reform which we find desirable.

We also considered it necessary to look at the overall picture of constitutional reform in the United Kingdom, focusing on the relationships between the individual proposals, and the potential unintended consequences of those proposals and interactions between them.

20. In this report we are chiefly concerned with the actual process and mechanisms of how we 'do' constitutional reform in the United Kingdom: of identifying and achieving the appropriate balance between Government responsibility, parliamentary ownership and public engagement in the process of constitutional reform.²⁷

23 Justice Committee, Fifth Report of Session 2008-09, *Devolution: A Decade On*, HC 529-I, para 6

24 For example, see the Third Report of Session 2004-05, *Constitutional Reform Bill: the Government's proposals [Lords]*, HC 275-I

25 Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill*, HL 166-I and HC 551-I, Session 2007-08, 31 July 2008, para 376

26 Constitutional Affairs Committee, Second Special Report of Session 2006-07, *Scrutiny of Constitutional Reform*, HC 907. During this Parliament alone, the Justice Committee has produced several major reports on constitutional issues, including: *the Constitutional Role of the Attorney General, Party Funding, and Devolution: A Decade On*. For a full list see Appendix A to this report.

27 Further questions to be addressed include: How can public engagement be achieved? Do we require referendums for major constitutional reform? Should we move towards citizens juries or citizens assemblies?

21. This report outlines some of the main features of the proposals that have emerged from the Government, from the leaders of the three main political parties and from other sources.²⁸ In doing so we identify some fundamental principles for the process by which constitutional reform should be achieved in the UK. This is our second report in this inquiry (we have already published a report on the Parliamentary Standards Bill). We will return to a more in-depth study of the detail of the specific proposals for reform as these emerge.

28 For example, see: Meg Russell and Akash Paun, *The House Rules? International lessons for enhancing the autonomy of the House of Commons*, The Constitution Unit, October 2007

3 Parliamentary Reform

22. Many of the proposed reforms to date have focused on the work and practices of Parliament and its Members. While the Parliamentary Standards Bill made provision for an Independent Parliamentary Standards Authority for the external regulation of Members' allowances, it is proposed that a new Parliamentary Commission, or Select Committee, on Reform of the House of Commons will consider possible reform to the internal management of the House's business.²⁹ Parliament, and the procedures and practices by which it carries out its business, are part of the constitution and seemingly minor changes to the way Parliament works can have broader constitutional implications. These changes and proposals therefore need to be considered within the framework of a proper understanding of the constitutional role and position of Parliament and parliamentarians.³⁰

The Parliamentary Standards Bill

23. In his statement on 10 June, the Prime Minister outlined proposals for the introduction of the Parliamentary Standards Authority with delegated power to regulate the system of allowances and a statutory code of conduct for all MPs. This would require primary legislation and the Prime Minister indicated that a short free standing Bill would be introduced and debated in the House before the summer recess.

24. Rt Hon Harriet Harman MP, Leader of the House of Commons, made a statement on the Bill on Tuesday 23 June.³¹ On the same day the Bill was formally presented and received its First Reading.³² The Bill sought to establish a new Independent Parliamentary Standards Authority (IPSA) as a body corporate. IPSA will have functions in relation to MPs' salaries, allowances and financial interests. The Bill also sought to establish a separate Commissioner for Parliamentary Investigations to investigate breaches of the rules on allowances and financial interests.³³

25. While there was cross party support for the creation of an independent authority to run the expenses system, concerns have been raised about some of the potential unintended or unforeseen consequences of the Bill. In particular, we identified three central constitutional questions which need to be addressed when considering the Bill:

- does the creation of the Independent Parliamentary Standards Authority have an impact on parliamentary privilege?
- does the Bill expose Parliament to the process of judicial review in novel ways?

29 The Parliamentary Standards Bill received Royal Assent on Tuesday 21 July 2009

30 Erskine May makes this clear: "At the very highest level, there is much in the observation that if the United Kingdom has in any senses a constitution and that constitution is capable of restraining an elective dictatorship, the standing order and the practices of the two Houses, shaped over the centuries by changing political pressures, and since 1844 described in May's Treatise, are an important part of it". Erskine May 23rd edition, p.11, 2004.

31 HC Deb, 23 June 2009, cols 678-691

32 HC Deb, 23 June 2009, col 691

33 Parliamentary Standards Bill, Explanatory Notes, Bill 121-EN, p.7

- to what extent does the Bill break new constitutional ground in terms of establishing external regulation over matters beyond issues of Members' pay and expenses?

26. Writing in *The Times* on 24 June 2009, Peter Riddell said that the Bill “has big constitutional implications”. While the final power to decide on non-criminal penalties will still lie with MPs, he argued that “self-regulation is being heavily qualified in practice”. He identified that one of the biggest questions was the extent to which “the creation of the new authority by statute will open the way for a flood of judicial review cases”.³⁴

27. Speaking in the House on 23 June, Dr Alan Whitehead MP asked the Leader of the House whether she intended to produce further material that would seek to “make a clear and durable distinction between the standards relating to Members, for which an outside body should have reference and sanctions, and the privileges of the House?” The Leader responded that: “The standards for which the new authority established in the Bill would be responsible would relate to the allowances and claiming for them. There is no proposal in the Bill for the authority to have further powers that would deal with the privileges of the House”.³⁵ Furthermore, on 25 June, the Leader of the House claimed:

“... the question of parliamentary privilege is not an issue in that Bill ... that is not a question that Hon. Members need to concern themselves with. Essentially, the Parliamentary Standards Bill sets up an authority to deal with our allowances to ensure that they are established and administered independently and that the public can have confidence that this is the case. It will not trample on the question of privilege”.³⁶

28. Such an assurance has no legal standing and would not have limited future action in the courts, so we remained concerned about the broader constitutional implications of the Bill, and therefore commissioned oral and written evidence from the Clerk of the House of Commons, Dr Malcolm Jack. The resulting analysis identified that clauses six (MPs' Code of Conduct), eight (Enforcement) and ten (Proceedings in Parliament) had potential constitutional impacts in relation to parliamentary privilege.

29. Following the evidence session with the Clerk of the House, we produced a short report on the Bill which was published on 1 July in advance of the second day of the Bill's committee stage on the floor of the House (the Bill's remaining stages were also taken on this day).³⁷ We drew the House's special attention to our concerns on the possible implications of the Bill for the safeguarding of freedom of speech in debate in Parliament and the boundary between the courts and Parliament.³⁸ These arose mainly from clauses six and ten of the Bill. Our report welcomed the Government's statement on 31 June that it intended not to pursue clause six and would support its removal from the Bill.

34 “MPs will regret rushing into tough-looking legislation on expenses”, *The Times*, 24 June 2009

35 HC Deb 23 June 2009, col 689

36 HC Deb, 25 June 2009, col 950

37 Justice Committee, Seventh Report of Session 2008-09, *Constitutional Reform and Renewal: Parliamentary Standards Bill*, HC 791, Ev 1-10

38 Justice Committee, Seventh Report of Session 2008-09, *Constitutional Reform and Renewal: Parliamentary Standards Bill*, HC 791, para 4

30. There was, however, no such commitment in relation to clause ten, which we suggested needed to be removed from the Bill to allow “more measured consideration of the issues of [parliamentary] privilege” noting that this need not delay the establishment of an independent body to administer and monitor members’ expenses, which would not be affected by the clause’s removal. The House of Commons subsequently voted by a margin of three votes to remove the clause from the Bill. During its passage through the House, other amendments were made to the Bill and commitments given to revisit issues during its consideration in the House of Lords.³⁹

31. In that place, Rt Hon Baroness Royall of Blaisdon, Chancellor of the Duchy of Lancaster, acknowledged the impact of the work of this Committee in amending the Bill:

“The Justice Committee report aired concerns about the infringement of parliamentary privilege. The Government have listened to its concerns about including a statutory requirement for there to continue to be a code of conduct incorporating the Nolan principles and we have removed this from the Bill. On its introduction, the Bill also included provisions that proceedings in Parliament may be admissible in a court in relation to the three new offences in proceedings against a Member. At the behest of the other place (the House of Commons), this no longer forms part of the Bill. The removal of these clauses in no way undermines our key objective, which is to establish an independent and transparent system of regulation”.⁴⁰

32. On the first day of the Bill’s Committee Stage in the House of Lords, Baroness Royall outlined further amendments. She said:

“We have tabled amendments, first, to remove the offence on paid advocacy from the Bill; secondly, to provide that the commissioner will refer his or her findings directly to the House of Commons Committee on Standards and Privileges; and, thirdly, to provide that the commissioner will not be required to refer findings to the Committee on Standards and Privileges if the transgression is minor and the Member in question has already agreed to take appropriate remedial action. We have introduced greater safeguards into the procedures that the commissioner will be required to have. They include an opportunity for the Member to be heard in person and an opportunity, where appropriate, to call witnesses.

I could go on, but I come instead to the sunset clause. We have tabled an amendment to require that the parts of the Bill that relate to offences be continued by order every two years. We believe that that approach is about balance ... Also, as noble Lords will recall, I gave a commitment that the Bill should be subject to formal post-legislative scrutiny within the next two years”.⁴¹

33. We particularly note the removal of clause seven, which set out IPSA’s enforcement powers, from the Bill, the insertion of a sunset clause and the Government’s

39 House of Commons Library Standard Note (SN/PC/05121), *The Commons stages of the Parliamentary Standards Bill*.

40 HL Deb, 8 July 2009, col 681

41 HL Deb, 14 July 2009, col 1049

commitment to post-legislative scrutiny. The Government needs to set out the basis on which post-legislative scrutiny will be carried out.

34. The House of Lords Select Committee on the Constitution also published a report on the Parliamentary Standards Bill on 6 July 2009.⁴² It described the Bill as “a product of a desire to respond to a demand to see something done, as the Government put it, rather than the outcome of a law-making process suitable for a Bill with serious constitutional repercussions”.⁴³

35. The Lords Committee argued that this attempt to fast-track the legislation had two consequences: first, it identified a “failure at the centre of Government to prevent a policy with clear constitutional flaws being pursued”. The Committee added that the “abandoned clauses in the present bill now lay on the cutting room floor alongside clauses from the Legislative and Regulatory Reform Bill in 2006 and the 2003 announcement that the office of Lord Chancellor would be abolished”.⁴⁴ Second, the Committee commented on the process, and while it welcomed the consultation between the leaders of the political parties prior to the presentation of the Bill, it argued that:

“such discussion are no substitute for rigorous evaluation of policy options and public consultation. It is ironic that provisions designed to restore public confidence in aspects of the operation of Parliament have emerged from behind closed doors without providing an opportunity for adequate public engagement before the policy is crystallised into a bill introduced to Parliament. This is no way in which to legislate on matters which raise complex constitutional and legal issues”.⁴⁵

36. A combination of both issues led the Lords Committee to question whether the Parliamentary Standards Bill would meet the Prime Minister’s stated aim of restoring public trust in Parliament and parliamentarians. It argued:

“it is not ... clear to us that a cobbled together bill rushed through Parliament will help rebuild public trust; on the contrary, if Parliament cannot be seen to be scrutinising proposals with the thoroughness they deserve, public confidence in parliamentarians is likely to be further undermined”.⁴⁶

37. We welcome the main provisions in the Bill in relation to the creation of an Independent Parliamentary Standards Authority and note that the removal of clause six and the defeat of clause ten have addressed concerns set out in our previous report in regard to the constitutional implications for free speech in Parliament and the comity between the courts and Parliament.

38. While we acknowledge the need for urgent action in order to respond to public anger, we agree with the House of Lords Select Committee on the Constitution that the

42 Seventeenth Report of Session 2008-09. HL Paper 130. The Committee also published a second report, *Parliamentary Standards Bill: implications for Parliament and the courts*, Eighteenth Report of Session 2008-09, on 8 July 2009. HL paper 134

43 Para 3

44 Para 19

45 Para 20

46 Para 23

Parliamentary Standards Bill was rushed through its stages and that inadequate thought had been given to the broader potential constitutional implications of the Bill. We also agree that allowing insufficient time for adequate scrutiny of the legislation may have a detrimental effect on public trust.

39. There are broader lessons to be learnt from this in terms of both parliamentary and constitutional reform. First, that the inappropriate handling of bills and proposals for reform specifically designed to restore public trust may further undermine that trust. Second, although the Bill had the support of the party leaders, it also had potential constitutional consequences which they had not identified and were not identified by the Government. This should serve as a warning about the dangers of undertaking reform too quickly, and without adequate consultation to enable a full and thorough investigation of the constitutional implications. It also illustrates the danger of party leaders, however much they are responding to the public's appetite for immediate and radical action, engaging in a bidding war on reform.

Select Committee on Reform of the House of Commons

40. In his statement on constitutional renewal on 10 June 2009, the Prime Minister said:

“We must also take forward urgent modernisation of the procedures of the House of Commons, so I am happy to give the Government's support to a proposal from my hon. Friend the Chairman of the Public Administration Committee [Dr Tony Wright MP] that we will work with a special parliamentary commission comprising Members from all sides of this House, convened for a defined period to advise on necessary reforms, including making Select Committee processes more democratic, scheduling more and better time for non-Government business in the House, and enabling the public to initiate directly some issues for debate”.⁴⁷

41. Speaking in the House of Commons on 18 June, Barbara Keeley, Parliamentary Secretary to the Office of the Leader of the Commons, confirmed that a new committee would be set up for a defined “short period”. On Monday 6 July, notice was given on the order paper of a motion to establish a body called the “Select Committee on the Reform of the House of Commons” to make recommendations by 13 November 2009 on the following matters:

- the appointment of members and chairmen of select committees;
- scheduling non-government business in the House; and
- enabling the public to initiate debates and proceedings in the House.

42. Following objections from many quarters, including the Chairman of this Committee, this motion was withdrawn and an amended version was tabled by the Government which:

47 HC Deb, 10 June 2009, col 797

- extended the life of the committee till the end of the Parliament, while requiring it to report by 13 November 2009 on certain matters; and added to the list of issues identified in the previous motion:
 - the scheduling of government business; and
 - such other matters as appear to the Committee to be closely connected with the matters set out above.

43. On 14 July, Rt Hon Jack Straw MP, Secretary of State for Justice and Lord Chancellor, told us that the new committee was: “a way of bringing things to a conclusion as quickly as possible” and he “hoped” the Government’s business managers would allow time for the motion to be debated, and thus decided upon, before the summer recess. In similar vein the Prime Minister, when asked on 16 July by the Liaison Committee for a commitment to establishing the committee before the recess (not least because of its November deadline), said: “I do not manage the business of the House but I shall look at what you say”. Later the same day, the motion was re-tabled for consideration on 20 July, alongside a Business of the House motion guaranteeing time for it to be debated if necessary. The remit of the proposed Committee had been further expanded to include consideration of the way in which the Chairman and Deputy Chairman of Ways and Means (i.e. the senior deputy speakers) are appointed.

44. We commend the Government for taking on board four substantial changes to the remit of the Select Committee on Reform of the House of Commons. We are mindful of the truism that ‘nothing will be attempted if all possible objections must first be overcome’.⁴⁸ We believe, however, that it is yet more evidence of the need for reform that terms of reference of such significance to the House were developed by the executive behind closed doors followed by such a hit and miss, suck it and see, ‘consultation’ process. We do welcome the way in which the proposed membership of the committee was brought forward. The choice of a backbench chairman, within the terms of the motion itself, is an innovation and one significant advantage over the, presumably, now moribund Select Committee on the Modernisation of the House of Commons. We also applaud the way that the main political parties—seemingly independently—each arranged for names to be put forward for its membership via secret ballot. This, other things being equal, may well prove to be a model for the way forward for all select committees.

45. It is for the Committee itself, now formally established, to decide its own programme. Nevertheless, we have considered two important and inter-related priorities:

- Commons Standing Order No. 14 states that “Save as provided in this order, government business shall have precedence at every sitting [of the House]”.⁴⁹ Exceptions are made for 20 Opposition Days and 13 Fridays for Private Members’ Bills.⁵⁰ The authoritative guide to parliamentary procedure, Erskine May, marks the year 1811 as the beginning of the executive’s appropriation of the time of the House by

48 Samuel Johnson, *The Major Works*, April 2009

49 House of Commons Standing Orders relating to public business, 2009, HC 2

50 Opposition Days are for business chosen by opposition parties pro rata and Private Members’ Bills days are self-explanatory.

standing order at the expense of backbenchers, with modern practice having its roots in Lord Balfour's reforms of 1902.⁵¹ Erskine May notes that: "In the early nineteenth century, government business was by custom given priority on two days a week" but between then and now, backbenchers have lost Tuesdays, Wednesdays and some Fridays⁵² but gained Westminster Hall (although only for debates, not decisions and votes).⁵³

- Within this shifting balance, different ways of curtailing or re-locating debate were also developed.⁵⁴ Obstruction of House business by Irish nationalists in the 1870s and 1880s, and other pressures, gave rise to the guillotining of bills, closure motions and standing committees (moving debate on the detail of legislation away from the floor of the House).⁵⁵ The post-war period saw time for debating the flow, now torrent, of delegated legislation severely circumscribed and relegated from the floor of the House. Most recently, programme motions for bills have had a profound effect on the time allocated to legislative scrutiny both on the floor of the House and in committee.

46. The Government's control of parliamentary time is embodied in the fact that the Leader of the House is a Cabinet Minister and greatly strengthened by the system of programme motions introduced in 1997.⁵⁶ There are negotiations about Parliamentary business between the "usual channels", i.e. between the Government and the leaders and whips of opposition parties, but these negotiations take place behind the scenes.

47. We welcome the establishment of the Select Committee on Reform of the House of Commons to examine these matters, and we particularly applaud the change in the terms of its remit that will allow the Committee to consider the scheduling of government, as well as non-government, business. We believe that three key areas for the re-consideration of existing practice by this Committee are:

- **the near total control of the Order Paper which determines the House's business each day;**

51 Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 23rd Edition (MacKay), page 7. In 1852 the ability of Ministers to place Government Orders at the head of the Orders of the Day on certain (undefined) days was formalised in Standing Orders. By 1902 the definition of Standing Orders was reversed and Government business had precedence "at every sitting" with certain exceptions which had the effect of preserving two days a week for private Members.

52 Private Members' Bills Fridays survive; but Private, or backbench, Members' *Motions* Fridays do not.

53 *Ibid*, pages 7-9. Debates in Westminster Hall are 'adjournment debates'; i.e. there is no proposition before the Chamber on which to have a vote. The backbench Member therefore gets to choose the debate subject but cannot propose a Motion on which to ask the House to express an opinion.

54 Erskine May has a whole chapter entitled "Methods of curtailing debate", *ibid*, pages 456-81

55 Now called 'public bill' and 'delegated legislation' committees.

56 Allocation of time orders (guillotine motions) were first used in 1887. In its first report of 1997 on *The Legislative Process* the Modernisation Committee recommended an approach for the timetabling of legislation that was "more formal than the usual channels but more flexible than the guillotine". The approach the Committee recommended was based on agreement of the bills to be programmed across the parties through the usual channels. Programme motions were to be subject to 45 minutes of debate after the second reading. Programming sub-committees of the relevant standing committees would be established to guide the legislation through its committee stage drawing up a detailed timetable for consideration of the legislation within the set outdate. During the 2000-2001 session the Government began timetabling almost all public Government bills and almost all of the 19 Programme Motions introduced that session were resisted by the Official Opposition. In the 2003-04 Session a total of 63 Programme Motions were introduced. On 26 October 2004 the House voted to make programming permanent.

- the dual role of the Leader of the House as the main channel for all House business and as a member of the executive; and
- the fact that the House itself has no mechanism for introducing effective motions relating to business and timing other than through the Leader of the House.

48. Any government is entitled to use its majority to create opportunities to give an account, and secure the passage, of its legislative programme and to ensure that it has the parliamentary time to present that programme to the House. The right of the elected majority to make effective progress with its business is well accepted but equally the House must hold the executive to account and, in doing so, make sure that legislation is adequately examined and amendments properly considered. There is widespread concern over the current balance between how the House, as a whole, perceives and articulates its priorities for the way time in the Chamber is spent, and how the executive responds in managing arrangements. The House and the executive need a mechanism, not dominated by the latter, through which the timetabling of bills and other debates can be determined. The House needs its own ‘voice’. We expect that the new committee will examine the case for a business committee—without an automatic government majority—to carry out this function.

49. We acknowledge the short time-frame within which the Select Committee on Reform of the House of Commons is expected to report, and urge it to bear in mind the broader constitutional implications of any recommendations it makes for parliamentary reform, which we will consider when the proposals are published.

4 Constitutional Reform

Building Britain's Future

50. Both in his statement of 10 June, and in *Building Britain's Future*, the Prime Minister set out those areas within which it is intended that the Government bring forward proposals for consideration and debate. The document outlines and describes a “radical programme of democratic and constitutional reform” including:

- further reform of the House of Lords;
- the possibility of a written constitution;
- offering stronger powers to local and city-regional government;
- possible options for electoral reform; and
- how to improve engagement, particularly of young people.⁵⁷

House of Lords reform

51. On 6 and 7 March 2007, the House of Commons debated motions on the composition of the second chamber and voted in favour of both an all elected House and a House comprising 80% elected and 20% appointed peers, with a significantly greater majority in favour of an all elected House. There was wide support across the main political parties for this option. On 13 March 2007, however, the House of Lords voted in favour of an all appointed House to the exclusion of all other options.

52. On 14 July 2008, the Government published a White Paper, *An Elected Second Chamber: Further Reform of the House of Lords*,⁵⁸ which considered proposals for either an 80% or 100% elected second chamber, with non-renewable terms of 12 to 15 years.⁵⁹ In *Building Britain's Future* the Government voiced its intention to legislate in the 2009-10 session for the next steps on House of Lords reform by completing the process of removing the hereditary element from the second chamber, and to bring forward a draft Bill for a smaller and democratically constituted second chamber.⁶⁰

53. There are a number of constitutional issues and principles still to be addressed:

- the primacy of the Commons, and the potential change in the expected powers of the second house (formal or otherwise) if it has an electoral mandate;
- whether it would be constitutionally and politically appropriate to use the Parliament Acts 1911 and 1949 to force through the second stage of Lords reform.

57 Prime Minister, *Building Britain's Future*, Cm 7654, June 2009, p 26

58 Cm 7438

59 Cm 7438

60 Prime Minister, *Building Britain's Future*, Cm 7654 June 2009, para 20, p 29.

54. Further thought is also required in order to address how reform of the House of Lords is linked to existing constitutional arrangements and proposed constitutional reforms:

- the creation of a predominantly elected second chamber, to which all three main parties are committed, would involve deciding on an electoral system which may have implications for any change in the electoral system for the House of Commons;
- devolution has raised new issues for the role of the second chamber and will continue to do so;
- the creation of the Supreme Court has already changed the future composition of the House of Lords by ending the appointment of law lords;
- there is a possible inter-relationship between the future of bishops in the second chamber and the establishment of the Church of England; and
- potential reforms of the Commons leading to more detailed scrutiny of legislation and a strengthening of the Commons in relation to the executive could change the balance in the respective role of the two Houses.

55. On 14 July, Rt Hon Jack Straw MP indicated that proposals would be published before the summer recess including those relating “to hereditaries and disqualification, resignation and suspension of members and then there are the longer term ones”,⁶¹ which “with a bit of luck can be the subject of legislation which goes through all its stages before the end of this Parliament”.⁶²

56. In a Written Ministerial Statement on the *Constitutional Reform and Governance Bill*, published on 20 July, the Ministry of Justice indicated that the Bill included provisions which would:

- end the hereditary peers by-elections, thus phasing out the hereditary principle; and
- provide for the resignation of peers and powers for their expulsion, suspension and disqualification in certain circumstances.

In the same statement, the Government indicated that it was fully committed to comprehensive reform of the Lords, based on four principles, all of which were endorsed by the cross-party group namely:⁶³

- the primacy of the House of Commons, enshrined in the Parliament Acts, and in rules and convention;
- independence of members, supported by their serving a single, non-renewable term of three normal-length Parliaments, and, as set out originally in the 2007 White Paper

61 Q 54

62 Q 53

63 As set out in the White Paper, *An Elected Second Chamber*, July 2008, Cm 7438

(*The House of Lords: Reform*, Cm 7027), by a system of election which prevents a single party gaining an overall majority;

- direct election, such that the second chamber has a democratic mandate underpinning its revising role, but one that is never as a whole more up to date than that of the Commons; and
- sensible transitional arrangements in respect of existing peers.

57. The Government said that it would seek to address “outstanding questions ... in final proposals [to be published] after the summer, with draft legislation for pre-legislative scrutiny as soon as possible”. It identified those outstanding questions as the electoral system and the size of the elected element (80% or 100%).

58. The present Prime Minister has appointed 11 people to be life peers so that they could serve as ministers or as an adviser to the Government, some of whom have already given up ministerial office but remain members of the House of Lords. These measures accentuate a trend towards an appointed second chamber, contrary to the view expressed by the three main parties and by the House of Commons. Moreover, it is likely to lead to a continuous trend in future governments appointing peers in order to rebalance the numbers and this is unsustainable.

A written constitution

59. The *Governance of Britain* Green Paper 2007 noted the possibility of a British Bill of Rights and Duties. In March 2009, the Government’s Green Paper, *Rights and Responsibilities: developing our constitutional framework* was published. A Bill of Rights and Responsibilities would impact on the debate around the constitution, as it would take the UK a step closer to a written constitution. No legislation is expected on a Bill of Rights before the next general election; but the Government has announced a public debate on a written constitution, building on the dialogue begun in *Rights and Responsibilities: developing our constitutional framework*.⁶⁴

60. The Prime Minister has indicated that he is in favour of a written constitution.⁶⁵ It is worthy of note that significant parts of the UK’s constitution are written down, for example, the Scotland Act 1998, the Wales Act 1998, the Government of Wales Act 2006, the Northern Ireland Act 2009 and the Human Rights Act 1998, the European Communities Act 1972, the Maastricht Treaty, the Magna Carta and the Bill of Rights. Nevertheless, as the Government has identified, “a move to a written constitution would represent a fundamental and historic shift in our constitutional arrangements”.⁶⁶ We agree. There are many constitutional issues and questions relating both to the principles upon which a written constitution would be based and the process by which it could be determined and, if necessary, subsequently amended:

64 Para 20, p 30

65 HC Deb, 10 June 2009, col 798

66 Para 20, p 30

- the process and timetable for debate on a written constitution, and public engagement in the process;
- the different forms a written constitution for the UK could take;
- the question of how comprehensive the text of a written constitution should be:
 - should it include most constitutional conventions?
 - should the text be a detailed rule book or a relatively brief statement of the principal arrangements?
- the extent to which a written constitution could or should be protected from amendment by the ordinary Parliamentary process for changing legislation ('entrenched'), given the doctrine of parliamentary sovereignty;
- the extent to which a written constitution should be enforceable by the courts and the role of the Supreme Court and relationship with Parliament in this area;
- the relationship between, or hierarchy of the constitution, statute and common law; and
- the mechanism for agreement to such a fundamental change, which would presumably involve a referendum.

61. Rt Hon Jack Straw MP said that:

“There are two models of a written Constitution. One is a text which seeks to bring together the fundamental principles, sometimes called conventions, of our constitutional arrangements, the most important of which is that Parliament is sovereign, but also to bring in other texts as well, which include things like the Parliament Acts, a Bill of Rights and Responsibilities and so on, basic texts which add up to the arrangements which we have today ... The second model is an entrenched and overarching Constitution which is more powerful than Parliament ... If you go down that route you would have to have some special means of endorsing that text, and probably generating it as well through some kind of constitutional convention. It would have to be endorsed by Parliament and then by a referendum and you would also have to have a special process for amending it as well. Typically in other countries that is a combination of either special majorities in the Parliament, two-thirds and so on, and/or a referendum”.⁶⁷

He noted that he preferred the first model and further clarified that he was in favour of a “single text which better describes our arrangements”.⁶⁸

62. When asked in Liaison Committee on 16 July, whether a written constitution should be entrenched, the Prime Minister responded:

67 Q 61

68 Q 61

“I think that would have to be your understanding and, therefore, you would have to agree a mechanism by which it could be changed in the future, but I accept that that raises the question of whether one Parliament can bind another Parliament, and I accept also that there are very difficult questions already raised by the existence of a supreme court and the role of the judges in the coming in of a supreme court that have got to be dealt with as well because I do not think that the intention of a written constitution, in Britain at least, would be to give judges greater power over our democratic affairs”.⁶⁹

63. The Prime Minister has raised the issue of a written constitution. This involves fundamental issues about the sovereignty of Parliament, the nature of the monarchy, the role of the judiciary and the rights of the citizen, which merit careful and close examination. We would welcome a thorough debate.

Stronger powers to local government

64. In May 2009 we published a major report, *Devolution: a decade on*, looking at the impact of devolution in the UK.⁷⁰ This included an examination of the ‘English Question’ and the devolution of power in England. We described the governance of England as the “unfinished business” of devolution.⁷¹ Many different solutions have been suggested to the many different questions which fall under the broad heading of the English question. First, there are proposals which seek to address the constitutional imbalance seemingly brought about by devolution, for example, through the creation of an English Parliament. Second, there are potential solutions which seek to amend the role, practice and status of the Westminster Parliament as a means of addressing the West Lothian Question, for example, schemes of English votes for English laws. The final category of solutions covers those which attempt to tackle the centralized nature and relative size of England through decentralization or devolution within England.

65. Any move towards an all-England solution, or the creation of an all England government and assembly, raise questions of the asymmetrical size and population of England within the United Kingdom. These issues also have particular implications for the executive role and for the whole political process. A potential First Minister of England and English Government would command resources, political attention and media coverage on such a scale that he or she could rival the UK Prime Minister and Government for perceived significance in the mind of voters.

66. Following defeat in the 2004 referendum on establishing a regional assembly in the North East, the Government has sought to address issues around the governance of England through the strengthening the development of regional bodies, including regional development agencies, regional assemblies and regional government offices in the region.⁷² Proposals for the creation of nine regional select committees were set out in *The Governance of Britain*. It was suggested that these select committees would examine the

69 Q 241

70 Justice Committee, Fifth Report of Session 2008-09, *Devolution: a decade on*, HC 529-I

71 Para 154, *Devolution: a decade on*

72 For more information see Justice Committee, Fifth Report of Session 2008-09, *Devolution: a decade on*, HC 529-I

work and activities of regional bodies, in particular the regional development agencies, and call Ministers, particularly the relevant regional Minister, to account.⁷³

67. On 12 November 2008 the House of Commons agreed to establish eight regional select committees. The Standing Order stated that the regional select committees shall be appointed to “examine regional strategies and the work of regional bodies” for the eight English regions, excluding London. A further Standing Order set up regional grand committees, to which all regional members were appointed.⁷⁴ A Regional Select Committee for London was later set up on 25 June 2009. The Government’s intention was that the committees would look at the “development or implementation of policies where there is a regional aspect to decision-taking and delivery, and would not be focused on the purely local impact of nationally set policies”.⁷⁵ The Standing Order establishing these Committees took effect from 1 January 2009, and the Committees met for the first time during March 2009. However, only Labour members have been appointed to the Committees because the Conservative party was opposed in principle to the system and the Liberal Democrats objected to the fact that the committees’ composition would not reflect the balance of Members of Parliament in the region, but rather were in accordance with the distribution of seats in the House of Commons. As a result, neither opposition party chose to put forward nominations.

68. Ministers posts for each region have been created. *The Governance of Britain* defines the role of Regional Ministers as to:

- “advise the Secretary of State for Business, Enterprise and Regulatory Reform on the approval of regional strategies and appointment of RDA Chairs and Boards;
- represent regional interests in the formulation of central government policy relevant to economic growth and sustainable development in areas that have not been devolved to the RDAs;
- facilitate a joined up approach across government departments and agencies to enable the effective delivery of the single regional strategy;
- champion the region at high level events and with regard to high profile projects (including through a programme of regional visits); and
- represent the Government with regard to central government policy at regional select committee hearings and at parliamentary debates focused specifically on the region”.⁷⁶

69. Ministers designated as regional ministers do this work in addition to their other ministerial responsibilities in a variety of departments. The Government has also introduced regional boards for local authority leaders in order to address issues of regional accountability.

73 See also, Communities and Local Government Select Committee Report, *Is there a future for Regional Government?*

74 Standing Order 117A. On 25 June 2009, the House passed a series of motions setting the dates for the first meeting of each of these committees.

75 Explanatory Memorandum on the Motions in the Name of the Leader of the House, debated in the House on 12 November 2008

76 *The Governance of Britain*, Cm. 7170, paragraph 118.

70. However, more recently, the Government has focused its attention on the strengthening of local government as a way of addressing the governance of England. Rt Hon Jack Straw MP said, in evidence to our inquiry into devolution: “people ... are more interested in ideas of strengthening the existing local government units and the development of ... city regions”.⁷⁷

71. Whether or not there are future moves towards devolving power to an all England national body, or to regional authorities in England, there remain key questions about the balance between central and local government in England. We note that the Communities and Local Government Committee has recently published a report entitled *The balance of power: central and local government*⁷⁸ which examines how local government in England could be more proactive in making best use of existing structures and where change is required to increase the scope for autonomous local government activity. The Committee’s report also examines the role of central government in relation to local government and advocates further cultural change to facilitate a lasting move towards a “minimalist” approach to the centre’s involvement in local government.

72. We also note the progress of the *Local Democracy, Economic Development and Construction Bill* which includes provisions on increasing opportunities for public involvement in local decision-making and scrutiny; new forms of joint working between local authorities; and on the establishment of single regional development strategies produced jointly between regional development agencies and local authorities.

73. In comparison with many other democracies, local government in England remains relatively weak in relation to central government both in its ability to exercise authority and in its funding systems, and central government is free to make major changes to the pattern and structure of local authorities without constitutional restraint. This has been illustrated by the abolition of the Greater London Council and metropolitan counties under a previous government and the imposition of unitary authorities by the present government. This raises the question of whether the powers and structures of local government would or should be recognised in a written constitution, with a specified process for any changes to be made in them.

Electoral reform

74. Since 1997, the issue of reform of the voting system for Westminster elections has been sporadically under consideration by the Government. An Independent Commission on the Voting System was established by the Government in December 1997 under the Chairmanship of the Rt Hon Lord Jenkins of Hillhead. The Jenkins Commission recommended that “the best alternative to the first past the post system for Westminster elections would be a two-vote mixed system, described as either a limited additional member system or AV top-up”.⁷⁹

77 Q 680

78 Communities and Local Government Committee, Sixth Report of Session 2008-09, *The balance of power: central and local government*, HC 33-1

79 Home Office, *The Report of the Independent Commission on the Voting System*, Cm 4090

75. Between 1997 and 2009, different electoral systems have been introduced and used for different elections in the UK, including the additional member system for elections to the Scottish Parliament and National Assembly for Wales, the supplementary vote system for the London mayor elections, and the single transferable vote for local government elections in Northern Ireland and Scotland, European Parliament elections in Northern Ireland and for the election of Northern Ireland Assembly members. The Government published the review of *Voting Systems: the experience of voting systems on the United Kingdom since 1997* in January 2008 which sets out clearly the characteristics, advantages and disadvantages of alternative systems and the present system for the election of members to the House of Commons.⁸⁰

76. In *Building Britain's Future* the Government re-iterated its belief that the link between a Member of Parliament and the constituency was essential, but said that change could be considered if there were broad consensus in the country that it would strengthen democracy and politics by improving the effectiveness and legitimacy of both Government and Parliament. The Government said that proposals would be set out in order to take this debate forward.⁸¹

77. We note and welcome the increasingly open debate about this issue by Ministers which includes, for example, the case put for electoral reform for the Commons by Rt Hon Alan Johnson MP, 82 and the case against put by Rt Hon Jack Straw MP.⁸³

78. There are two particular constitutional issues which require consideration in this context:

- electoral reform for the House of Commons would need to be considered alongside any proposals for an elected House of Lords with particular reference to the mode and timetable for any such elections. For example, it is generally accepted that it would not be desirable to have the same electoral system for both Houses.
- the mechanism for agreement to such a fundamental change, the question of whether a referendum would be required, and, if so, to what extent a referendum would provide for choice between different alternative systems.

Improving young people's engagement in politics

79. In April 2004, the Electoral Commission concluded a 12 month review of the voting age. They concluded that the minimum age for all levels of voting at UK public elections should remain at 18 years, but that the minimum candidacy age should be reduced from 21 to 18. *The Governance of Britain* Green Paper, published in July 2007, highlighted the need for the Government to engage with young people and encourage them to play an active part in British society. Julie Morgan MP presented a Private Member's Bill: *Voting Age (Reduction) Bill*, Session 2007-08, which did not receive a second reading because of lack of

80 Cm 7301

81 Page 30

82 "Labour must embrace voting reform", The Independent, 8 July 2009

83 Qq 80-82

time. The Bill recommended the lowering of the voting age in all elections from the age of 18 to 16.

80. The Youth Citizenship Commission was set up by the Government to examine ways of developing young people's understanding of citizenship and increase their participation in politics and included the idea of lowering of the voting age. The Commission's report, published on 26 June 2009, recommended that the Government should consider the lowering of the voting age.⁸⁴ The Government agreed to set out steps to increase the engagement of young people in politics, including "whether to give further consideration to a reduction in the voting age",⁸⁵ a phrase of puzzling indeterminacy.

81. The overall effect of lowering the voting age would be to increase the number of people eligible to vote by 1.4 million. Changing the voting age has a number of resource and administrative implications, including additional government funding to enable administrative changes to be made. There would be a minimal increase in the running costs of the registration process, and some initial implementation costs to address the changes to registration software and fund a public awareness campaign.

Other reforms

Freedom of information

82. In several reports this Committee has commended the Freedom of Information Act as a generally successful piece of legislation with far-reaching impact, and has put forward proposals to build on its success by further improvements.⁸⁶ The Government's proposals reflect the recommendations of the Dacre Review and the Ministry of Justice's consultation on broadening the application of Freedom of Information, held between October 2007 and February 2008. While broadening the application of Freedom of Information, the Government also wants to introduce safeguards under the current legislation. The Ministry of Justice told the BBC on 10 June: "In relation to Cabinet information, and information relating to the Royal Household, it has become clear that those safeguards are insufficiently robust to protect our current constitutional arrangements, and need changing. We will be announcing the detail of these changes in our full response, to be published shortly".⁸⁷

83. On 16 July 2009, the Ministry of Justice published its response to the consultation on broadening the application of the Freedom of Information Act.⁸⁸ The Government state "that responses to the consultation show considerable support for the principle of extending the coverage of the Act to additional organisations through a series of section 5 orders."⁸⁹ The Government propose to take this forward by "an initial, focused section 5

84 www.ycc.uk.net/news/YCC%20-%20Press%20release.doc

85 *Building Britain's Future*, page 30

86 See appendix A for a full list

87 "Cabinet papers to stay secret", BBC website, 10 June 2009; available at http://news.bbc.co.uk/1/hi/uk_politics/8093764.stm

88 Ministry of Justice, Freedom of Information Act 2000: Designation of additional public bodies: response to Consultation CP(R) 27/07, 16 July 2009

89 HC Deb, 16 July 2009, col 65WS

order to be accompanied by action outside the Act to promote proactive publication—by voluntary adoption of the Information Commissioner Offices’ model publication scheme—and openness—by reminding public authorities and contractors of the existing guidance on access to information, which should inform contracting processes and response to requests for information”.⁹⁰ We will continue to follow closely developments on these matters.

84. We have previously expressed concerns about the funding of the Office of the Information Commissioner in respect of the freedom of information aspect of its work and the resulting backlog of cases.⁹¹ We note the recent report from the Campaign for Freedom of Information expressing concern at continuing delays in the Information Commissioner Offices’ investigation of freedom of information complaints.⁹²

85. We welcome the Government’s intention to extend the application of the Freedom of Information Act to a wider range of bodies exercising public functions, but we also recognise the implications for the workload and resources of the Office of the Information Commissioner. We remain of the view that the Commissioner should be an officer of Parliament, like the Comptroller and Auditor General and the Ombudsman, funded by Parliament rather than the Executive.

Process

86. There has been no effective process established to take the many constitutional proposals forward in an open and consultative manner. The Government’s chosen mechanisms for change - the strangely titled Democratic Renewal Council and the Parliamentary Commission - are in effect a Cabinet committee and a House of Commons select committee respectively. Neither body could be described as an innovative mechanism for dealing with what is perhaps the most important and far reaching area of political debate in recent years, or the basis of wider public consultation.

87. *Building Britain’s Future* provided an outline of the process by which the Democratic Renewal Council would go about constitutional reform:

“The results of the consultation across the UK will be reported back to the Democratic Renewal Council to conclude in time to shape the Government’s forward legislative programme and to feed into the Queen’s speech. All proposed reforms will be underpinned by cross-party discussions. Our proposals will also be informed by leading external figures including academics and others who command public respect and have a recognised interest or expertise in the different elements of democratic reform”.⁹³

90 At present, the bodies to be included in the first section 5 order are: Academy schools; Association of Chief Police Officers; Financial Ombudsman Service and UCAS. The Government will consult these bodies directly and aim to bring forward a section 5 order early in the next session of Parliament.

91 For example, Justice Committee, Third Report of Session 2008-09, *The work of the Information Commissioner: appointment of a new Commissioner*, HC 146, para 36

92 Campaign for Freedom of Information, *Delays in Investigating Freedom of information Complaints*, 3 July 2009

93 *Building Britain’s Future*, para 21, page 30.

We sought further clarification on this process from Rt Hon Jack Straw MP, who simply described it (in this particular question in relation to consultation in relation to the Barnett Formula) as “listening to what people have to say ... then there will finally be judgements made”.⁹⁴ This sentiment was echoed by the Prime Minister in Liaison Committee on 16 July. He said: “the process for consultation has to be very wide and it would have to be very general and people would have to feel that there was a sense of involvement on their part of the issues that were of concern ...”⁹⁵ However, he gave no indication of what that process might be or how it would be organised.

88. The Government appears to be setting an over-optimistic timetable if it assumes that this process can be appropriately undertaken in time for November of this year. If the Government intends to conduct a genuine consultation process, this timetable is insufficient. If this timetable is to be met, we fear the consultation and consideration would lack substance. In any event it would be wrong to allow the timing of the general election to drive the process.

89. A number of major constitutional reforms in the United Kingdom, including devolution in Scotland and Wales have been the subject of referendums. There was also a referendum on the creation of the Greater London Assembly and the London Mayor. Since then, there have been calls for referendums on the question of whether or not the United Kingdom should adopt the Euro, on the ratification of the Lisbon Treaty and on the United Kingdom’s continued membership of the European Union. There has been some concern that the use of the referendum in bringing about major constitutional reform, has, to date, arisen from political considerations rather than constitutional principle.

90. An important or complementary process to the binary choice offered by a referendum can be the establishment of a constitutional convention similar to that established in Scotland prior to the 1997 devolution referendum, which, it is widely accepted, made a positive contribution both to the development of devolution policy in Scotland and to public engagement with the process. Such a forum could be the means by which the questions for referendums are formed. Speaking in the Liaison Committee on 16 July, the Prime Minister acknowledged that there were “lessons to be learned from the constitutional convention in Scotland”.⁹⁶

91. While referendums are only one mechanism by which the Government could seek public confirmation of major constitutional reforms, the decision on whether or not to have a referendum should be based on principle rather than political expediency. Otherwise, the risk is that the decision of whether or not to hold a referendum becomes an issue of political controversy, thereby potentially further undermining public trust and the legitimacy of reform. Rt Hon Jack Straw MP told us that he “never thought a referendum was simply a matter of expediency” and that, in his view, you should “have a referendum for major constitutional change which is going to alter the fundamental landscape of our constitutional arrangements”.⁹⁷

94 Q 68

95 Q 240

96 Q 241 Liaison Committee

97 Q 16

92. We welcome the Government's commitment to a wide ranging discussion of a broad spectrum of proposals for major constitutional reform. Getting this right is crucial. We are not satisfied that the process for constitutional reform outlined in *Building Britain's Future* is adequate for changes of such magnitude and significance. A more systematic and established process is required, which could include, for some changes, a constitutional convention to work through the more complex issues, and a referendum on fundamental changes.

5 Conclusion

93. We welcome the Government's commitment to constitutional reform and renewal, and its desire to restore public trust in Parliament and the political process more broadly. The Government, however, must take this opportunity to complete the "unfinished business" of its previous attempts at constitutional reform, particularly in relation to the House of Lords, and in relation to the governance of England which remains in a pre-devolution time warp.

94. The Government's approach to constitutional reform has been ad hoc and piecemeal. Constitutional reform will determine the direction and nature of our core institutions for generations to come. It is imperative that we get this right. It must be done properly.

95. Further reform must therefore be underpinned by a set of constitutional principles based on a proper understanding of the position and role of Parliament in relation to the other institutions of state. Individual reforms cannot be treated in isolation, so must be considered both in relation to each other and in the context of this set of principles. The Democratic Renewal Council should prioritise the clarification of constitutional principles and their strategic and consistent implementation through its proposals for reform.

96. Without the strategic implementation of constitutional principles, proposals for change can have unintended and unforeseen constitutional consequences and risk the creation of a constitutional imbalance. The Parliamentary Standards Bill, as originally presented to the Commons, provides a stark illustration of this.

97. In order to avoid these dangers, the Government must allow sufficient time for adequate and thorough consultation with the public and with Parliament on constitutional change. It is essential that the process for reform is transparent, considered and appropriate. If this is not achieved, not only will the legitimacy of the specific reforms be undermined, but the Government will also risk the further alienation of the public—potentially worsening the crisis that it is seeking to resolve.

Conclusions and recommendations

Constitutional Reform and Renewal

1. We recognise the appetite in many quarters for fundamental constitutional change and welcome the Government's renewed focus on constitutional reform and renewal in response to this. We are surprised by the limited provisions in the Constitutional Reform and Governance Bill, and fear that this may be a missed opportunity to make progress in some areas of reform. Any programme introducing fundamental change should be carefully constructed and aimed at a coherent outcome taking into account the widest possible range of views. (Paragraph 16)

The Parliamentary Standards Bill

2. We particularly note the removal of clause seven, which set out IPSA's enforcement powers, from the Bill, the insertion of a sunset clause and the Government's commitment to post-legislative scrutiny. The Government needs to set out the basis on which post-legislative scrutiny will be carried out. (Paragraph 33)
3. We welcome the main provisions in the Bill in relation to the creation of an Independent Parliamentary Standards Authority and note that the removal of clause six and the defeat of clause ten have addressed concerns set out in our previous report in regard to the constitutional implications for free speech in Parliament and the comity between the courts and Parliament. (Paragraph 37)
4. While we acknowledge the need for urgent action in order to respond to public anger, we agree with the House of Lords Select Committee on the Constitution that the Parliamentary Standards Bill was rushed through its stages and that inadequate thought had been given to the broader potential constitutional implications of the Bill. We also agree that allowing insufficient time for adequate scrutiny of the legislation may have a detrimental effect on public trust. (Paragraph 38)
5. There are broader lessons to be learnt from this in terms of both parliamentary and constitutional reform. First, that the inappropriate handling of bills and proposals for reform specifically designed to restore public trust may further undermine that trust. Second, although the Bill had the support of the party leaders, it also had potential constitutional consequences which they had not identified and were not identified by the Government. This should serve as a warning about the dangers of undertaking reform too quickly, and without adequate consultation to enable a full and thorough investigation of the constitutional implications. It also illustrates the danger of party leaders, however much they are responding to the public's appetite for immediate and radical action, engaging in a bidding war on reform. (Paragraph 39)

Select Committee on Reform of the House Of Commons

6. We welcome the establishment of the Select Committee on Reform of the House of Commons to examine these matters, and we particularly applaud the change in the terms of its remit that will allow the Committee to consider the scheduling of

government, as well as non-government, business. We believe that three key areas for the re-consideration of existing practice by this Committee are:

- the near total control of the Order Paper which determines the House's business each day;
 - the dual role of the Leader of the House as the main channel for all House business and as a member of the executive; and
 - the fact that the House itself has no mechanism for introducing effective motions relating to business and timing other than through the Leader of the House. (Paragraph 47)
7. Any government is entitled to use its majority to create opportunities to give an account, and secure the passage, of its legislative programme and to ensure that it has the parliamentary time to present that programme to the House. The right of the elected majority to make effective progress with its business is well accepted but equally the House must hold the executive to account and, in doing so, make sure that legislation is adequately examined and amendments properly considered. There is widespread concern over the current balance between how the House, as a whole, perceives and articulates its priorities for the way time in the Chamber is spent, and how the executive responds in managing arrangements. The House and the executive need a mechanism, not dominated by the latter, through which the timetabling of bills and other debates can be determined. The House needs its own 'voice'. We expect that the new committee will examine the case for a business committee—without an automatic government majority—to carry out this function. (Paragraph 48)
8. We acknowledge the short time-frame within which the Select Committee on Reform of the House of Commons is expected to report, and urge it to bear in mind the broader constitutional implications of any recommendations it makes for parliamentary reform, which we will consider when the proposals are published. (Paragraph 49)

House of Lords reform

9. The present Prime Minister has appointed 11 people to be life peers so that they could serve as ministers or as an adviser to the Government, some of whom have already given up ministerial office but remain members of the House of Lords. These measures accentuate a trend towards an appointed second chamber, contrary to the view expressed by the three main parties and by the House of Commons. Moreover, it is likely to lead to a continuous trend in future governments appointing peers in order to rebalance the numbers and this is unsustainable. (Paragraph 58)

A written constitution

10. The Prime Minister has raised the issue of a written constitution. This involves fundamental issues about the sovereignty of Parliament, the nature of the monarchy,

the role of the judiciary and the rights of the citizen, which merit careful and close examination. We would welcome a thorough debate. (Paragraph 63)

Freedom of Information

11. We welcome the Government's intention to extend the application of the Freedom of Information Act to a wider range of bodies exercising public functions, but we also recognise the implications for the workload and resources of the Office of the Information Commissioner. We remain of the view that the Commissioner should be an officer of Parliament, like the Comptroller and Auditor General and the Ombudsman, funded by Parliament rather than the Executive. (Paragraph 85)

Process

12. The Government appears to be setting an over-optimistic timetable if it assumes that this process can be appropriately undertaken in time for November of this year. If the Government intends to conduct a genuine consultation process, this timetable is insufficient. If this timetable is to be met, we fear the consultation and consideration would lack substance. In any event it would be wrong to allow the timing of the general election to drive the process. (Paragraph 88)
13. We welcome the Government's commitment to a wide ranging discussion of a broad spectrum of proposals for major constitutional reform. Getting this right is crucial. We are not satisfied that the process for constitutional reform outlined in *Building Britain's Future* is adequate for changes of such magnitude and significance. A more systematic and established process is required, which could include, for some changes, a constitutional convention to work through the more complex issues, and a referendum on fundamental changes. (Paragraph 92)

Appendix A: Justice Committee Reports on constitutional issues since 2005

Reports Session 2005-06

Freedom of information: one year on (Seventh report (HC 991), Govt response 6397)

Reports 2006-07

Party funding (First report, HC 163)

Freedom of Information: Government's proposals for reform (Fourth report (HC 415), Govt response Cm 7123)

The Constitutional Role of the Attorney General (Fifth report (HC 306), Govt responses HC 242 (Session 2007-08) and Cm 7355)

Scrutiny of Constitutional Reform (Second Special Report (HC 907))

Reports 2007-08

Protection of Private Data (First report (HC 154), Govt response HC 406))

Draft Constitutional Renewal Bill (provisions relating to the Attorney General) (Fourth report (HC 698), Govt response awaited)

Public Appointments: Lord Lieutenants and High Sheriffs (Sixth report (HC 1001), Govt response Cm 7503)

Reports 2008-09

Devolution: A Decade on (Fifth report (HC 529), Govt response awaited)

Constitutional Reform and Renewal: Parliamentary Standards Bill (Seventh Report (HC 791), Govt response awaited)

One-off evidence sessions

Human Rights Legislation and Government policy-making (HC1703-i-ii, Session 2005-06)

House of Lords Reform and Party Funding (HC 738-i, Session 2006-07)

The work of the Electoral Commission (HC 439-i, Session 2007-08)

Formal Minutes

Tuesday 21 July 2009

Members present:

Sir Alan Beith, in the Chair

Siân James
Alun Michael
Jessica Morden
Julie Morgan

Dr Nick Palmer
Andrew Turner
Andrew Tyrie
Dr Alan Whitehead

Draft Report (*Constitutional Reform and Renewal*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 97 read and agreed to.

A Paper was appended to the Report as Appendix A.

Resolved, That the Report be the Eleventh Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 13 October at 4.00 pm]

Witnesses

Tuesday 14 July 2009

Page

Rt Hon Jack Straw MP, Secretary of State for Justice and Lord Chancellor

Ev 1

Reports from the Justice Committee since Session 2007–08

Session 2008-09

First Report	Crown Dependencies: evidence taken <i>Government response</i>	HC 67 HC 323
Second Report	Coroners and Justice Bill <i>Government response</i>	HC 185 HC 322
Third Report	The work of the Information Commissioner: appointment of a new Commissioner <i>Government response</i>	HC 146 HC 424
Fourth Report	Work of the Committee in 2007-08	HC 321
Fifth Report	Devolution: A Decade On <i>Government response</i>	HC 529 Cm 7687
Sixth Report	Sentencing Guidelines and Parliament: Building a Bridge	HC 715
Seventh Report	Constitutional Reform and Renewal: Parliamentary Standards Bill	HC 791
Eighth Report	Family Legal Aid Reform	HC 714
Ninth Report	The Crown Prosecution Service: Gatekeeper of the Criminal justice System	HC 186
Tenth Report	Draft Sentencing Guideline: overarching principles—sentencing youths	HC 497

Session 2007-08

First Report	Protection of Private Data <i>Government response</i>	HC 154 HC 406
Second Report	Work of the Committee in 2007	HC 358
Third Report	Counter Terrorism Bill <i>Government response</i>	HC 405 HC 758
Fourth Report	Draft Constitutional Renewal Bill (provisions relating to the Attorney General) <i>Government response</i>	HC 698 Cm 7689
Fifth Report	Towards Effective Sentencing <i>Government response</i>	HC 184 Cm 7476
Sixth Report	Public Appointments: Lord-Lieutenants and High Sheriffs <i>Government response</i>	HC 1001 Cm 7503
Seventh Report	Appointment of the Chair of the Office of Legal Complaints <i>Government response</i>	HC 1122 HC 342

Oral evidence

Taken before the Justice Committee on Tuesday 14 July 2009

Members present

Sir Alan Beith, in the Chair

Alun Michael
Julie Morgan
Mrs Linda Riordan

Mr Andrew Tyrrie
Dr Alan Whitehead

Witnesses: **Rt Hon Jack Straw, MP**, Secretary of State for Justice and Lord Chancellor, gave evidence.

Q1 Chairman: Lord Chancellor and Secretary of State, welcome.

Mr Straw: Thank you very much.

Q2 Chairman: Who is running this show? We have got constitutional reform on the agenda in quite a big way but is the lead being taken, in terms of officials particularly, by the Ministry of Justice or by Downing Street?

Mr Straw: The lead in terms of officials is entirely by the Ministry of Justice, with some assistance from the Cabinet Office. Officials work very co-operatively with those in Downing Street and the Cabinet Office.

Q3 Chairman: So is Number 10 driving the agenda and sending over messages that it wants this, that or the other included in the constitutional reform programme or is the process rather the other way?

Mr Straw: It is a collaborative process. It has been going on for as long as the Government has been in place but this particular process has been going on for two years. The basic agenda, leaving aside the Parliamentary Standards Authority Bill which is slightly different, was set in the statement that the Prime Minister made in July 2007. As you know, a whole series of things have followed from that.

Q4 Chairman: What has happened to the Constitutional Renewal Bill?

Mr Straw: The Constitutional Renewal Bill is ready, in fact—I have not published it yet—I have a copy of the text here and I hope to publish it very shortly.

Q5 Chairman: Very shortly: this week, next week?

Mr Straw: Very shortly. These matters, as you know, are in the hands of business managers but very shortly.

Q6 Chairman: What about the process for consulting on and delivering constitutional reforms, starting with this extraordinarily named Democratic Renewal Council? That is just a Cabinet Committee, is it not, like you have had before?

Mr Straw: It is a Cabinet Committee, that is for sure, the difference is that unlike most Cabinet Committees which are chaired by senior members of the Cabinet but not the Prime Minister, this particular one is chaired by the Prime Minister. I

chair a parallel one which is called CN, which deals with the more prosaic agenda. I have found it extremely helpful to have the Prime Minister chairing this because inevitably it ensures high level attendance and more effective decision-making.

Q7 Chairman: Are you saying there are two committees existing side by side?

Mr Straw: There are two committees. There is CN which deals with day-to-day matters. Let me say there are plenty of things which come within the ambit of the constitution. If you want me to take one example, take the Political Parties and Election Bill, for which we had the Commons consideration of Lords' amendments yesterday. The policy for that was set a long time ago but it is still necessary to get clearance within the Cabinet Committee structure for amendments and so on. Those, and plenty else like that, are dealt with through the standard CN and Legislative Committee, that is the L Committee that the Leader of the House chairs in parallel. The Democratic Renewal Council there is to deal with over-arching policy but it actually works very well and it is Cabinet government as well, contrary to myth.

Q8 Chairman: Why on earth did you give it a name so redolent of dictatorships and coups?

Mr Straw: I do not think it is redolent of dictatorships and who did you say as well?

Q9 Chairman: Coups. When military rulers take over a country they normally establish a national democratic renewal council.

Mr Straw: Yes, but they try and steal the lexicon of people who are genuine democrats. If that is what happens, I do not mind, there is nothing wrong with having a Democratic Renewal Council.

Q10 Chairman: Is it part of the remit of the Democratic Renewal Council to engage with the wider public in some way and, if so, how?

Mr Straw: It is not part of the function of the Democratic Renewal Council per se to engage in a wider scheme of participation but it is certainly part of the Government's policy to do so and that is what we have been trying to do over the past two years. The next question is, how do you do it? I think it is pretty straight forward, you talk to people in all sorts

of forum, including the kind of forum I use in Blackburn, which is very straightforward and very cheap. You stand on a box.

Q11 Chairman: You stand on your box in Blackburn?

Mr Straw: Yes, and you talk to people, and listen to what they have got to say. I did that to the surprise of the residents in Brighton the other day. People enjoyed it. The local vicar sent me a letter to say, "Thank you very much for taking our questions for an hour", and it works. There are plenty of other ways you can do it. One of the things I am particularly interested in is engaging with young people through the agency of the UK Youth Parliament. It is a very unsung aspect of democratic renewal but what the UK Youth Parliament has been able to do over the last few years has been fantastic. In my constituency, and this is not unusual, you are now getting a higher level of turnout for the youth MPs for the areas than you do in local elections. It may be the case in others as well but it is quite extraordinary the level of enthusiasm, interest and commitment, which suggests to me that politics is not dead. It is up to us lot to try and make formal politics a bit more interesting.

Q12 Chairman: Welcome as all these processes are, and they all contribute to the Government's thinking and that of Opposition MPs about these issues, I think you have to have various kinds of more formalised consultation in which the Government sets out rather more precisely what its proposals are, gives time to get a broad reaction to them and then sets out how it is going to respond to that?

Mr Straw: We have done that because we published *The Governance of Britain* paper in July 2007.

Q13 Chairman: The Prime Minister has advanced the agenda since then, within the last month he has made statements in which he imports new elements which surely deserve a similar process.

Mr Straw: Which ones were you thinking about, Chairman?

Q14 Chairman: He has started talking about electoral reform, for example, and I will come to that later. I am not making any complaint about this, he raised a series of issues which went beyond those on which the consultation had taken place.

Mr Straw: He raised the profile of those issues and in respect of parliamentary standards he raised a new issue, one which, for reasons everybody understands, is having to work pretty swiftly, without the usual level of consultation. There has been a huge amount of consultation on all of the issues that were raised in *The Governance of Britain* Green Paper two years ago. There has been a formal consultation process in which the views of the public have been sought. We have had the Joint Committee on the Draft Constitutional Renewal Bill. This volume is just the report, the evidence volume is a great thick volume and it took evidence from a wide range of sources. The parliamentary processes

generate their own level of public interest and public consultation. You will recall that your Committee produced one on the Attorney General, so did the Constitution Committee of the House of Lords and the Public Administration Select Committee produced one on the Civil Service.

Q15 Chairman: We have all contributed to the discussion about this.

Mr Straw: Chairman, you consult and consult and consult, and certainly no-one can accuse us of rushing the Constitutional Renewal Bill. There has been a pretty steady deliberative process on it. In the end the Government has got to come to some decisions on it, and then they are put before Parliament and it is up to Parliament.

Q16 Chairman: Do you then see a place for the referendum in relation to major constitutional changes and, if so, is there a set of principles which govern when a referendum would be appropriate rather than mere expediency?

Mr Straw: I have never thought a referendum was simply a matter of expediency, let me say. My own view is—and there was a great debate about this in which, I think, from recollection, Chairman, you participated ten years ago when we had the Political Parties, Elections and Referendums Act—that you have a referendum for major constitutional change which is going to alter the fundamental landscape of our constitutional arrangements. We have used those for deciding on devolution to Scotland, Wales, Northern Ireland, to London as well—bear in mind that was also determined by a referendum. We, as a party, the Labour Party, are committed, and we repeated it again in our 2005 manifesto, to a referendum in respect of any change in the electoral system to the House of Commons, because it is from that this opportunity arrives and I regard that as an absolutely fundamental point of principle. I have quite often repeated this during the course of debates on party funding, you have to be very, very careful, even if you have a clear point of view as a party and a government, not to try and change the ground rules for partisan advantage and to build up the widest range of consent.

Q17 Chairman: An exception to this pattern as you have conceded, perhaps for good and compelling reasons, was the introduction of the Parliamentary Standards Bill because that was done by a very rapid process, an accelerated timetable and this Committee reported on the Bill and on its parliamentary privilege and some other constitutional implications. In fact, from the front bench in the Lords, Baroness Royall referred to the fact the Government had listened to and responded to what the Committee said by changes in the Bill. I am not sure we would have got them all if we had not secured a defeat in the Government on clause 10 of the Bill, though clause 6 was withdrawn by the Government's own decision. Are there not some lessons from this process, that if you get into really

14 July 2009 Rt Hon Jack Straw, MP

difficult complex areas of constitutional significance, like free speech in Parliament, there is an enormous danger about rushing it?

Mr Straw: Of course there are risks in proceeding speedily, if I may use more neutral language, but I just remind the Committee, Chairman, if I may, that all three party leaders on behalf of their parties said they wanted this done with some speed, and your party leader, Nick Clegg, was as explicit in the House about the importance of getting this done before the summer recess as the Prime Minister was. The Leader of the Opposition, it is fair to say, kept his tinder dry a bit more on the precise timescale but Mr Clegg was absolutely explicit about this. There seemed to be general agreement, approbation, for the Prime Minister's timescale when he set it out on 10 June. Of course, I prefer to take more time but I happen to think that the benefits, the advantages, of having this Bill on the Statute Book this side of the summer, for the governance of the country and to try and draw a line for the benefit of Members of Parliament as a whole and the reputation of Parliament as soon as possible and to try to get this body established as quickly as possible, those benefits outweigh the risks. People can say, "Well, you got defeated on that", I do not feel I have been defeated, what I feel as though is that I have taken part in a collaborative, iterative process. People cannot have it both ways. What I sought to do all the way through was to listen to people. Harriet Harman and I set up this cross-party group which has met now five times in the large ministerial conference room underneath the Commons Chamber. Each party has had two representatives there and the staff that they want. It has had to be on Chatham House rules because if you had a *Hansard* reporter down there you would not get the same kind of collaboration. We have discussed and debated in detail what was in the original Bill, and I am not saying everybody signed up to it but there was pretty broad consensus behind it. Then, as things have gone on, it has been changed. On some issues like clause 6, I recognise the strength of the argument. I was frustrated in respect of clause 10 by the shortage of time, and I think had there been a bit more time to discuss clause 10—because there was no time if you recall—I might have tipped three people the other way. One of the ironies of the carve-out from Article 9, to which people were taking such exception, is that with the amendments I had already indicated to the House that I was going to accept from Sir George Young, that carve-out would have then been in the same terms as the House has already in practice endorsed in terms of the carve-out in the Bribery Bill. Anyway, it is in no sense the end of the world. As I think I have explained to the House, we had a debate downstairs and a debate in my Department about whether in respect of parliamentary privilege we brought the Parliamentary Standards Authority wholly within the ambit of parliamentary privilege or excluded it. There was a debate both ways. As it happens, because of other changes now being proposed to the Bill, which I can take the Committee through, we are managing to get around that provision in other ways.

Q18 Chairman: For the record, this Committee reported that it saw no problem about getting the body set up to administer allowances and expenses, our issues were with those clauses which impinged particularly on the Bill of Rights and on some of the other constitutional aspects of the Bill. I agree with you that the process has produced an improved Bill and I recognise that you were ready to do that. I just wonder if we had got our way on clause 10 though, if you would not have been defeated, although you may have had to face the same decision in the Lords I think?

Mr Straw: It is not meant as a truism but I have not had a single Bill in the last 12 years, and I have had quite a lot, which has not been improved by the parliamentary process at both ends, and so it should be. It would be astonishing arrogance. I am serious about this. Also, bearing in mind the speed, however long it takes, the way in which modern legislation develops, I happen to think that the more extensive the scrutiny within Parliament the more effective ministers can be as well. I have sometimes been irritated by particular votes, particularly in the other place, which I have not welcomed, but the overall part of the process is your arguments are tested and, in general, if you have got a strong argument in favour of something, it will win the day and if you have not, well you need to change.

Q19 Mr Tyrie: After all those years in Parliament, what a refreshing optimism about the strength of argument in determining the structure of legislation. I would like, first of all, to clarify on the Parliamentary Standards Bill whether it is still the Government's intention to move forward with something like this, if not exactly this Bill, that would be applicable to the Lords?

Mr Straw: We have made it clear the answer is no to that. What the Lords want to do is a matter for the Lords on an all-party basis.

Q20 Chairman: That is not what the Prime Minister said.

Mr Straw: No, I know it is not, and it is not what, if I may say so, other party leaders indicated. I thought there would be general welcome in the House of Lords for the Authority to be extended to the House of Lords because they may face similar issues in the future. Anyway, currently, they have resisted the idea and I think you will find that the Leader of the Lords is accepting amendments to this Bill which are, words to the effect, that "it will relate only to the Commons". Now, down the track, if the Lords decide they want a similar arrangement that is a matter for them but it is not a part of Government policy. I think the extent of concern by the Lords that this could apply to the Lords has taken the Commons by surprise; it certainly took me by surprise given the indications we had had earlier but there we are. This is part of the process of discussion and the purpose of this is to deal with parliamentary standards, the standards of Members of Parliament, particularly in relation to their allowances and other related matters.

Q21 Mr Tyrie: How did the Prime Minister get it so wrong?

Mr Straw: I reject the basis of your question, Mr Tyrie, if you do not mind me saying so.

Q22 Mr Tyrie: He said it would apply to the Lords.

Mr Straw: Nobody got it so wrong.

Q23 Mr Tyrie: You are saying it will not apply to the Lords, it does sound to me like one or other of you has got it wrong.

Mr Straw: I have already explained why there was a change in approach to this, in the light of concerns expressed in the House of Lords which were not expressed there before. I just bat it back to you to say what is it you want? Do you want a situation where we do not listen to sentiments in the other place, and sometimes sentiment changes in any case?

Q24 Mr Tyrie: Do you think it is realistic that we find ourselves, as we will shortly, in a position where we have a statutory regime here while the Lords is fast constructing what amounts to pretty much the system that we have just left in the Commons?

Mr Straw: The House of Lords, like the House of Commons, as far as its own internal processes are concerned, is genuinely self-governing. We have no locus in respect of their allowances, nor they in respect of our allowances, that is just true. They have to make decisions themselves. The circumstances are inherently different, given the fact that they are not elected to constituencies and although I know some of them have main homes outside London, those issues are easier to deal with, it seems to me, than the issues of Members of the Commons who have, aside from those whose constituencies are London, to live and to work in two different places.

Q25 Mr Tyrie: Do you think this Bill is having much traction in helping restore public confidence?

Mr Straw: I think it will be the answer. What is palpable is that the situation we have arrived at, with the setting of our allowances and the administration of our allowances, not only wholly lacked public confidence but actually, as it turned out, actively undermined public confidence in Members of Parliament. As I have already set out, there was a collective failure by the House, by Members of Parliament on all sides, to establish an effective system of allowances which commanded public confidence and to ensure that its administration also commanded public confidence. My belief is having an Independent Parliamentary Standards Authority, which is genuinely independent of Parliament, which sets the allowances without coming back to us so it is independent, and then administers those and has initial authority over complaints is a very sensible thing for us to do. We want to help restore public confidence. It is not the only thing, other things will: transparency will make a very big difference, but it is one of the things.

Q26 Mr Tyrie: All three party leaders have said that they will look very favourably towards the recommendations of Sir Christopher Kelly. If he

makes recommendations which require some amendment to this Bill, will you be prepared to try and find a way of opening up discussions to secure that amendment?

Mr Straw: If he were to but, as I say, that is very conditional. Of course, one would not ignore what he said but since what Sir Christopher and his Committee are doing is considering the scheme of allowances of Members of Parliament, and this body has the power to set the allowances, I find it hard to believe that Sir Christopher's proposals will not simply slot into the scheme set by this Authority. The other thing it is worth saying, Mr Tyrie, is about the timescale. One of the reasons why it is important, if we conceivably can, to get Royal Assent for this Bill by next week is to start the process of appointing people to the Authority. This takes time, people think it can be done just like that but we have got the summer, so you can forget about August, it will take probably to the end of October to get the people appointed to the Authority and to get the interim chief executive and start making arrangements for the staff to transfer and so on. I do not think it will be much before the 1 January before this body can be operational. Sir Christopher has promised his Committee's recommendations in October. All three party leaders, as you indicate, have suggested that they will give a fair wind and more to their recommendations. Then they have to be endorsed by the House of Commons and, with a little bit of luck, we can have a situation where the starting point for this Authority will be the scheme of allowances as proposed by Sir Christopher Kelly and endorsed by the Commons, so the two things then come together on 1 January next year.

Chairman: I think we must move on at that point. Maybe I should have declared an interest in earlier questioning because I am married to a member of the House of Lords.

Q27 Mrs Riordan: Minister, the decision to establish a Select Committee on the Reform of the House of Commons by 13 November this year, do you consider that a sufficient timeframe to establish—

Mr Straw: —the Tony Wright Committee?

Q28 Mrs Riordan: Yes?

Mr Straw: I do as a matter of fact, Mrs Riordan, and for this reason, that there is no great intellectual challenge in working out what you could do to improve the way the House of Commons deals with legislation. The ideas are there. For example, if one is interested, as I am certainly, in the proposals for having a business committee of the House, then Tony Wright's Committee will have the benefit, amongst many other things, of the University College London Constitution Unit Report prepared by Dr Meg Russell and her colleagues. That is a very good analysis of how other parliaments operate with business committees and also, let me say, provides some warnings about what you get right and what you get wrong and suggests that what you need to concentrate on is the so-called non-governmental time on the floor of the House because then there is a much greater chance of the Committee not being

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dominated in practice by the Whips, whereas if it is to take over the Whips in practice it will end up like the Committee of Selection which has never looked to me very different from the Whips, I am sure it is.

Q29 Chairman: Sounds like a counsel of despair.

Mr Straw: No, it is not a counsel of despair.

Q30 Chairman: Are you against setting something up which can influence how we deal with business because the Government will dominate it?

Mr Straw: No, it is not a counsel of despair at all, Chairman, it is a recognition of the realities and dynamics of governance.

Q31 Chairman: Would you like to change the realities?

Mr Straw: We are. I just tell you this, if you get the business committee and it does, so-called, non-governmental business, and no-one is suggesting, not even the smaller parties, that the Government should cease to be entitled to get its business, but if you get a business committee established as Meg Russell and her colleagues recommended, then I think we will see the beginnings of a process which will lead to much greater interest by Members in what happens in the Commons. As I was saying in the House yesterday, if you look at comparisons in terms of days and hours spent, funnily enough I looked at it recently, it is not that different from what it used to be, notwithstanding the fact that those of us with longer memories tend to think there was some sort of age when we first came into the House when things were a bit different but it is not that different, we tend to forget about the times when business collapsed and all the rest of it. What is different is what the time is spent on, less time is spent on consideration of bills at the report stages because they are not open-ended. There are not the same opportunities, thanks initially to the so-called Jopling reforms which I greatly regret myself, for backbenchers to have substantive motions on the floor of the House. In addition, although this has not been changed by this Government, there remains this problem of dealing with private Members legislation where the irony is precisely because it is not timetabled, and cannot be timetabled, it is too easy for it to be allowed to drift off, and without the Commons being given a chance to come to a decision one way or another.

Q32 Mrs Riordan: It is also about the public being able to initiate debates.

Mr Straw: Yes.

Q33 Mrs Riordan: How should the public engage in that process?

Mr Straw: I think one of the ways of doing that is through the petition process. There is bound to be some kind of intermediation between what the public are saying and having matters debated. I hope that we will get round to having a system where in place of petitions or to supplement petitions to Number 10 Downing Street you get petitions to the House of Commons and, if you get more than a

certain number, then there is a good chance of those being debated on substantive motions. Over the years, this is a successive government point, we have been too timid about having debates on substantive motions.

Q34 Mrs Riordan: Petitions and things like that have been looked at by the Procedure Committee, so how do you see the relationship between this Committee and that of the Modernisation and Procedure Committee?

Mr Straw: It is a way of bringing things to a conclusion as quickly as possible. It is a one-off committee. To use a not altogether appropriate metaphor, there is a better market for these proposals, which have been around for a long time and some of us have wanted to see happen for a long time, but because of the catastrophe for Members of Parliament of the allowances scandal and the need to try and restore public confidence, the market has changed. All one can hope for in a situation like this is that good comes from what has been a very difficult period. I hope that one of the things which happens is that the Commons is able to become more active than it has been. Can I just make this point, if I may, Chairman. I have been thinking about this a lot based on my experience going back slightly less time than yours in the House. What I think is this, it is not true that the Commons has lost in authority or activity compared with 50 years ago when you had an entirely supine House of Commons as brought out by evidence from one of the clerks of committees two or three years ago, pointing out that there were no rebellions in the 1951 to 1955 Parliament at all. If you look at *Hansard* for those periods you often saw that Parliamentary Questions ran out of questioners, it was very laid back. What I think has happened is this—and it is quite paradoxical—in terms of scrutiny, the House of Commons is immensely more active and more powerful than it was 20 years ago, still more 40 years ago, not least because of the establishment of select committees. If you think about the way in which quite often select committee hearings dominate the news. Here I am before a select committee but also think about what is happening currently in respect of the allegations about the *News of the World* before one select committee or think of the role of the Treasury Select Committee.

Q35 Chairman: We are in danger of spending a little too long on this point.

Mr Straw: So you have a great increase in scrutiny but that has not been paralleled by an improvement in respect of power over legislation where timetabling of bills, which was introduced not least for the convenience of backbench Members of Parliament, let me say, has led to less scrutiny of legislation than it should, in my view.

Q36 Chairman: None of this is going to happen and the Committee will not be set up unless the Government gives it some time in the next few days

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because the motion has been blocked and it will continue to be blocked unless debating time is found for it. Will it be?

Mr Straw: I hope so is the answer. I am not briefed on that and I am not a business manager.

Q37 Chairman: But have you not got a pretty big interest?

Mr Straw: I have a big interest but so has Harriet Harman and she is pursuing it. I am sorry I cannot give you a precise answer.

Q38 Alun Michael: Can we turn to the freedom of information issue

Mr Straw: Which issue?

Q39 Alun Michael: We have had the recommendations of the Dacre review and we have had the Ministry's consultation and we have also got issues of safeguards on the agenda. In the first place can you tell us the timetable, when will we have the Government's response to the recommendations of the Dacre review?

Mr Straw: I am due to publish the response before we rise for the summer.

Q40 Alun Michael: That is helpful. Secondly, an issue that we have been concerned about arising out of evidence that we have had in recent months is about the resources of the Information Commissioner. We have obviously looked at it in relation to freedom of information generally and of course we interviewed the new Commissioner at the time of his appointment. We have expressed concerns about the funding of the Office, particularly in terms of the freedom of information aspects of the work on the backlog of cases. Is there anything that you can tell us about that?

Mr Straw: Not offhand. We have sought to put in some more resources for that side. The data protection side is self-financing and because of the change in the fee structure which is related to the size of the organisation—

Q41 Chairman: We recommended it.

Mr Straw: That goes to show how the select committee process is working, Chairman! My original intention was that a modest fee should be charged for an FOI request but that did not happen. That was what was in the Bill and nobody argued about it either. There was a power to set a fee and we thought it was going to be exactly the same as for data protection. It is slightly odd that if I want to find out information about you, Mr Michael, it is free but if I want to find out information about me I have to pay £10. There is a case for saying it might be the other way round, but anyway!

Q42 Alun Michael: I suppose it could be about relative values!

Mr Straw: It could be. Continuing discussions take place with the Information Commissioner about his budget but all budgets are under pressure and we are open to argument.

Q43 Alun Michael: Thank you. The reason for the question is because it is something that we as a Committee have expressed concern about. The other aspect is a question following on from the role of the Information Commissioner and the view that has been expressed, again by this Committee, that the Commissioner should be an officer of Parliament, like the Comptroller and Auditor General and the Ombudsman, and therefore have its pay and rations from Parliament rather than from the Executive. Have you considered that and have you come to any conclusions?

Mr Straw: It is pretty nearly that at the moment in practice. You frown but we had to get the salary increase of the Commissioner agreed by Parliament.

Q44 Alun Michael: So you are saying it would be a small step to accept the Committee's recommendation then?

Mr Straw: Richard Thomas deserved a pay rise. The breadth of his responsibilities had risen and he had not had an increase for some time. He was placed in a really very embarrassing position where if he had been in any other equivalent position in government or a local authority or a health authority he would have got his rise without it having to be negotiated with all parties in the Commons, but because it coincided with anxiety about allowances for Members of Parliament it took a bit of work to get this agreed. Anyway, it was in the end and it went through *nem con* as I recall. So that salary is set by the Commons. We would have to change the legislation, that is the only point, Mr Michael. The other thing is that there is pre-endorsement scrutiny of the appointment, as you know; I think your Committee did it.

Q45 Alun Michael: We did it.

Mr Straw: Okay, you only had one nomination but that is not unusual in the system, so I think we are pretty close to what you are proposing in any event.

Q46 Alun Michael: Are you still considering that final step then?

Mr Straw: I am considering it but, as I say, it would require legislation, so is legislation on the horizon for that? No, but I honestly do not think it is a major issue.

Q47 Chairman: It makes a very big difference as to whether Parliament or the Executive decides how big his staff should be.

Mr Straw: There would be a different issue about the control of staff, if we were to determine the size of the budget as well.

Q48 Chairman: That is exactly the position.

Mr Straw: I am not sure I would recommend that, Chairman, because it is confusing two sets of functions. I could certainly see the case for having the Commissioner, as it were, as a creature entirely of Parliament, although it is getting on for that at the moment. I think that in terms of pay and rations and

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efficiency and so on, you need to have an organisation like that under the sponsorship of a government department.

Q49 Chairman: Tell that to the Comptroller and Auditor General!

Mr Straw: You have raised that but those members of the Committee who know the story about the previous Comptroller and Auditor General will know that all I have to do is refer to the fact that the House of Commons did not cover itself in glory with its supervision of the work of the previous Comptroller and Auditor General.

Q50 Mr Tyrie: I think that is a little unfair. I was and am on the Public Accounts Commission. When it was brought to our notice we dealt with it immediately—

Mr Straw: I know you did, Mr Tyrie, but you understand what I am saying.

Mr Tyrie: And furthermore we got an outsider in to do an independent report on how to reform the structure and we asked you for legislative time which was found by the Government which has changed the arrangements to ensure that such a thing cannot happen again.

Chairman: Having had two rounds on that we will go to Dr Whitehead.

Q51 Dr Whitehead: Last week when the Prime Minister announced proposals for the final stages of reform of the House of Lords he said they would include the next steps that we can take to resolve the position of the remaining hereditary peers and other outstanding issues and that all those published proposals would come before the House before the summer break.

Mr Straw: Yes.

Q52 Dr Whitehead: Should I be there early on Thursday to hear these proposals?

Mr Straw: Thursday? The break with luck will take place late next Tuesday, in a week's time.

Q53 Dr Whitehead: Okay. And when those proposals arise is it your understanding, as is suggested in the announcement, that the other outstanding issues will include, for example, the question of how the primacy of the Commons can best be ensured as far as the relationship between the two Houses is concerned and the process of election?

Mr Straw: There are two sets of things. One relates to membership of the existing House which can be taken forward and with a bit of luck can be the subject of legislation which goes through all its stages before the end of this Parliament. The second is proposals for the major reform of the House of Lords on which you rightly refer to the Prime Minister's intention too that we move forward on that with proposals, but there has not been a suggestion we could get through holus-bolus a bill to set up a wholly or mainly elected chamber between now and the General Election. In the first set of proposals nothing is said or will be said to gainsay the Parliament Act which is the fundamental basis of

the relationship between the two Houses. So far as the final stage of reforms is concerned, the White Paper that I published last summer, based on all-party talks, suggested that there was not a need to change the Parliament Acts. I think it is an interesting and difficult issue because if you establish a wholly or mainly elected second chamber, will the Parliament Acts and the other arrangements including those in relation to money which predate the Parliament Act be sufficient to ensure the primacy of the House of Commons? I would like to think they would be; they may not be. They certainly would ensure that even if you had an elected or mainly elected second chamber that *in extremis* the House of Commons will prevail. What I also think, however, is that if we move down that path we will see a further development of the process we have seen since 1999 which is of a much more active second chamber, but I do not resent that at all; I think it is a good idea.

Q54 Dr Whitehead: So if I can be clear, what we will anticipate next Tuesday is essentially the end of the hereditary peers and a signpost towards the creation of a wholly elected second chamber and that is it?

Mr Straw: When people say that is it, and you are not one of them, there are always people waiting around to be disappointed. If you look back to where we were in respect of the House of Lords 12 years ago, well over half the Lords was hereditary and one party had an inbuilt majority. If you look to see where we are today, the difference is absolutely dramatic. Why is it that this House of Lords has been much stroprier with the House of Commons than a predecessor House of Lords? Because no party in the House of Lords these days has had a majority so it has been very assertive. The proposals which we think we can pass into law in the next nine months include those relating to hereditaries and disqualification, resignation and suspension of members and then there are the longer term ones.

Q55 Dr Whitehead: A number of people have indeed expressed disappointment to the extent that the perfect solution was never there as far as Lords reform was concerned and indeed action which, as you say, removed a large number of hereditary peers from the House of Lords was not a perfect solution but nevertheless was the first thing that looked like a solution for a century. The question I would like to put to you relates to perhaps that argument of a perfect solution. Do you not think that removing the remaining hereditary peers without, for example, combining such a move with questions of how an election of the House that would replace that with no hereditary peers in it, and fully elected, might actually take place and how that House for example might sit with the creation of the Supreme Court and what that means in terms of the ending of the appointment of Law Lords and indeed the question of the role of the Parliament Act in making those wider changes would give rise to arguments that actually these are partial arrangements yet again which do not actually move us to the position that

has been now set out in the Prime Minister's statement and in the most recent White Paper, that this indeed is the final stage of reform?

Mr Straw: First of all, on the hereditaries, this is not an "off with your head" approach but it is one which seeks to ensure that the hereditaries are phased out. As I have already indicated, and I think you indicated, Dr Whitehead, there are always going to be people who are disappointed, but in addition given the slow pace of reform of the House of Lords which has taken place in most of the last century this Government has moved with dramatic speed. Indeed, we are the only party which has made any reform to the House of Lords apart from the introduction of life peers in 1958 and the Bill to help Tony Benn and as it turned out Alec Douglas-Home in the early 1960s. In addition to the 1999 changes I would just remind the Committee that we had a Green Paper based on the work of a cross-party group which was published in February 2007. Then there were votes in March 2007 which determined that the House was in favour of either an 80% or 100% elected second chamber and not in favour of anything else. There was then further work in the cross-party group for another year which led to the publication of the White Paper last July. Now we are going forward. I would like to believe—and I try to be optimistic, Mr Tyrie—that by 2011, which after all will be the centenary of the passage of the Parliament Act, we might have been able to give some substance to the aspiration in the preamble to the Parliament Act. I paraphrase it but it was a temporary measure until we got long-term reform. We are moving forward on that. On the Supreme Court I think it is a bit of a red herring, if I may say so. That change is happening. I have already signed the order bringing the Supreme Court into effect on 1 October. I think it is symbolically very important because it physically separates the Supreme Court from the legislature, which I think is really important, and ends this confusion about what the House of Lords is there for. It also sets out that justices of the Supreme Court cannot sit in the House of Lords, although they could be appointed there when they retire. I do not think that is going to be an issue really at all.

Q56 Chairman: Surely the point is that the Law Lords are going, the hereditaries are going and the only group which is increasing is the ones appointed by the Prime Minister, most of them to be ministers and not necessarily for very long?

Mr Straw: The other thing that has happened is that you have the House of Lords Appointments Committee.

Q57 Chairman: They are not able to stop some of those appointments.

Mr Straw: There is a need for ministers in the House of Lords. There always has been. There would be, Chairman, even under a Liberal Democrat Government. Currently the way you have ministers in the House of Lords is you appoint them as peers so they can—

Q58 Chairman:—for the rest of their lives.

Mr Straw:—be members of the House of Lords, that is true, for the rest of their lives. That is the system. We could change it. There were various proposals in the White Paper but meanwhile I think any Prime Minister is entitled to use that system, which has operated quite successfully for a long time.

Q59 Dr Whitehead: Could I move now to another topic that was raised by the Prime Minister in his statement and also by the paper which is the question of a Bill of Rights and Responsibilities and the possibility of a written Constitution. Would one or both of those moves make us citizens rather than subjects?

Mr Straw: They would help that process. We are citizens and not just subjects, but I think one of the challenges in our society is to make people more self-conscious about what it is to be a citizen. The reasons why we are not so self-conscious are well-known. We have not had the same kind of convulsions or fights for our liberation that other societies have had. That in many ways has had great benefits for our society but it also produces disadvantages. I think it would help. We have already described in a paper what the components of a Bill of Rights and Responsibilities could be, but with a written Constitution there is a prior question that has to be answered, which is does one see a written Constitution as a text which summarises and encapsulates existing arrangements and the balance of power between Parliament and the other institutions and organs of the state or is one trying to move to establish a basic or fundamental law which overtakes or supersedes the sovereignty of the people in Parliament? My view is that we should concentrate on the first and not the second.

Q60 Dr Whitehead: Do you see any constitutional significance at all in the fact that, as you said yourself, we would amplify the fact that we were citizens rather than subjects? Indeed, you have mentioned the idea that this would lead to the adoption of the people in Parliament rather than, you might say, the adoption of the King in Parliament?

Mr Straw: I do and I think that there is a constant challenge in our society—and I think it is replicated in other societies as well for different reasons—to encourage people to be confident about their rights as citizens and their responsibilities, but, above all, their rights in a democracy to have control of their lives. Although we have moved on a long way in the last 50 or 60 years in the practice of our democracy, we still have a long way to go. All of us are elected politicians and I think all of us here, if I may say so, are active and seek to engage with our constituents. Speaking personally I certainly do and it is relatively straightforward in a single town constituency like mine, but I am also continually struck by what amounts to a distance between the institutions of governance and citizens and I would like to see that distance and that gap closed.

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Q61 Dr Whitehead: So would you see a Bill of Rights and Responsibilities, and certainly a written Constitution, as being unamendable by Parliament and if it was unamendable by Parliament by whom might it be amendable?

Mr Straw: That is why I say there are two models for a written Constitution. A Bill of Rights and Responsibilities as such would be a matter for Parliament because there is no other way of putting it through. There are two models of a written Constitution. One is a text which seeks to bring together the fundamental principles, sometimes called conventions, of our constitutional arrangements, the most important of which is that Parliament is sovereign, but also to bring in other texts as well, which include things like the Parliament Acts, a Bill of Rights and Responsibilities and so on, basic texts which add up to the arrangements which we have today. So that is one model; a sort of summary and codification of the existing arrangements. The second model is an entrenched and overarching Constitution which is more powerful than Parliament. That is what many other countries do. If you go down that route you would have to have some special means of endorsing that text, and probably generating it as well through some kind of constitutional convention. It would have to be endorsed by Parliament and then by a referendum and you would also have to have a special process for amending it as well. Typically in other countries that is a combination of either special majorities in the Parliament, two-thirds and so on, and/or a referendum. I am not in favour of that. I think however seeing whether we can get to a single text which better describes our arrangements would be a good thing.

Q62 Dr Whitehead: But a single text would presumably be justiciable?

Mr Straw: It depends on its status. We have discussed this issue of justiciability in the Green Paper on Rights and Responsibilities, but I do not think that discussion about whether you have a single text should be stalled simply because on some reading the text might end up being justiciable. There are quite a lot of myths around about whether the judiciary want to take over from Parliament. They do not on the whole. It is absolutely right that there should be review by the courts by judicial review of decisions made by the Executive, by secretaries of state, because some of the decisions we make have a profound impact on individuals. If I get it wrong over whether or not to grant somebody parole which affects their liberty or a planning minister decides they are going to plonk a housing estate in somebody's backyard, and it is thought that the minister has acted improperly or irrationally, it is absolutely right that that should be reviewable by the courts otherwise the power of ministers becomes oppressive. That is different from whether the rights of Parliament should be reviewed by the courts. In practice, the courts do not want that power and would not seek it. In any case, whether it is reviewable, we famously have Article IX of the Bill of Rights.

Q63 Alun Michael: Can we turn to the relationship and the powers of local government. *Building Britain's Future* promised stronger, more clearly defined powers for local government. What is the timetable for dealing with that issue?

Mr Straw: I would need notice of that question, Mr Michael. I simply do not know is the answer. I suppose one pays for not having direct ministerial responsibility for that. I do not know. I can write to the Committee or get Mr Denham to write.

Q64 Alun Michael: That would be helpful. Of course it is another part of the constitutional agenda which is the reason for asking the question. I suppose one of the questions is as far as you and as far as the Government's approach is concerned, will that strengthening of the powers of local government and the proposals in respect of city regions in some way answer the English question which we have looked at in a recent inquiry?

Mr Straw: I think that maybe the stronger that local government and city regional government is the less bothered people may be about the so-called West Lothian question. I also happen to believe that if the Calman Commission proposals are implemented, which are designed as you know to produce a better balance between the responsibilities of, in this case, the Scottish Parliament to raise money and its power to spend, then this concern may become a lesser order one. Interestingly enough, certainly in my constituency, it ebbs and flows on the issue. It has not been raised with me for quite so time but sometimes it pops up. I am in favour of stronger local government. I was just thinking good local authorities are now enjoying quite an extensive degree of autonomy. There is very, very little ring-fencing of funding and even when I happened to think as a departmental minister of really good reasons for ring-fencing this funding or that funding, it met with a very hostile response from the DCLG as well as from the local authority associations. These multi-area agreements in which my authorities are taking part give a further level of autonomy.

Q65 Julie Morgan: We have mentioned the Calman Commission and obviously there is a recommendation that the Barnett Formula should be reviewed, and there has been a Committee in Wales that reported last week, the Holtham Commission. That reported last week which I think also has asked for a review and this Committee has asked for a review. How do you propose to respond to these calls?

Mr Straw: To these proposals for reform of the Barnett Formula? They are being actively considered at the moment. I have not seen the Holtham review. I am obviously aware of it and I have seen and read the proposals from Kenneth Calman and we welcome those. They are under active consideration. As far as the Barnett Formula is concerned, people sometimes have a pop at it, and indeed Joel Barnett himself said it was not intended to be there 30 years later.

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Q66 Julie Morgan: He gave evidence to the Committee.

Mr Straw: I am sure he said that.

Alun Michael: It was quite entertaining.

Q67 Julie Morgan: Very strongly.

Mr Straw: He should be flattered that a scheme which has immortalised his name should have lasted for so long because although it is easy to criticise the formula it is much more difficult to find something that is acceptable to go in its place, and that is the challenge. There is a level of elementary justice about the formula which is why despite complaints from time to time people have gone along with it.

Q68 Julie Morgan: What would be the process now?

Mr Straw: The normal process: listening to what people have to say about it and then there will finally be judgments made. I do not know of any other process.

Q69 Julie Morgan: I was going to ask about the voting age and the fact that the Youth Citizenship Commission has now reported and has said that the voting age is a political decision and it has handed it over to the politicians. How is the Government going to respond to that Commission?

Mr Straw: I do not think it is any great secret that there was no agreement within that Commission. What I thought was really interesting about the Commission report was that there was a majority of those whom they surveyed between the ages of 14 and 18 who were in favour of votes at 16, but not a big majority, and every other age group after that, including the 18 to 25s, were against lowering the age. The honest truth is—and I do not mean to put words into the mouth of the Commission but this is the perception that I have drawn from their excellent report—that their view was this was not a top-line issue, and that is certainly my perception. I myself would take a lot of persuading to be in favour of lowering the age to 16. I think the arguments in favour of lowering it to age 18 were very different. I was very actively involved in campaigning both for the establishment of the committee under Mr Justice Latey which reported in 1968 and then getting it implemented when I was involved in the National Union of Students, but, as I say, the argument for 18 was different. Personally I am sceptical about lowering it to 16.

Q70 Julie Morgan: I take a different view, but the Government is going to come forward with a response, is it?

Mr Straw: It will come forward with a response to the overall consultative Youth Commission proposals, but the truth is—and this is confirmed both by the lack of agreement within the Commission and by their polling evidence—there is not a consensus behind lowering the age to 16; there simply is not. That was a very clear message from the Commission as well. It can do all sorts of other things to raise the participation of young people in

politics. That is really the message from young people, which is why I am so keen on the UK Youth Parliament.

Q71 Chairman: They would like the voting age lowered, would they not, the UK Youth Parliament?

Mr Straw: I cannot say for certain.

Q72 Alun Michael: This is obviously going to be an interesting discussion. I personally think the case for lowering the age to 16 is overwhelming, but there we are.

Mr Straw: Against or for?

Q73 Alun Michael: Could I try to mop up a few issues to get clarity across the board on a couple of remaining issues? I think you clarified earlier the timetable for the publication of the Constitutional Renewal Bill.

Mr Straw: My aim and intention is for it to be published before the recess. Nothing is certain in politics until it has happened.

Q74 Alun Michael: But if you have said the same thing twice in the same session, that is a useful confirmation. The second thing is the delay in response to the Committee's report on the provisions relating to the Attorney General.

Mr Straw: Our response would be published alongside the Bill.

Q75 Alun Michael: At the same time?

Mr Straw: Yes.

Q76 Alun Michael: Then the reform of the House of Commons. Is there consideration being given to two particular proposals? Firstly, allowing Committees to propose legislation or vote on their recommendations on the floor of the House and, secondly, mechanisms by which ministers who are members of the House of Lords can be questioned in the House of Commons in some way on the floor of the House in addition to being questioned by Select Committees?

Mr Straw: The Wright Committee, once it gets going, will have to develop its own agenda and fast, but it is certainly the case that the proposal that Select Committees should have power to put forward amendments to legislation has been around and I think is attractive. The second one?

Q77 Alun Michael: Voting on such recommendations on the floor of the House?

Mr Straw: You would need to; that would have to follow. What would drive people mad is if these things were vacuously symbolic and did not have an effect. All I would say, and I say this to parliamentary colleagues, is that the House could sit for maybe one week or two weeks more than it does at the moment, but not much more given the weight of constituency responsibility. People forget the dramatic change in the last 20 years—and still more the 30 years that you and I have been sat in the House—has been the burden of constituency responsibilities, which I think the Westminster press

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simply have not properly digested; it is huge. Okay, it could sit for a couple of weeks longer, that would be perfectly feasible, but if you want the House of Commons to be more active then two things will happen. There will be less time spent on general debates on quite a lot of non-governmental business, aside from the Opposition Days, which are sacrosanct, and the hours would have to be extended.

Q78 Chairman: We are running short of time. I want to make sure you answered the other question Mr Michael put which is, what about the Transport Secretary and the Business Secretary being able to be heard on the floor of the House of Commons; questioned on the floor of the House of Commons?
Mr Straw: I personally do not have a problem about that at all; I can see the case. I can remember when Lord Young was appointed—

Q79 Chairman: You probably made the argument!
Mr Straw:—as a Lord Mandelson figure back in the mid-1980s and Kenneth Clarke had to be his gofer, we were making the same argument. So I can see the case. It is a matter ultimately for the House of Commons.

Q80 Chairman: Briefly, although it is difficult to be brief about it, on electoral reform, since the Prime Minister has expressed a renewed interest in at least some form of electoral reform, there has actually been quite an open debate between the Home Secretary and yourself. Do you welcome that and what else will the process involve?
Mr Straw: May a thousand flowers bloom from this debate which is opening up. It is hardly a secret that I see much merit in—

Q81 Chairman: I do not complain about it.
Mr Straw:—first-past-the-post. My good friend and colleague, Alan Johnson, has a slightly different view about this.

Q82 Chairman: Is this part of a genuine process which, following on from the Prime Minister's statement, is meant to lead to a consideration and then an outcome?
Mr Straw: Alan Johnson has always had his views, I have had mine, and it has always been accepted that we are open to express our views on these things. It is not like a Budget secret. If you formed a view, in my case, in favour of first-past-the-post and, still more, single member constituencies, it is quite hard to stand on your head on this issue. It was not that there was no organisation behind the fact that Alan produced his views and I produced mine, it is just how the cookie crumbled.

Chairman: We did promise to release you at 5.30 but Mr Tyrie has another question.

Q83 Mr Tyrie: As you know, I have been campaigning to try and bring an end to the practice of extraordinary rendition, that is the practice of

kidnap and taking people to places where they may be maltreated or tortured, by the US Government. I made a number of allegations about possible UK complicity in this. I wondered whether you have changed your view about this issue at all in the light of recent revelations that most of those allegations have turned out to be true? I would particularly like to take you back to what you said in response to those allegations in December 2005 to another Select Committee. You said, "Unless we all start to believe in conspiracy theories and that the officials are lying, that I am lying, that behind this there is some kind of secret state which is in league with dark forces in the United States, and also, let me say, believe that Secretary Rice is lying, there is simply no truth in the claims that the United Kingdom has been involved in rendition." As you know, since then we have had a judge conclude, "That the UK facilitated interviews by or on behalf of the US". We have had numerous other—

Chairman: That is enough of the question, I think. He is entitled to answer.

Mr Tyrie: —numerous other substantiations—

Q84 Chairman: That is enough of the question, let us have an answer.

Mr Straw: Do I stand by what I said about my state of knowledge and enquiry in December 2005? Yes, I do, Mr Tyrie. I went into the situation with a huge amount of care and examination, and a lot of detailed examination has been made available which was not made available at the time and has subsequently been made available to the Intelligence and Security Committee. I am satisfied, and I was satisfied then, about the veracity of the answer as far as my state of knowledge was concerned, and I remain satisfied about it. If you have particular points you want to put to me, then feel free to write to me and I will respond.

Q85 Mr Tyrie: I do have one particular question. I will be very brief. Given that there has been such a transformation, or such a gap, between what was originally said and what is now coming out bit by bit, do you not now think it is time to consider the proposal of Lord Carlile, the Anti-Terrorism Watchdog, that we have a judge-led inquiry into rendition, which is now supported by the Leader of the Liberal Party and the Leader of the Conservative Party?

Mr Straw: I am certainly happy to pursue that with my colleagues, the Prime Minister and the Foreign Secretary, but can I say, with respect, that nothing to which you have so far alluded undermines the veracity of what I said about rendition because I was talking specifically about rendition, and the allegation at the time it will be recalled was that the United Kingdom had been complicit or negligent about the United States using UK facilities to render individuals into unlawful custody. I have repeated enough times that I share your abhorrence of rendition, which is kidnap, I always have done. I am against it.

Chairman: Thank you very much indeed.