



House of Lords
House of Commons

Joint Committee on Conventions

First Special Report

Ordered by The House of Lords to be printed 24 May 2006

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THE JOINT COMMITTEE ON CONVENTIONS

The Joint Committee has been appointed with the following terms of reference:

That, accepting the primacy of the House of Commons, it is expedient that a Joint Committee of the Lords and Commons be appointed to consider the practicality of codifying the key conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation, in particular:

(A) the Salisbury-Addison convention that the Lords does not vote against measures included in the governing party's Manifesto;

(B) conventions on secondary legislation;

(C) the convention that Government business in the Lords should be considered in reasonable time;

(D) conventions governing the exchange of amendments to legislation between the two Houses;

That the committee have leave to report from time to time;

That the committee have power to appoint specialist advisers;

That the committee have power to adjourn from place to place within the United Kingdom;

That the committee do report by 21 July 2006.

Current membership

The eleven Lords members, appointed on 22 May 2006, are:

Viscount Bledisloe
Lord Carter
Lord Cunningham of Felling
Lord Elton
Lord Fraser of Carmyllie
Lord Higgins
Lord McNally
Baroness Symons of Vernham Dean
Lord Tomlinson
Lord Tyler
Lord Wright of Richmond

The eleven Commons members, appointed on 17 May 2006, are:

Mr Russell Brown
Mr Wayne David
Mr George Howarth
Simon Hughes
Sarah McCarthy-Fry
Andrew Miller
Sir Malcolm Rifkind
Mr John Spellar
Ms Gisela Stuart
Mr Andrew Tyrie
Sir Nicholas Winterton

At its first meeting, on 23 May 2006, the Committee elected Lord Cunningham of Felling as its Chairman.

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Introduction

1. The Committee met for the first time on Tuesday 23 May, the day after the motion to appoint the members from the House of Lords was agreed to. We elected Lord Cunningham of Felling as our Chairman.

Orders of reference

2. The Committee's remit is:

“accepting the primacy of the House of Commons ... to consider the practicality of codifying the key conventions on the relationship between the two Houses of Parliament which affect the consideration of legislation, in particular:

- a) the Salisbury-Addison convention that the Lords does not vote against measures included in the governing party's Manifesto;
- b) conventions on secondary legislation;
- c) the convention that Government business in the Lords should be considered in reasonable time;
- d) conventions governing the exchange of amendments to legislation between the two Houses”.

Timetable

3. We are required by our terms of reference to report by 21 July 2006. We consider, however, that a deadline set just over 8 weeks after our first meeting will not allow us to do justice to our remit. We therefore invite the two Houses to amend our orders of appointment, so as to give us until the end of the current Session. We aim to produce a final report by then.

Method of proceeding

4. We invite written evidence by 20 June on any aspect of this remit, subject to the assumptions and exclusions which follow. We set out below some particular questions which everyone submitting evidence is invited to address. The Committee will also be taking some oral evidence. Further guidance on submitting evidence is set out in the Appendix.

5. This inquiry is set in the context of a debate about House of Lords reform. Our remit, as we see it, is to seek consensus on the conventions applicable now, and to consider the practicality of codifying them. We have not been charged to consider the composition of a future Second Chamber.

6. We assume that the House of Lords will retain its present open procedures (“self-regulation”), and that codification will not involve giving new powers to the Lord Speaker.

7. We assume that codification will not involve increased oversight of Parliament by the courts.

8. We do not offer a definition of “convention”. We believe we will know one when we see it.

9. We are charged to consider the practicality of codification, not the desirability of codification, so far as this can be distinguished.

10. We have not been charged with considering modification of existing conventions.

11. Our remit excludes conventions wholly internal to each House, and conventions which do not affect legislation.

12. We take the financial privilege of the House of Commons as a given. We will not consider

- a) The special status of Supply Bills, including the rule against tacking
- b) The special status of Money Bills
- c) The “privilege amendment” convention, which permits Bills with financial implications to start in the Lords.

13. We will not consider the following categories of legislation:

- a) Supply Bills and Money Bills
- b) Consolidation and Tax Law Rewrite Bills
- c) All forms of private legislation
- d) Draft bills and pre-legislative scrutiny
- e) Private Members’ Bills.

14. Witnesses who gave evidence to the Royal Commission on the Reform of the House of Lords are asked not to repeat that evidence to this Committee.

15. Evidence which disregards these assumptions and exclusions is unlikely to be considered or published.

Questions

Salisbury-Addison convention

The Salisbury-Addison convention is described in the report of the Royal Commission on the Reform of the House of Lords (Cm 4534, 2000) as “an understanding that a ‘manifesto’ Bill, foreshadowed in the governing party’s most recent election manifesto and passed by the House of Commons, should not be opposed by the second chamber on Second or Third Reading.” (paragraph 4.21) The convention is also suggested to include the principle that the Lords will not pass wrecking amendments to such a Bill.

1. Is this an accurate description of the convention? Is it sufficiently comprehensive?
2. Can “manifesto bills” be properly identified? Is a manifesto an appropriate basis for codification?
3. Have there been any breaches of convention in this area?
4. How can the convention be codified? If it is codified, how can it be enforced?

Secondary legislation

House of Lords conventions in relation to the Commons on secondary legislation are currently codified thus in the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* (2005):

“The House of Lords has only occasionally rejected delegated legislation. The House has resolved “That this House affirms its unfettered freedom to vote on any subordinate legislation submitted for its consideration’.” (paragraph 8.02)

5. Is this an accurate codification? Is it adequate?
6. Have there been breaches of convention in this area?
7. Is there a convention that the House of Lords *does not* reject delegated legislation, with perhaps definable exceptions? Does it depend on prior warning, perhaps when the enabling legislation was considered? Does it depend on whether the Commons have already approved the instrument in question? Does it depend on the views of the scrutiny committees?
8. If there is such a convention, how could it be codified? In its codified form, how could it be enforced?
9. Would codification have indirect consequences in practice? For instance, might it make the House of Lords less willing to create new delegated powers?
10. Do different considerations apply to certain categories of order, eg those subject to “super-affirmative” procedure?

The issue of rendering delegated legislation amendable by Parliament is outside the remit of this committee.

Reasonable time

The convention that Government business in the Lords should be considered in reasonable time is not currently codified, save that it appears in the report of the Royal Commission and the first report of the Joint Committee on House of Lords Reform (HL Paper 17, HC 171, Session 2002-03).

11. Is there such a convention?
12. Has it been breached?

13. Could it be codified? In its codified form, how could it be enforced?

The Labour manifesto for the last General Election contained a commitment to “legislate to place reasonable limits on the time bills spend in the second chamber – no longer than 60 sitting days for most bills”.

14. Would codification of the convention in the form of a statutory time limit be practical? How could it be enforced? What would be its practical consequences, including indirect consequences?

15. Would 60 sitting days be a practical limit? If not, what time would?

16. Would there need to be provision for exceptions, or for extending the time limit? How could this work?

Exchange of amendments (“ping-pong”)

Ping-pong is a shorthand way of describing the procedures used by both Houses for dealing with amendments proposed to legislation by the other House.

17. What would be the consequences of codifying ping-pong?

18. What would codification cover?

19. Is codification necessary?

20. What effect has packaging of Lords amendments had on the operation of ping-pong?

21. How far can the Lords push ping-pong before the practice is considered to have been pushed too far?

Alternative procedures, eg reconciliation committees, are outside the scope of this inquiry.

Other key conventions

22. Are there other conventions which this Committee ought to consider?

Appendix: Guidance on Submitting Evidence

The Committee invites written evidence by **Tuesday 20 June 2006** at the latest.

Oral evidence sessions will be arranged and will be announced in due course.

Written evidence should if possible be submitted in an electronic format, either on disk or preferably by e-mail in MS Word or Rich Text format. Written evidence must include a contact name, telephone number and postal address. Evidence submitted by e-mail should be sent to jcconventions@parliament.uk. Evidence submitted by post should be sent to The Clerks of the Committee, Joint Committee on Conventions, Journal Office, House of Commons, London SW1A 0AA. Paragraphs and pages should be numbered.

Witnesses who wish their evidence to be treated in confidence should contact the Committee clerks in advance.

Detailed guidance on the submission of evidence to the Committee can be found at:

<http://www.parliament.uk/commons/selcom/witguide.htm>

Alternatively, please telephone 020 7219 2743 to request a copy by post or email.