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Select Committee on the Constitution

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Annual Report 2008–09

Report

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Select Committee on the Constitution

The Constitution Committee is appointed by the House of Lords in each session with the following terms of reference:

To examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution.

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Professor Adam Tomkins, Legal Adviser, is a Member of and unpaid Ad Hoc Legal Adviser to Republic.

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Contact Details

All correspondence should be addressed to the Clerk of the Select Committee on the Constitution, Committee Office, House of Lords, London, SW1A 0PW.

The telephone number for general enquiries is 020 7219 1228/5960

The Committee's email address is: constitution@parliament.uk

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Annual Report 2008–09

Introduction

1. The House of Lords Constitution Committee is appointed by the House “to examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution”. Accordingly, we conduct bill scrutiny whilst simultaneously carrying out longer, in-depth policy inquiries.
2. This is the Committee’s fifth Annual Report: the first two reports covered the 2002–03 and 2003–04 sessions.¹ In the 2006–07 session we decided to resume the practice of making Annual Reports. In making such reports, we seek to:
 - summarise for the House and the public our work over the preceding session;
 - assess the impact of that work wherever possible; and
 - comment on any other general matters we consider to be important.

Bill Scrutiny

3. In this section we examine in detail the bill scrutiny conducted during the 2008–09 session. In Appendix 1 we set out the broad principles and methods which guide the Committee in carrying out our legislative scrutiny function.
4. In 2008–09 the Committee considered the constitutional implications of 18 Government bills and two Private Members’ Bills. We made 13 scrutiny reports to the House on ten bills—the Marine and Coastal Access Bill, the Banking Bill, the Borders, Citizenship and Immigration Bill, the Northern Ireland Bill, the Welfare Reform Bill, the Coroners and Justice Bill, the Law Commission Bill, the Policing and Crime Bill, the Parliamentary Standards Bill and the Co-operative and Community Benefit Societies and Credit Unions Bill. We also corresponded with ministers on several other bills. A table summarising bills examined can be found at Appendix 2.

Marine and Coastal Access Bill²

5. The Committee’s report on the Marine and Coastal Access Bill drew the attention of the House to a constitutional issue arising in Part 9 of the Bill. Clause 286 proposed to place on Natural England and the Secretary of State ‘the coastal access duty’, which would require them to secure a route around the coast of England that is accessible for recreational purposes on foot or by ferry. The report concluded as follows:
 - The range of powers contained in the bill to require coastal landowners to permit public access to their property ought, in our view, to be accompanied by a right of appeal to an independent body ... We are not persuaded by the reasons ... advanced by the Government for not including any appeal procedures in the bill.

¹ 2nd Report (2003–04) (HL Paper 19) and 17th Report (2003–04) (HL Paper 194).

² 1st Report (2008–09) (HL Paper 13).

- No-one is in favour of slow and extravagantly costly appeal processes ... A measured response in relation to the coastal access duty would, however, be to attempt to create a better appeal system rather than to exclude one altogether.
6. The Chairman tabled amendments at Committee Stage that would have given coastal landowners the right to appeal a decision to permit public access across their land. These amendments were initially rejected by the Government. Lord Hunt of Kings Heath, the Minister in charge of the Bill, subsequently wrote to the Chairman explaining that because of the strength of feeling at Committee stage the Government intended to bring forward their own amendments which would introduce a mechanism for dealing with objections and representations about coastal access reports. These amendments stopped short of the full appeals procedure that the Committee had initially sought but, having sought and obtained reassurance from the Minister that it would be open to a person who believed that the Secretary of State's determination in respect of a coastal access report was legally flawed to seek judicial review of that determination, the Committee decided to support the amendments as they satisfied the most important of our concerns about the Bill. The Government amendments were accepted at Report stage.

*Banking Bill*³

7. The Committee published two reports relating to the Banking Bill which had been introduced to the House of Commons in the 2007–08 Session and carried over into the 2008–09 session.
8. On 21 January 2009 we published our first report on the Banking Bill. In Clause 75, the Bill proposed to give the Treasury order-making powers to “amend the law for the purpose of enabling the powers under [Part 1 of the bill] to be used effectively, having regard to the special resolution objectives”. We were particularly concerned that the order-making power would enable the Treasury to “make provision which has retrospective effect in so far as the Treasury consider it necessary or desirable for giving effect to the particular exercise of a power under this Act in connection with which the order is made”.
9. We drew to the attention of the House the need for there to be:
- “... a compelling reason in the public interest for a departure from the general principle that retrospective legislation is undesirable. There is therefore a heavy onus on the Government to justify to the House why a retrospective provision of such breadth as that contained in Clause 75(3) is required in the particular context of this bill, and whether further consideration should be given to narrowing the retrospective nature of the bill. On the basis of the arguments advanced by the Government so far, we are not wholly persuaded that this burden has been discharged. We welcome the Government's indication to the House on 20 January that they will re-examine the Clause to consider whether a more limited and targeted retrospection power could meet the requirements of the situation.”
10. During the passage of the Bill, an amendment was tabled in the name of several members of the Committee to leave out the words “or desirable”.⁴

³ 3rd Report (2008–09) (HL Paper 27) and 11th Report (2008–09) (HL Paper 97).

This was not accepted by the Government and at Third Reading, Lord Myners made a detailed speech explaining the Government's position. Nobody in the Chamber spoke in support of his position. However, an amendment moved by the Government resulted in section 75(3) of the Banking Act 2009 providing as follows:

“An order under subsection (2)(c) may make provision which has retrospective effect in so far as the Treasury consider it necessary or desirable for giving effect to the particular exercise of a power under this Act in connection with which the order is made (but in relying on this subsection the Treasury shall have regard to the fact that it is in the public interest to avoid retrospective legislation)”.

11. While we welcomed the recognition on the face of the legislation that there is a public interest in avoiding retrospective legislation, we remained concerned that, in enacting a retrospective law-changing power that may be invoked on the basis of “desirability” rather than “necessity”, a dangerous precedent might have been thought to have been created. After the Banking Bill's enactment as the Banking Act 2009, we therefore engaged in correspondence with the Government about the retrospective power contained in section 75 of the Act. We published this correspondence in our report, *Banking Act 2009: Supplementary report on retrospective legislation*. In that report we noted that there is no exact precedent for retrospective law-changing powers based on a minister's perception of what is desirable rather than what is necessary and concluded that:

“It remains our view that “desirability” should not be a basis on which to allow ministers to change the law retrospectively. We note Lord Myners' statement that section 75(3) of the Banking Act 2009 ‘does not set a precedent for the use of retrospective powers’. The fact of the matter is, however, that a precedent has been set. It is not, in our view, an acceptable precedent.”

Borders, Citizenship and Immigration Bill⁵

12. The Committee engaged in correspondence with the Government on Part 1 of the Borders, Citizenship and Immigration Bill, which proposed a scheme under which the Director of Border Revenue would share ‘customs revenue functions’ with the current holder of those functions, namely the Commissioners for Her Majesty's Revenue and Customs (HMRC). The constitutional convention, or principle, at stake was that the revenue affairs of individuals should be kept at arm's length from ministers.
13. Our fears were not allayed by the Minister's reply and we published a report on Part 1 of the Bill which concluded that, “A system in which the head wears two hats (as Chief Executive and Director of Border Revenue), and the staff may wear three (immigration officer, general customs official, customs revenue official) risks undermining the limited formal guarantees of separation between ministers and individuals' revenue affairs that appear on the face of the bill.”

⁴ For debates on clause 75, see House of Lords Debates, 20 January 2009, cols 1592–1615 (4th day of Committee); House of Lords Debates, 3 February 2009, cols 556–580 (2nd day of Report); House of Lords Debates, 9 February 2009, cols 950–963 (Third Reading).

⁵ 5th Report (2008–09) (HL Paper 41) and 7th Report (2008–09) (HL Paper 54).

14. The Committee considered that Part 3 of the Bill had constitutional implications for the relationship between the United Kingdom and the Crown Dependencies of Jersey, Guernsey and the Isle of Man. Clause 46 of the bill proposed to introduce changes to the Common Travel Area (CTA) which would enable fixed and routine border controls.⁶ Correspondence with the Government about this did not reassure the Committee and so the Chairman wrote to the Chief Ministers of Jersey, Guernsey and the Isle of Man. Their responses led the Committee to publish a second report on the Bill which concluded that, “the policy-making process that has led to Clause 46 (now Clause 48) has not been informed by any real appreciation of the constitutional status of the Crown dependencies or the rights of free movement of Islanders.” With the Committee’s agreement, the Chairman added his name at report stage to an amendment to leave out Clause 48 of the bill. The House accepted this amendment on division by 193 votes to 107.

*Northern Ireland Bill*⁷

15. The Northern Ireland Bill paved the way for devolution of policing and justice functions. The Committee’s report on it raised concerns that a bill of constitutional significance had not been subject to pre-legislative scrutiny and that it was being fast-tracked through Parliament. In addition, whilst recognising that there is a need for ministers to be involved in both the appointment of and any steps to remove a member of the senior judiciary in Northern Ireland, we questioned whether the Prime Minister should have a role in these processes. The Chairman spoke during the Second Reading of the Bill to highlight the Committee’s concerns.

*Welfare Reform Bill*⁸

16. Part 3 of the Welfare Reform Bill raised points of constitutional significance, which we drew to the attention of the House. Clause 42 proposed to amend the Child Support Act 1991 to give new sanction powers to the Child Maintenance and Enforcement Commission (CMEC) to disqualify a person from holding a passport, a driving licence, or both, if he or she has wilfully and culpably failed to pay maintenance for a child.
17. The Committee concluded that it was constitutionally unsatisfactory for CMEC and its contractors—rather than the courts—to have a sanction power to withdraw a person’s right to hold a passport. The freedom to travel to and from one’s country is a constitutional right of such significance that restricting this right as a punishment demands rigorous examination by an independent and impartial judge.
18. The Minister responded to the Committee’s report in a letter received on 2 June which explained why the Government did not accept the Committee’s recommendations. The Chairman tabled Committee amendments for the Grand Committee on the Bill. These were discussed by the Grand Committee but not accepted.

⁶ The CTA has been in existence since the 1920s, enabling people to move freely between the United Kingdom, the Republic of Ireland and the Crown dependencies.

⁷ 6th Report (2008–09) (HL Paper 50).

⁸ 9th Report (2008–09) (HL Paper 79).

Coroners and Justice Bill⁹

19. The Coroners and Justice Bill was in nine parts and our initial examination of it led us to write to the Minister to ask whether the judiciary had been consulted about the provisions relating to inquests.
20. We then published a report on the Bill which highlighted three areas of concern. First we criticised the omnibus nature of the Bill which in our view hindered the parliamentary scrutiny process. Secondly in relation to the provisions for coroners inquests without juries we concluded that it should be clear on the face of the Bill that a High Court judge when faced with a certificate is not merely to accept a ministerial assertion that the national interest is at stake; the Secretary of State should be expected to demonstrate to the satisfaction of the judge that such a national interest does in fact exist. Lastly we noted our disappointment that the Government had not taken the opportunity afforded by the Bill to provide the Information Commissioner with powers to assess whether private sector organisations were complying with data protection principles.
21. The Chairman spoke at Second Reading to elucidate further the Committee's concerns. At Committee stage the Government moved amendments which removed the provisions on inquests without juries from the Bill.

Law Commission Bill¹⁰

22. The Law Commission Bill was a Private Members' Bill initiated by Lord Lloyd of Berwick. It required the Lord Chancellor to make an annual report to Parliament on the implementation of Law Commission proposals. It also made provision for the Law Chancellor and the Law Commission to agree a protocol about the Law Commission's work.
23. The Committee's report on the Bill welcomed the reforms contained in the Law Commission Bill as enhancing the accountability and transparency of the relationship between the Government and the Law Commission.

Policing and Crime Bill¹¹

24. The Committee's report on the Policing and Crime Bill raised concerns about the proposals relating to preventative injunctions, gang-related violence injunctions and retention and destruction of DNA samples.
25. Our initial scrutiny of the Bill led us to write to the Minister about the border control proposals contained in Clause 99. This Clause proposed to amend the Customs and Excise Management Act 1979 to give customs officers power to require any person entering or leaving the United Kingdom "to produce the person's passport or travel documents for examination" or "to answer questions ... about the person's journey". The Minister's explanation reassured us that the proposal did not infringe constitutional principles because powers available under Clause 99 would not be available to officers for the purpose of checking the immigration status of persons travelling within the Common Travel Area.

⁹ 10th Report (2008–09) (HL Paper 96).

¹⁰ 12th Report (2008–09) (HL Paper 103).

¹¹ 16th Report (2008–09) (HL Paper 128).

26. The Government's response to our report¹² explained why it did not share our concerns on the proposals relating to preventative injunctions, gang-related violence injunctions but did concede that, given the strength of feeling on the issue, it would invite Parliament to remove from the Bill the clauses relating to retention and destruction of DNA samples. These clauses were removed at Committee stage in the House of Lords.

Parliamentary Standards Bill

27. The Parliamentary Standards Bill was a legislative response to concern about the conduct of some Members of both Houses of Parliament in relation to financial matters. We wrote to the Minister asking for a full justification for the fast-tracking of the Bill through Parliament. We published two reports on the Bill—the first concentrated on the procedures by which the Bill had been taken through Parliament¹³ and the second dealt with our concerns about the substance of the Bill.¹⁴
28. We wrote to the Leader of the House of Lords and asked her a number of questions relating to the fast-tracking of the Bill. We published her response as an appendix to our first report on the Bill in which we concluded:
- “We are wholly unpersuaded by the Government's case for this bill to be fast-tracked. There is an undoubted need to restore public confidence in the parliamentary system. It is not, however, 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. Governments should find the strength to resist falling into a temptation simply to see something done, which is no substitute for properly prepared policy and legislation.”
29. Before publishing our second report on the Bill we sought and received from the Clerk of the Parliaments a memorandum about the possible implications of the Parliamentary Standards Bill for the House of Lords. This was published with our second report on the Bill which examined the proposals contained in the Bill. We drew conclusions on a number of issues, including:
- the independence and accountability of the Independent Parliamentary Standards Authority (IPSA) and the Commissioner for Parliamentary Investigations;
 - possible legal challenges to the IPSA and the new Commissioner;
 - whether there should be a right of appeal for members; and
 - the creation of new criminal offences applying only to MPs.
30. The Government responded to both of our reports on the Bill in writing and we published this response as a Committee report.¹⁵

¹² 22nd Report (2008–09) *Parliamentary Standards Bill & Policing and Crime Bill: Government Responses to the Committee's 17th, 18th and 16th Reports of Session 2008–09*, (HL Paper 173).

¹³ 17th Report (2008–09) (HL Paper 130).

¹⁴ 18th Report (2008–09) (HL Paper 134).

¹⁵ 22nd Report (2008–09) *Parliamentary Standards Bill & Policing and Crime Bill: Government Responses to the Committee's 17th, 18th and 16th Reports of Session 2008–09*, (HL Paper 173).

*Co-operative and Community Benefit Societies and Credit Unions Bill*¹⁶

31. This was a Private Members' Bill which had all-party support. From a constitutional point of view, the subject-matter of the Bill was straightforward and uncontroversial and no objection to it was raised in the Committee's report. The Committee raised concerns relating to drafting and, in particular, to the powers the Bill would confer on the Treasury to amend legislation by order: so-called "Henry VIII Clauses".
32. The Bill did not proceed beyond Second Reading in the 2008–09 session.
33. In the current session a Co-operative and Community Benefit Societies and Credit Unions Bill was introduced which was identical to the previous Bill, save that it was re-drafted in two respects in order to take account of this Committee's concerns. The Bill was passed by the House of Lords and is under consideration by the House of Commons.

Scrutiny of Welsh Legislative Competence Orders

34. During the 2006–07 session the Committee agreed to conduct pre-legislative scrutiny on proposed Legislative Competence Orders (LCOs) under section 95 of the Government of Wales Act 2006 for an initial 12-month trial period.¹⁷ This scrutiny was to complement the similar scrutiny roles of the House of Commons Welsh Affairs Committee and the National Assembly for Wales. This was in line with the recommendations of our scrutiny report on the Government of Wales Bill published during the Bill's passage through Parliament, in which we suggested that pre-legislative scrutiny in this House should be carried out by either the Delegated Powers and Regulatory Reform Committee or by the Constitution Committee.¹⁸
35. The purpose of LCOs is to enlarge the National Assembly for Wales' powers to make Measures and the powers of Welsh Ministers to make subordinate legislation. Proposed LCOs are subjected to pre-legislative scrutiny before being formally laid before Parliament for approval. The full LCO process is set out in detail in our second report published in the 2007–08 session.¹⁹
36. On 27 November 2007 we published a report, *Scrutiny of Welsh Legislative Competence Orders*. The purpose of this report was to remind members of the House (and other interested parties) what Legislative Competence Orders (LCOs) are and to explain how they would be scrutinised at the pre-legislative stage and subsequently in both Parliament and the National Assembly for Wales.
37. During the 2008–09 session we examined seven proposed LCOs.²⁰ We cleared five of them without report but published reports on the proposed National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (relating to Carers)²¹ and on the proposed National Assembly for Wales (Legislative Competence) (Environment) Order 2009.²²

¹⁶ 19th Report (2008–09) (HL Paper 158).

¹⁷ In July 2008 the Committee decided to extend this by a further 12 months.

¹⁸ 8th Report (2005–06) *Government of Wales Bill* (HL Paper 142), paragraphs 23–24.

¹⁹ 2nd Report (2007–08) *Scrutiny of Welsh Legislative Competence Orders* (HL Paper 17).

²⁰ Those relating to the Environment, Health and Health Services and Social Welfare, Culture, Local Government, Housing, Welsh Language and Carers.

²¹ 13th Report, *The Proposed National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 (relating to Carers)* (HL Paper 105).

²² 20th Report, *The Proposed National Assembly for Wales (Legislative Competence) (Environment) Order 2009* (HL Paper 159).

38. We decided in July 2009 to extend the trial period until the end of this Parliament. We shall then consider whether we should continue this scrutiny role.

Policy Inquiries and Reports

39. Pursuant to the second part of our terms of appointment, “to keep under review the operation of the constitution”, the Committee conducts in-depth policy inquiries into major constitutional issues. We published two major reports in the 2008–09 session.

*Surveillance: Citizens and the State*²³

40. In April 2007 we decided to conduct an inquiry on the constitutional implications of the collection and use of surveillance and other personal data by the State and (insofar as they can be used by the State) private companies, particularly with regard to the impact on the relationship between citizen and State. We heard our first oral evidence on 14 November 2007 and held a total of 23 oral evidence sessions. In April 2008 the Committee visited the United States of America and Canada as part of the inquiry.
41. Our final report made 44 recommendations to protect individuals from invasions of their privacy related to surveillance and data collection. They included:
- The Regulation of Investigatory Powers Act 2000 (RIPA) should be amended to include a system of judicial oversight for surveillance carried out by public authorities. Compensation should be paid to those who are found to have been subject to unlawful surveillance under RIPA powers.
 - The Government should reconsider whether local authorities are the appropriate bodies to exercise RIPA powers, and if they are to continue to possess those powers that the Government should define the circumstances in which their use is appropriate.
 - The Data Protection Act 1998 should be amended so as to make it mandatory for Government departments to produce an independent and publicly available Privacy Impact Assessment (PIA) prior to the adoption of any new data collection or processing scheme. There should be a role for the Information Commissioner in scrutinising and approving PIAs.
 - The Government should introduce a Bill to replace the existing regulatory framework governing the National DNA Database (NDNAD), so as to provide an opportunity to reassess the length of time DNA profiles are retained and the regulatory oversight of the NDNAD. The DNA of people who voluntarily provide it to assist an investigation should be removed from the NDNAD at the close of that inquiry as a matter of law.
 - The Government should introduce a statutory regime for the use of CCTV by both the public and private sectors and introduce codes of practice which are legally binding on all CCTV schemes.
 - A Parliamentary Joint Committee on surveillance and data powers of the state should be established. Any proposed legislation which would expand

²³ 2nd Report (2008–09) (HL Paper 18).

surveillance or data processing powers should be referred to this Committee for scrutiny.

- The Information Commissioner should be given the same powers to carry out inspections of private sector organisations as for the public sector. Companies who refuse access to the Information Commissioner may well be those with something to hide.
42. This report published on 6 February 2009, received extensive media coverage. It was the subject of a lengthy discussion on GMTV and *The Wright Stuff* on Channel 5 as well as being discussed on many radio stations including the *Today* programme on Radio 4 and Radio 5 Live *Breakfast*. The Report was covered on the front page of *The Guardian* on the day of its publication and was the subject of around 30 other national newspaper articles, 3 international newspaper articles and around 10 regional newspaper stories. The report featured in over 60 on-line news articles.
 43. The Information Commissioner's Office produced a response to this report on 6 February. The Government's response was received on 13 May of which we published an analysis.²⁴
 44. The report was debated on the floor of the House on 19 June 2009.

*Fast-track Legislation: Constitutional Implications and Safeguards*²⁵

45. In January 2009 the Committee decided to conduct an inquiry into the constitutional issues that may arise when the Government seeks to fast-track legislation through Parliament.
46. Our report, published on 7 July 2009, concluded that the fast-tracking of legislation should only be undertaken in exceptional circumstances, that the normal Parliamentary scrutiny process is important and that it should be adhered to where possible.
47. The main recommendation in the report was that when seeking to fast-track a bill through Parliament the Government should set out the case for fast-tracking in the Explanatory Notes on the Bill and should make a statement to the House on this when introducing the Bill.
48. The Government response was received on 3 November 2009 and the report was debated on the floor of the House on 10 November 2009. It is worth noting that when the Video Recordings Bill was introduced to the House of Lords in January 2009 the Explanatory Notes contained a detailed explanation of the reasons for fast-tracking the Bill which followed our recommendation. Immediately after the Bill received its First Reading in the House of Lords, the Government Deputy Chief Whip made an oral business statement to the House explaining the case for fast-tracking the Bill. We view this as a useful precedent which will enhance the House's scrutiny of bills which are fast-tracked.

²⁴ 14th Report, 2008-09 *Analysis of the Government's response to Surveillance: Citizens and the State* (HL Paper 114).

²⁵ 15th Report (2008-09) (HL Paper 116).

APPENDIX 1: LEGISLATIVE SCRUTINY FUNCTION

In carrying out our legislative scrutiny function, we seek to identify any issues of principle affecting a principal part of the constitution (the “two p’s” test).²⁶ Such issues may arise in bills which at first glance do not deal with matters of high constitutional importance, as well as bills where the subject matter obviously engages with basic elements of the constitution. As the Committee explained in its first Annual Report, a wide variety of matters fall within the rubric of “the constitution”.

Without seeking to narrow the broad remit entrusted to it by the House, the Committee believes that its attention is most likely to be engaged by significant legislative proposals that affect the relationship between the executive and the judicial system; the system of civil and criminal justice; the integrity of the legislative process; the democratic process (with specific regard to the electoral system and the use of referendums); the distribution of powers between the central executive, the devolved institutions and local government; public accountability; and fundamental principles relating to good government, liberty and the rule of law. Many legislative proposals arise from the United Kingdom’s obligations at the international level; where this is the case, the Committee seeks to understand the nature of those obligations when it examines the manner in which Parliament is asked to implement them.²⁷

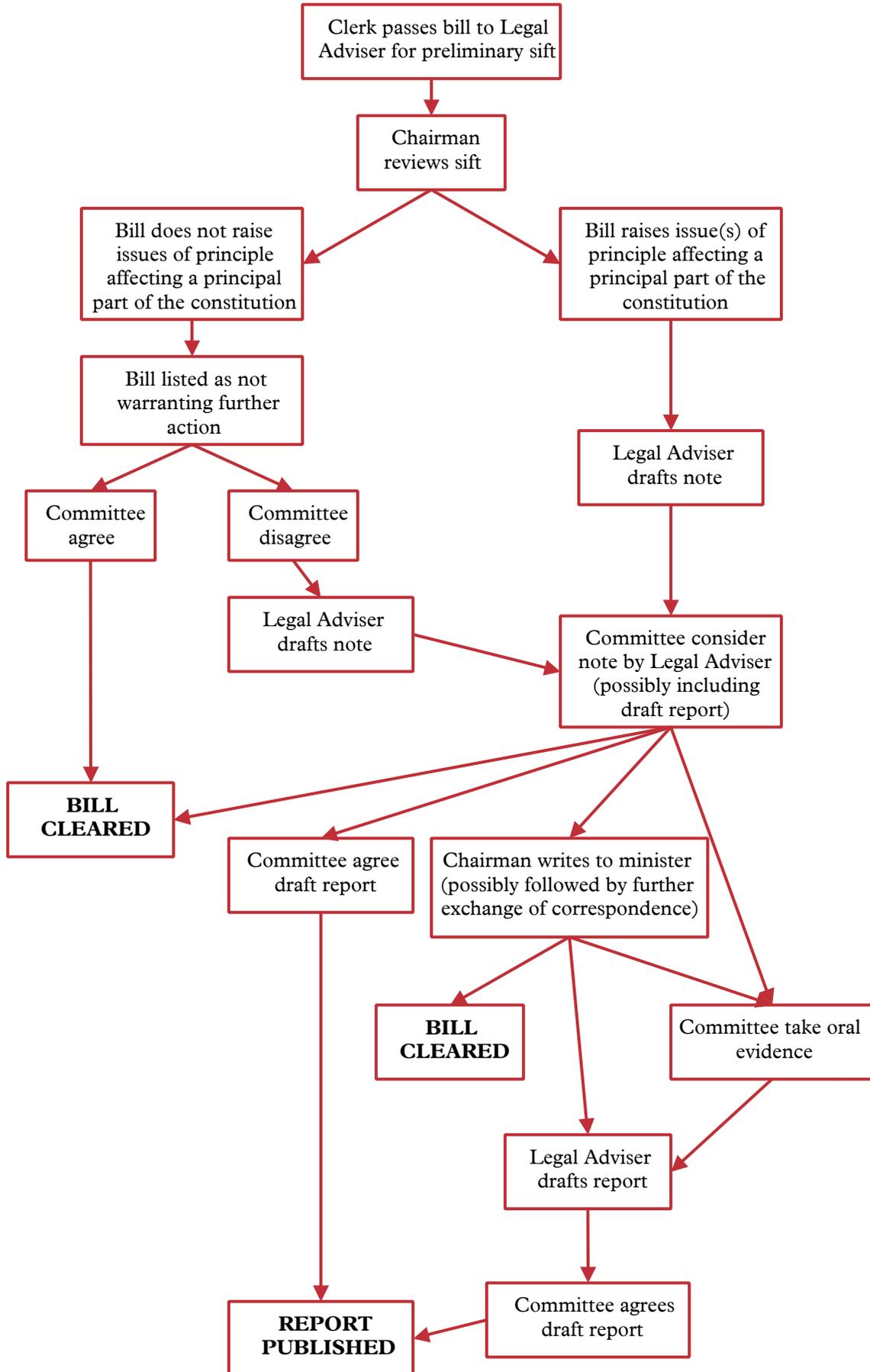
All Government bills introduced to the House of Lords, and those Private Members’ Bills that have “a reasonable prospect of being enacted”,²⁸ are subjected to scrutiny. If it is felt that a particular bill raises an issue of principle affecting a principal part of the constitution, a number of options are available to the Committee. These options are set out in the flowchart below, which also incorporates the sift system that we have adopted to streamline the scrutiny process.

²⁶ Constitution Committee, 1st Report (2001–02) *Reviewing the Constitution: Terms of Reference and Method of Working* (HL Paper 11), paragraph 22.

²⁷ 2nd Report (2003–04) (HL Paper 19), paragraph 6.

²⁸ 17th Report (2003–04): *Annual Report 2003–04* (HL Paper 194), paragraph 2.

Flowchart: Bill Scrutiny



In some cases, as the flowchart indicates, the Committee considers that the constitutional principles engaged are of sufficient import to warrant a report to the House. The purpose of scrutiny reports is to ensure that informed debate on a bill's constitutional implications takes place during its legislative stages. We endeavour to publish any such reports before the bill in question receives its Second Reading in this House, although this is not always possible. Scrutiny reports published in advance of the bill's Second Reading are often cited alongside the Second Reading entry in *House of Lords Business*, thus increasing members' awareness of the report. Where publication of a scrutiny report before a bill's Second Reading is not possible, the report is cited alongside the bill's Committee stage entry in *House of Lords Business*.

In some cases, the Committee's scrutiny reports simply highlight the constitutional implications of the bill in question without expressing a view on the merits of the provisions, but in other cases we feel it necessary to conclude that particular provisions, if enacted, would breach one or more key constitutional principles.

The Committee's bill scrutiny reports over the years have had a significant impact on the House's deliberations. However, it is equally clear that our concerns about a bill can on occasion disappear from view before detailed consideration of that bill takes place during Committee and Report Stages. Often this is because our concerns cannot be addressed without fundamentally altering the policy thrust of the bill or as a result of fast-tracking. On other occasions some or all of our concerns can be resolved through amendments to the bill. Accordingly, we have adopted the occasional practice of tabling amendments in the Chairman's name (and sometimes in the name of other Committee members) on behalf of the Committee, which seek to improve clauses that threaten to breach one or more key constitutional principles. This not only ensures that the Committee's concerns are fully debated in the House, with the participation of our Chairman and other Committee members, but can also result in the bill being improved from a constitutional perspective.

APPENDIX 2: PROGRESS OF SCRUTINY

<i>Title</i>	<i>Bill Number</i>	<i>First discussed²⁹</i>	<i>Comments</i>	<i>Action</i>	<i>Cleared</i>
Queen's Speech		17/12/08			
Marine and Coastal Access Bill	HL 1, 38, 49, 76	10/12/08	Concern about lack of appeal procedures in the bill.	Report published; agreed that Chairman would table amendments on behalf of the Committee; amendments tabled at Committee stage; Government agreed to table their own amendments which partially met the Committee's concerns; amendments agreed to.	X
Local Democracy, Economic Development and Construction Bill	HL 2, 27, 40, 71	14/1/09		NFA	X
Banking (No. 2) Bill (withdrawn on 18 December and replaced with Banking Bill)	HL 3 HL 13, 20, 21, 23	14/1/09	Concern about breadth of retrospective provision contained in Clause 75(3)	First report published 22 January; Government amendment accepted at Third Reading which partially met the Committee's concern; Committee engaged in further correspondence with the Minister; supplementary report published.	
House of Lords Bill	HL 4	N/A	Lord Steel of Aikwood PMB		
House of Lords (Members' Taxation Status) Bill	HL 5	N/A	Lord Oakeshott of Seagrove Bay PMB		
Equal Pay and Flexible Working Bill	HL 6	N/A	Baroness Morris of Bolton PMB		

²⁹ Date of discussion in Committee

<i>Title</i>	<i>Bill Number</i>	<i>First discussed²⁹</i>	<i>Comments</i>	<i>Action</i>	<i>Cleared</i>
Disabled Persons (Independent Living) Bill	HL 7	N/A	Lord Ashley of Stoke PMB		
Cohabitation Bill	HL 8	N/A	Lord Lester of Herne Hill PMB		
Dog Control Bill	HL 9	N/A	Lord Redesdale PMB		
Companies' Remuneration Reports Bill	HL 10	N/A	Lord Gavron PMB		
Bank of England (Amendment) Bill	HL 11	N/A	Lord Saatchi PMB		
Geneva Conventions and United Nations Personnel (Protocols) Bill	HL 12	14/1/09		NFA	X
Community Amateur Sports Clubs (Support) Bill	HL 14	N/A	Lord Addington PMB		
Borders, Citizenship and Immigration Bill	HL 15, 29, 36, 65	4/2/09	<p>Concern about</p> <ul style="list-style-type: none"> scheme under which the Director of Border Revenue would share 'customs revenue functions' with the current holder of those functions, namely the Commissioners for Her Majesty's Revenue and Customs; and The bill's constitutional implications for the relationship between the United Kingdom and the Crown Dependencies of Jersey, Guernsey and the Isle of Man. 	Letter sent to Minister about Part 1 of the Bill; reply received; report on Part 1 published; letters sent to Minister and to Chief Ministers of Jersey, Guernsey and the Isle of Man; report on Part 3 of the bill published; Committee amendment agreed to at report stage.	

<i>Title</i>	<i>Bill Number</i>	<i>First discussed²⁹</i>	<i>Comments</i>	<i>Action</i>	<i>Cleared</i>
Online Purchasing of Goods and Services (Age Verification) Bill	HL 16	N/A	Baroness Massey of Darwen PMB		
Torture (Damages) Bill	HL 17	N/A	Lord Archer of Sandwell PMB		
Health Bill	HL 18, 31, 43, 70	28/1/09		NFA	X
Law Commission Bill	HL 19	20/5/09	Lord Lloyd of Berwick PMB Committee welcomed the reforms contained in the Bill as enhancing the accountability and transparency of the relationship between the Government and the Law Commission	Report published.	X
Sports Grounds Safety Authority Bill	HL 22	N/A	Lord Faulkner of Worcester PMB		
Postal Services Bill	HL 24, 41, 44	25/2/09		NFA	X
Saving Gateway Accounts Bill	HL 25, 37, 52	18/3/09		NFA	X
Political Parties and Elections Bill	HL 26, 45, 54, 64	25/2/09		NFA	X
Northern Ireland Bill	HL 28	4/3/09	Concern over lack of pre-legislative scrutiny and the fast-tracking of the bill through Parliament. Also concern about involvement of Prime Minister in the appointment of and any steps to remove a member of the senior judiciary in Northern Ireland.	Report published; Chairman spoke at Second Reading; letter received from Minister and copies distributed.	

<i>Title</i>	<i>Bill Number</i>	<i>First discussed²⁹</i>	<i>Comments</i>	<i>Action</i>	<i>Cleared</i>
Business Rate Supplements Bill	HL 30, 47, 51, 55	22/4/09		NFA	X
Welfare Reform Bill	HL 32, 62, 65, 75, 81	1/4/09	Welfare Reform Bill raised points of constitutional significance—Clause 42 proposed to amend the Child Support Act 1991 to give new sanction powers to the Child Maintenance and Enforcement Commission (CMEC) to disqualify a person from holding a passport, a driving licence, or both, if he or she has wilfully and culpably failed to pay maintenance for a child.	Report published; response from Government received 2 June and copies distributed; Committee amendments tabled for Grand Committee stage.	
Coroners and Justice Bill	HL 33, 69, 77, 80	22/4/09	Concern about: <ul style="list-style-type: none"> • omnibus nature of bill; • provision for inquests without juries; and proposed amendments to the Data Protection Act 1998.	Letter sent to Minister and reply received; report published; Chairman spoke at Second Reading; Government withdrew provisions on inquests without juries at Committee stage.	
Constitutional Renewal Bill	HL 34	N/A	Lord Tyler PMB		
Perpetuities and Accumulations Bill	HL 35, 59	13/5/09		NFA	X
Industry and Exports (Financial Support) Bill	HL 39	20/5/09		NFA	X
Apprenticeships, Skills, Children and Learning Bill	HL 42, 73, 78	20/5/09		NFA	X

<i>Title</i>	<i>Bill Number</i>	<i>First discussed²⁹</i>	<i>Comments</i>	<i>Action</i>	<i>Cleared</i>
Marine Navigation Aids Bill	HL 46	N/A	Lord Berkeley PMB		
Policing and Crime Bill	HL 48, 74, 79	3/6/09	Report brought to the attention of the House provisions on preventative injunctions, gang-related violence injunctions, retention and destruction of DNA samples and border controls.	Letter sent to Minister; reply received; Report published; Government response received informing Committee that Government would seek to remove clauses on DNA samples from bill—this took place at HL Committee stage; Government response published as Committee report.	
Constitutional Reform Bill	HL 50	N/A	Lord Willoughby de Broke PMB		
Parliamentary Standards	HL 60, 67	24/6/09	First report concentrated on the fast-tracking of the bill through Parliament; second report dealt with a number of provisions contained in the bill.	Letter to Leader of the House about fast-tracking of bill; reply received; first report published; memorandum sought and received from the Clerk of the Parliaments about the bill; second report published; Chairman spoke at Second Readings; Government response to reports received and published.	
Holocaust (Return of Cultural Objects) Bill	HL 57	N/A	Mr Andrew Dismore PMB		
Co-operative and Community Benefit Societies and Credit Unions Bill	HL 53	14/10/09	Malcolm Wicks PMB		
Autism	HL 56	N/A	Mrs Cheryl Gillan PMB		
Driving Instruction (Suspension and Exemption Powers) Bill	HL 58	N/A	Willie Rennie PMB		

<i>Title</i>	<i>Bill Number</i>	<i>First discussed²⁹</i>	<i>Comments</i>	<i>Action</i>	<i>Cleared</i>
Green Energy (Definition and Promotion) Bill	HL 61	N/A	Peter Ainsworth PMB		X
Finance Bill	HL 63	N/A	No scrutiny.		
Live Music Bill	HL 66	N/A	Lord Clement Jones PMB		
Damages (Asbestos-Related Conditions) Bill	HL 72	N/A	Andrew Dismore PMB		