Select Committee on the Constitution
The Constitution Committee is appointed by the House of Lords in each session “to examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution.”

Membership
The Members of the Constitution Committee are:

Lord Brennan  Lord Judge  Lord Maclennan of Rogart
Lord Cullen of Whitekirk  Lord Lang of Monkton (Chairman)  Lord Morgan
Baroness Dean of Thornton-le-Fylde  Lord Lester of Herne Hill  Lord Norton of Louth
Lord Hunt of Wirral  Lord MacGregor of Pulham Market  Baroness Taylor of Bolton

Declarations of interests
A full list of Members’ interests can be found in the Register of Lords’ Interests:

Publications
All publications of the committee are available at:
http://www.parliament.uk/hlconstitution

Parliament Live
Live coverage of debates and public sessions of the committee’s meetings are available at:
http://www.parliamentlive.tv

Further information
Further information about the House of Lords and its committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is available at:
http://www.parliament.uk/business/lords

Committee staff
The current staff of the committee are Antony Willott (Clerk), Dr Stuart Hallifax (Policy Analyst) and Hadia Garwell and Victoria Rifaat (Committee Assistants). Professor Stephen Tierney and Dr Mark Elliott are legal advisers to the Committee.

Contact details
All correspondence should be addressed to the Constitution Committee, Committee Office, House of Lords, London SW1A 0PW. Telephone 020 7219 5960. Email constitution@parliament.uk
Sessional report 2014–15

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, carry out in-depth policy inquiries and hold annual evidence sessions with holders of certain public offices closely related to the constitution.

2. The aims of our sessional reports are:

   • to summarise for the House and the public the work we have undertaken during the session;

   • to assess the effectiveness of that work; and

   • to comment on any general matters which we consider important.

3. During the 2014–15 session we reported on five bills. In light of the referendum on Scottish independence in September 2014, much of our time was spent focusing on issues relating to devolution. We scrutinised one draft statutory instrument and a set of draft clauses, both produced by the Government in response to the Smith Commission’s report on the further devolution of powers to the Scottish Parliament, while one of our two substantive inquiries was into inter-governmental relations in the United Kingdom. Our other inquiry considered the role of the Lord Chancellor. We also published a report on the status of the Leader of the House and held a stand-alone evidence session with the President and Deputy President of the Supreme Court.

Devolution

4. The most significant constitutional event of the session was the referendum on Scottish independence. On 18 September 2014, a majority of Scottish voters (55 per cent) voted ‘No’ to the question ‘Should Scotland be an independent country?’ Before polling day, the leaders of the three main pro-union parties promised to deliver further devolution to Scotland in the event of a ‘No’ vote and set out a tight timetable to produce cross-party consensus on what powers should be devolved. After the referendum, Lord Smith of Kelvin was appointed to chair a commission into the subject, which reported in November 2014. In January 2015, the UK Government published its response: a Command Paper containing draft clauses for a Scotland Bill to be introduced in the first Session of the next Parliament.

5. In light of the changes to the UK's devolution settlement proposed in the Smith Commission’s report, as well as the ongoing devolution of powers through the implementation of the Scotland Act 2012, the Wales Act 2014 and the Corporation Tax (Northern Ireland) Act 2015, we decided to scrutinise both the UK Government’s draft clauses for a Scotland Bill, and the wider issue of the relationship between the UK Government and the devolved administrations.
Inter-governmental relations in the United Kingdom

6. Our inquiry into inter-governmental relations revisited the subject of the Committee's first substantive inquiry, *Devolution: inter-institutional relations in the United Kingdom*, published in 2002. We came to a number of the same conclusions, and indeed repeated many of the recommendations in that report: a worrying sign that was indicative of the low priority given to the subject by the UK Government in the intervening decade.

7. In our 2015 report, we noted that the way in which the top-level heads of government Joint Ministerial Committee (JMC) and its Domestic sub-committee work at present is not satisfactory, at least in the eyes of the devolved administrations. We recommended that the JMC structure be revitalised by incorporating the bilateral forums established to co-ordinate the devolution of welfare and tax powers, and by allowing the JMC to set up additional sub-committees on policy areas where regular four-way discussions are required, or temporary sub-committees on cross-cutting issues that are beyond the scope of bilateral cooperation between the devolved administrations and UK Government departments. The JMC structure should be used to facilitate joint policy-making and co-ordination between the UK Government and the devolved administrations. We also recommended that the Government should consider whether to set out the basic framework of inter-governmental relations, including the JMC, in statute.

8. We noted that significant improvements were needed to ensure there was an appropriate level of transparency around inter-governmental relations. There was a general paucity of information about the JMC and other formal inter-governmental meetings; we stated that more information should be published both before and after those meetings. Similarly, more information should be provided by UK Government departments about how, and on what issues, they interact with the devolved administrations. Adequate information would enable more effective parliamentary scrutiny, as would increasing the opportunity for such scrutiny by the introduction of an annual statement by the Prime Minister in the House of Commons after each plenary meeting of the JMC.

9. We echoed concerns, expressed in our report on the office of Lord Chancellor (see below), about the lack of central co-ordination and oversight of the devolution settlements generally, and of the minimal consideration given to the effect of devolution in one area of the UK on other areas. We recommended that there should be a clear focus within Government for oversight of the constitution as a whole, with a senior Cabinet Minister identified as responsible for that work.

10. We have yet to receive a Government response to our report. We expect to debate our report in the House once that response has been published.

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11. The second strand to our work on devolution was a report scrutinising the draft clauses for a Scotland Bill contained in Command Paper *Scotland in the United Kingdom: an enduring settlement.*

12. We started that report by assessing the process that led to the publication of *Scotland in the United Kingdom,* and concluded that it did not meet the standards expected of proposals for constitutional change as set out in our report *The Process of Constitutional Change.* In particular, we were astonished that the UK Government did not appear to have considered the wider implications for the United Kingdom of the proposals in the Command Paper. We questioned how any process that did not consider the future of the Union as a whole could provide for, as the Command Paper was titled, an “enduring settlement”. We also noted with concern the apparent exclusion of Parliament from the decision-making process, given the agreement already in place among the leaders of the main UK-wide parties to implement the recommendations of the Smith Commission.

13. We then addressed the draft clauses, focusing on the specifically constitutional provisions in the draft clauses. We concluded that draft clause 1, which stated the permanence of the Scottish Parliament and Government, and draft clause 2, which set out the Sewel Convention, were unlikely to have any legal or constitutional effect, and were designed to be political statements of intent rather than attempts to implement a constitutional restriction of the power of the UK Parliament. We also noted that the clauses appeared to be moving the UK constitution in a federal direction. More broadly we were concerned that powers over constitutional matters were being devolved without a broader UK-wide debate as to whether certain constitutional issues are better dealt with in a consistent manner across the UK.

14. The Government have not yet produced a response to our report. A Scotland Bill based on the draft clauses was introduced in the House of Commons on 28 May 2015—we intend to subject it to thorough scrutiny when it reaches the House of Lords, and will take account of any Government response as part of that process.

15. In order to implement the Smith Commission’s recommendation that the Scottish Parliament should be able to enfranchise 16 and 17 year-olds for Scottish parliamentary elections in time for the May 2016 poll, the UK Government introduced this Order alongside the Command Paper. The report focused on our concerns, expressed in previous reports, about constitutional change being delivered through unamendable secondary legislation.

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legislation. It also highlighted concerns about the ad-hoc nature of changes to the devolution settlement, the lack of a preceding UK-wide debate on the franchise, and the practical and data-protection issues around the registration of young electors. The Order was debated and approved by the House of Lords on 26 February 2015.6

The office of Lord Chancellor

16. Our other substantive inquiry looked at the role of the Lord Chancellor, ten years after major reforms to the office were legislated for in the Constitutional Reform Act 2005. We concluded that the Lord Chancellor continues to have important duties in regard of judicial independence and the rule of law that go beyond those required of other ministers. On the latter, we emphasised that this goes beyond the duty, reflected in the Ministerial Code, to comply with the law—it includes a responsibility to ensure that the rule of law is upheld within Cabinet and across Government. To clarify the scope of the Lord Chancellor’s duty, we recommended that the oath to “respect the rule of law” be amended to “respect and uphold the rule of law”. We are disappointed that the Government rejected these conclusions and recommendations, which were based on the provisions of the Constitutional Reform Act 2005, the Lord Chancellor’s oath of office, and the evidence we received during our inquiry.

17. We also called on the Government to recognise that it should seek to govern in accordance with constitutional principles, as well as the letter of the law. We welcome the Government’s acceptance of this principle in its response to our report.7

18. Our report also concluded that there was no clear focus within Government for oversight of the constitution. We recommended that a senior Cabinet minister, in our view most appropriately the Lord Chancellor, should have responsibility for oversight of the constitution as a whole, even if other ministers were given responsibility for specific constitutional reforms.

19. Our inquiry took place at a time of significant debate as to whether the Lord Chancellor should be required to have legal training; whether the office could be combined with that of Secretary of State for Justice; and even whether the office of Lord Chancellor should be abolished. We concluded that the office should be retained, and noted that the combination of the role with the position of Secretary of State for Justice gave the posts significant additional authority—a welcome development given the significant changes to the role brought about by the 2005 reforms. While we recognised the advantages to appointing a Lord Chancellor with a legal or constitutional background, we did not consider it essential. We did, however, recommend that the permanent secretary supporting the Lord Chancellor should be a lawyer and that, where that was not the case, a legal adviser should be appointed at permanent secretary level within the department. We are disappointed that the Government rejected this recommendation in its response.

6 HL Deb 26 February 2015, cols 1766-98
Bill scrutiny

20. We published five reports on Government bills during the Session, including two fast-tracked bills (i.e. bills whose passage through Parliament was expedited). Following a recommendation in our 2009 report Fast-track Legislation: Constitutional Implications and Safeguards, the Government has routinely included in the explanatory notes of fast-tracked bills an explanation as to why it is necessary for the bills’ progress to be expedited.

Data-retention and Investigatory Powers (DRIP) Bill

21. This was the first of the fast-tracked bills on which we reported. The reason given for its expedited passage through Parliament (the Bill had all of its substantive stages taken in one day in the House of Commons and in two days in the House of Lords) was a judgment of the Court of Justice of the European Union that rendered extant data retention regulations invalid. We noted a striking contrast between the time taken to prepare the Bill after this judgment—three months—and the short time Parliament was given to scrutinise it. We also expressed concerns that the reasons given for fast-tracking applied to only one part of the Bill; it was not clear why other provisions in the Bill also needed to be fast-tracked.

Counter-terrorism and Security Bill

22. This was a semi-fast-tracked Bill, with the intervals between bill stages shortened rather than waived. The Bill was brought forward to address an increased national terrorist threat level resulting from individuals returning to the UK after fighting in Syria and Iraq. We were concerned, as with the DRIP Bill (see above), about the contrast between the time the Government had taken to bring forward legislation and the time allowed for scrutiny by Parliament. We urged the House to consider carefully whether the reasons put forward by the Government for fast-tracking the Bill offered sufficient justification for each of its elements. We also noted that this semi-fast-track Bill sought to amend sensitive and controversial provisions contained in earlier legislation that was also fast-tracked (the DRIP Bill).

23. Our main recommendation was that there should be appropriate judicial oversight of the new temporary exclusion orders provided for in the Bill; the Bill was amended in the House of Lords to provide for such oversight.  

Criminal Justice and Courts Bill

24. Our report on this Bill focused on provisions reforming the administration of justice and judicial review. Judicial review is the primary means by which people or organisations may challenge the lawfulness of decisions made by government and other public bodies; as such, it is one of the key ways in which the rule of law is protected and advanced. We drew attention to concerns expressed by the judiciary that clause 64 in the Bill, which lowered

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10 See Counter-terrorism and Security Act 2015, section 3
the threshold for the application of the ‘no difference’ principle\textsuperscript{11} from “inevitable” to “highly likely”, risked undermining the rule of law. In particular, we noted concerns raised by the senior judiciary and asked the House to “reflect on the wisdom of the Government pressing ahead with a reform to the judicial process despite such warnings from the judiciary”.

25. We also asked the House to consider whether a provision introducing a presumption that interveners in judicial review cases should generally pay their own costs, and another restricting the circumstances in which courts might make cost capping orders, imposed too great a limit on effective access to justice. Finally, we drew attention to a Henry VIII power which allowed the Lord Chancellor to amend the list of matters to which courts must have regard when determining whether proceedings are public interest proceedings, and invited the House to consider whether it was constitutionally appropriate for the Lord Chancellor to have such a power.

26. The House amended the Bill in regard to both the ‘no difference’ principle and the intervener changes, defeating the Government on each issue. After a period of ping-pong, the House accepted Government amendments allowing the court to “disregard the requirements” lowering the threshold in the ‘no difference’ assessment, “if it considers that it is appropriate to do so for reasons of exceptional public interest.”

\textit{Deregulation Bill}

27. The Deregulation Bill was based on a draft Bill that received pre-legislative scrutiny from a Joint Committee in the 2013–14 session.\textsuperscript{12} We welcomed the fact that a very broad Henry VIII power in the draft Bill, about which the Joint Committee expressed concerns, did not appear in the final Bill.

28. Our report made a number of recommendations for amendments to the Bill. In particular, we drew attention to provisions that removed various duties on local authorities and other public bodies to engage in consultation, and questioned the Government’s approach to reviewing the sanctions regime in respect of TV licence violations. In the latter case, the Bill provided for a mandatory review of TV licensing sanctions, but also included provision for a Henry VIII power allowing the Secretary of State to decriminalise sanctions for TV licence violations by order. Our report stated that if it was decided that the sanctions regime should be changed, it would be more appropriate to introduce a bill at that point, rather than legislating speculatively by means of a Henry VIII clause. In their response, the Government emphasised the need to make any changes as soon as possible if the review recommended changes to the current sanctions system. It noted that Parliament would be able to scrutinise any secondary legislation changing the sanctions regime as it would be introduced under the affirmative procedure.\textsuperscript{13}

\textsuperscript{11} Under the ‘no difference’ principle a court must refuse to grant permission to apply for judicial review or to grant a remedy in an application for judicial review if it appears to the court that it was inevitable that the conduct complained of made no difference to the result.

\textsuperscript{12} Joint Committee on the draft Deregulation Bill, \textit{Draft Deregulation Bill} (Report, Session 2013–14; HL Paper 101, HC 925)

Recall of MPs Bill\textsuperscript{14}  

29. This Bill was subject to pre-legislative scrutiny by the House of Commons Political and Constitutional Reform Committee,\textsuperscript{15} most of whose recommendations the Government accepted. In our report, we raised a number of issues for the House to consider and drew the House’s attention particularly to the provision empowering ministers to create new election law offences by statutory instrument. The Government provided a substantial response to the points raised in our report.\textsuperscript{16}

Infrastructure Bill

30. We did not publish a report on the Infrastructure Bill, but wrote to the Lords minister responsible about our concerns around adequate scrutiny of the proposed provisions relating to access to shale gas ("fracking"). The inclusion of these provisions was dependent on the outcome of a consultation that was underway while the rest of the Bill was before the House. As a result, we expressed our concern that the late tabling of government amendments on a controversial subject might curtail full and effective parliamentary scrutiny. The minister’s response recognised these concerns and stated that the Government intended to ensure that their amendments to the Bill would be tabled with sufficient notice to allow effective scrutiny by the House. The Government’s amendments inserting the new clauses on ‘fracking’ were tabled on 26 September 2014, allowing the House two weeks to scrutinise and table amendments to them before the final day of Committee on 14 October.\textsuperscript{17}

Other notes on legislation before the House in 2014–15

31. We would like to draw the House’s attention to the welcome approach taken by the Government in three other bills on which we did not publish reports:

- The Wales Bill was obviously of constitutional importance, but we did not consider that it raised any novel issues—it echoed changes already legislated for in respect of Northern Ireland and Scotland. We welcome the approach taken by the Government in bringing forward the Bill after lengthy consideration by the Silk Commission\textsuperscript{18} and after pre-legislative scrutiny by the Welsh Affairs Committee.\textsuperscript{19}

- Similarly, the Serious Crimes Bill included measures recommended in pre-legislative scrutiny. In this case, provisions relating to restraint orders and sanctions for non-payment of confiscation orders were included on

\textsuperscript{14} Constitution Committee, \textit{Recall of MPs Bill} (7th Report, Session 2014–15; HL Paper 80)

\textsuperscript{15} Political and Constitutional Reform Committee, \textit{Recall of MPs} (1st Report, Session 2012–13; HC 373)


\textsuperscript{17} The new clauses are now sections 43–48 of the Infrastructure Act 2015

\textsuperscript{18} The Commission on devolution in Wales (the Silk Commission) was appointed in 2011. The Wales Bill addressed the conclusions of the Commission’s first report; the subsequent Command Paper \textit{Powers for a purpose} addresses the conclusions of the Commission’s second report, as well as the Smith Commission’s recommendations and their applicability to Wales.

\textsuperscript{19} Welsh Affairs Committee, \textit{Pre-legislative scrutiny of the draft Wales Bill}, (4th Report, Session 2013-14; HC 962)
the basis of recommendations by the Joint Committee on the Draft Modern Slavery Bill. This was another example of pre-legislative scrutiny leading to changes in legislation.

- We also welcomed the attempt to make consumer law more accessible and more readily enforceable through the Consumer Rights Bill; both are aspects of the rule of law that are constitutionally important. Also welcome was the extensive pre-legislative analysis of defects and weaknesses in the current law. The Bill was subject to pre-legislative scrutiny by the Business, Innovation and Skills Committee.

Supreme Court evidence session

32. On 25 June 2014, we held our annual evidence session with the President and Deputy President of the Supreme Court. The subjects discussed included the increasing separation of the Supreme Court from the Ministry of Justice; judicial review; whether Justices who are not peers should be appointed to the House of Lords on retirement; diversity in the senior judiciary; and the relationship between the Supreme Court and the European Court of Human Rights and the Court of Justice of the European Union.

Other matters

The delayed response to the Committee’s report on Coalition Government

33. As we noted in our previous Sessional Report, concerns were expressed during the debate on our report on the constitutional implications of coalition government that the Government had not responded to that report within the expected period of two months after publication. The report was published on 12 February 2014 and we eventually received an official response from the new Minister for the Constitution on 1 December 2014, over nine months after publication. We were concerned that, despite the length of time taken to prepare the response, the Government had not engaged with the Committee’s recommendations in a number of areas. As a result, we wrote to the Minister asking for a further elaboration on those points. We were disappointed that his response did not offer a substantive response to the points we raised, and indeed he suggested that the long gestation period of the original response was because the Government took the time carefully to consider the Committee’s report.

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22 The transcript is available on our webpages: http://www.parliament.uk/documents/lords-committees/constitution/AnnualOralEvidence2014-15/CC250614supremecourt.pdf
24 Constitution Committee, Constitutional implications of coalition government, (5th Report, Session 2013–14; HL Paper 130)
34. Following the Cabinet reshuffle in July 2014, it emerged that the new Leader of the House of Lords would not be a full member of the Cabinet, unlike her predecessors. The new Leader was entitled to attend Cabinet but was not paid a full Cabinet Minister’s salary. There was considerable disquiet in the House on the subject, leading this Committee to produce a short, factual report on the subject. The report set out the statutory limitation on the number of ministers who can be paid a Cabinet salary (a limit of 21 plus the Lord Chancellor) and the relatively recent distinction between Cabinet members and ministers “attending Cabinet”. We also noted the parallel concern that, with the Leader no longer a full member of the Cabinet, there were no full Cabinet members in the House of Lords.

Witnesses before Select Committees

35. We were concerned that, during our inquiry into inter-governmental relations in the United Kingdom, an evidence session with civil servants from various departments had to be cancelled at short notice after some witnesses withdrew due to conversations they had had with civil servants from the Cabinet Office. The Cabinet Office informed us that it was simply a “practical issue” about “the hierarchy of ... [the Committee’s] engagement with Whitehall” and that they felt it best the Committee speak to the Cabinet Office first (since it had formal responsibility for the subject matter) before discussing the matter in more detail with other departments. While we recognised that there was no deliberate attempt to obstruct the work of the Committee, it is for select committees to determine from whom they take evidence, and to what timetable. It is not acceptable for any civil servant, however well-meaning, to decide unilaterally to alter or disrupt a select committee’s work. We wrote to the Cabinet Secretary, Sir Jeremy Heywood, to express our concern at these events. His response stated that there was no intention on the part of Cabinet Office to prevent officials from giving evidence to the Committee on relevant matters. We welcome this assurance.


26 See oral evidence taken on 14 January 2015 (Session 2014–15), QQ18–19 (Dr Philip Rycroft)