

HOUSE OF LORDS

Select Committee on the Constitution

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Sessional report 2015–16

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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.”

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<u>Lord Brennan</u>	<u>Lord Lang of Monkton</u> (Chairman)	<u>Lord Norton of Louth</u>
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Sessional Report 2015–16

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 2015–16 session we published seven legislative scrutiny reports relating to nine bills, and corresponded with ministers on a further two bills. We carried out one large-scale inquiry looking at the Union and devolution, and published a report in response to the Strathclyde Review on delegated legislation. We also held standalone evidence sessions with the minister responsible for constitutional reform (the Chancellor of the Duchy of Lancaster), the Lord Chancellor and Secretary of State for Justice, the Lord Chief Justice of England and Wales, and the President and Deputy President of the Supreme Court.

Devolution

4. Devolution remained a central consideration for the Committee during the 2015–16 Session. In our main inquiry, *The Union and devolution*, we considered devolution through the lens of the Union, setting out how the needs and interests of the Union, as well as of the nations and regions of the whole UK, might be protected in the event of any demands for further powers to be devolved. During the Session we also reported on the Scotland Bill and the Cities and Local Government Devolution Bill.¹ A Draft Wales Bill was also published in October 2015—we did not scrutinise these proposals in any depth as they were subject to pre-legislative scrutiny by the House of Commons Welsh Affairs Committee.²

Union and devolution inquiry

5. Our major inquiry work focused on the Union and devolution.³ This work follows our concern, set out in our 2015 report *Proposals for the devolution of further powers to Scotland*, that recent and proposed changes to the devolution settlements continue a “pattern of ad hoc, piecemeal change ... which could well destabilise the Union as a whole in the longer term”. We concluded that insufficient attention had been paid to the needs of the Union as a whole,

1 Our report on the latter is covered below in paragraphs 19-21.

2 Draft Wales Bill, Cm 9144, October 2015: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/469392/Draft_Wales_Bill_Web_2_.pdf; House of Commons Welsh Affairs Committee, *Pre-legislative scrutiny of the draft Wales Bill* (First Report, Session 2015–16, HC 449)

3 Constitution Committee, *The Union and Devolution* (10th Report, Session 2015–16, HL Paper 149)

and that “the major UK-wide political parties need to formulate a coherent vision for the future shape of the UK as a whole”.⁴

6. For this inquiry, we focused on the Union. We explored the nature of the Union, and set out some of the risks arising from the devolution process to date. We then set out practical measures to protect and strengthen the Union to ensure that any future devolution does not occur at the expense of the stability, coherence and viability of the Union.
7. We recommended a two-stage process. First, the UK Government should identify which functions are essential to the effective functioning of the Union, and which therefore need to remain at all times the responsibility of the UK Parliament and Government. Second, we proposed that the UK Government should publish a Devolution Impact Assessment alongside any future proposals for devolution. This would measure the potential impact of such proposals on the Union as a whole, as well as on each of its constituent nations.
8. Our report addressed the ‘English Question’, considering both concerns about the representation of England within the Union and about the devolution or decentralisation of power within England. We rejected the idea of an English Parliament, and concluded that elected regional assemblies currently lack both political and public support. We cautiously welcomed the ‘devolution deals’ agreed between the UK Government and a range of local authorities in England, but expressed concern about the lack of an overarching strategic vision for the governance of England, the imposition of elected mayors (particularly where the mayoral model had been rejected in a local referendum), and the lack of transparency and public engagement. We recommended that a Devolution Impact Assessment should be published alongside any proposals for devolution or decentralisation of power within England, as with any proposal for further devolution to the devolved nations.
9. Following the 2015 general election, the Government proposed implementing English votes for English laws (‘EVEL’) as a solution, or at least partial remedy, for public concerns about English representation within the Union. This Committee has committed to undertake an assessment of the operation of the EVEL procedures early in the 2016–17 Session, ahead of the Government’s review of the new House of Commons Standing Orders in autumn 2016. We therefore did not publish any conclusions concerning EVEL in our report on the Union and devolution.
10. We also looked at how the UK Government had adapted to devolution and found it lacking. Building on our report *Inter-governmental relations in the UK*, published in the 2014–15 Session, we made a series of recommendations designed to instil a new mindset at all levels of government and to promote co-operation and collaboration with devolved governments across the whole breadth of government policy. We recommended steps to clarify for the public the different roles of the UK, devolved and local governments, such as clear branding of UK Government activity.

4 Constitution Committee, *Proposals for the devolution of further powers to Scotland* (10th Report, Session 2014–15, HL Paper 145)

Scotland Bill

11. The Scotland Bill 2015–16 had its roots in the ‘Vow’ by the leaders of the UK-wide pro-Union parties prior to the Scottish independence referendum, and the work of the Smith Commission in the aftermath of that poll. Our March 2015 report on the Draft Clauses published by the UK Government following the Smith Commission’s report⁵ expressed a number of concerns about the constitutional implications of some of the Draft Clauses. The Scotland Bill 2015–16, based upon the Draft Clauses, was introduced immediately after the 2015 General Election.⁶
12. The Government’s initial response to our report on the Draft Clauses, sent to us eight months after publication on 10 November 2015, was disappointing. We subsequently received a rather longer response from the Government on 17 November. Neither response engaged with the substance of our concerns and many points were left unaddressed.
13. We raised concerns over the clauses on elections, tax, welfare and equal opportunities. Our primary concerns arose in the context of the specifically constitutional clauses. Clause 1 of the Bill stated the “permanence” of the Scottish Parliament and Government and “declared” that they would not be abolished other than following a decision to that end by the Scottish people in a referendum. We were concerned that the wording of this clause risked introducing uncertainty over the absolute nature of parliamentary sovereignty. In their response,⁷ the Government asserted that the clause simply reflected the current constitutional situation and did not limit the sovereignty of Parliament.
14. Clause 2 sought to fulfil the Smith Commission’s recommendation that: “The Sewel Convention will be put on a statutory footing”. We raised three concerns. First, that the wording of the convention was being placed in statute without any attempt to amend the language to ensure it was appropriately clear and unambiguous.⁸ Second, we drew attention to the risk that the courts might be drawn inappropriately into considering the legislative process. Third, we noted that we were unclear as to whether the clause was intended to limit the power of Parliament to legislate for the devolved nations. In their response the Government asserted that the wording simply replicated the language of the Sewel convention; that “The Sewel Convention is a political convention which does not give rise to justiciable rights”; and that the inclusion of this clause did not limit Parliament’s sovereignty. We find it deeply concerning that the Government did not consider that the transition from political convention to Act of Parliament might necessitate a change in the language or form of the Sewel Convention, or might alter its constitutional status.
15. We noted that the absence of a fiscal framework agreed between the UK and Scottish Governments made it impossible to judge some elements of the Bill. In January 2016, the Chairman, along with the Chairman of the Economic Affairs Committee, wrote to the Parliamentary Under Secretary of State at the Scotland Office reiterating both committees’ concerns on the continuing

5 Constitution Committee, *Proposals for the devolution of further powers to Scotland* (10th Report Session 2014–15, HL Paper 145)

6 Constitution Committee, *Scotland Bill* (6th Report, Session 2015–16, HL Paper 59)

7 Letter from Lord Dunlop to Lord Lang, (11 January 2016)

8 As section 2 of the Scotland Act 2016, the legislation states: “it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament”

lack of a fiscal framework when the House was being asked to scrutinise the Bill. They advised that Committee Stage consideration of the financial elements of the Bill should not proceed until the framework was available to Members. The fiscal framework was eventually published at the end of February, during the Bill's Report Stage.

16. It is clear to us that the Scotland Bill demonstrated how political pledges and a curtailed timetable can undermine a proper legislative process. This was of particular concern when the changes sought were of such constitutional significance. We trust that the obvious short-comings of this approach, and the extent to which the process pre-empted any possibility of meaningful consultation and discussion on the merits of the proposals, will prevent any future proposals for constitutional change being subjected to such an inadequate process in future.

Delegated legislation, Parliament and the Executive

17. During the 2015–16 Session we were concerned to see come before us a number of bills which proposed to confer on ministers broad and undefined delegated powers to achieve legislative objectives, but which contained few restrictions as to how secondary legislation should be framed to achieve those goals. Those bills continued a trend that was evident during the 2010–15 Parliament—a tendency towards the introduction of vaguely worded legislation that left much to the discretion of ministers. We discuss our response to those bills in more detail below (see paragraphs 19–22).
18. In July 2015, the Chairman, along with the Chair of the Delegated Powers and Regulatory Reform Committee, wrote to the Leader of the House of Commons urging him to “remind ministers and civil servants across Government that delegations of legislative power must be appropriate, the degree of flexibility afforded to ministers proportionate to the objectives set out in primary legislation, and that ‘skeleton’ bills should be introduced only when absolutely necessary and with a full justification for the decision to adopt that structure of powers.”⁹

Cities and Local Government Devolution Bill [HL], Psychoactive Substances Bill [HL] and Charities (Protection and Social Investment) Bill [HL]

19. We grouped these three bills into one report¹⁰ to draw attention to the breadth of the delegated powers all three bills proposed. This was apparent in the broad discretion given to the Secretary of State to reorganise local government under the Cities and Local Government Devolution Bill [HL]. Similarly the vague language in the Psychoactive Substances Bill [HL] and the Charities (Protection and Social Investment) Bill [HL] raised concerns about legal certainty and the precise scope of powers being granted to the ministers to make changes through secondary legislation.
20. We reported that the powers granted to the Secretary of State in the Cities and Local Government Devolution Bill amounted to a significant extension of ministers' powers. The Bill allowed the Secretary of State to alter the structure and functions of local government, primarily to enact the contents of the ‘devolution deals’ agreed between English local authorities and the UK Government. These deals were envisaged to create new Combined

⁹ Letter from Lord Lang and Baroness Fookes to Chris Grayling MP, (22 July 2015)

¹⁰ Constitution Committee, *Cities and Local Government Devolution, Psychoactive Substances and Charities (Protection and Social Investment) Bills* (2nd Report, Session 2015–16, HL Paper 9)

Authorities with directly-elected mayors and greater powers than existing local authorities. We drew attention to the lack of pre-legislative scrutiny of the Bill and the risks of increased complexity and divergence in the governance of England. We considered the implications of the Bill in greater detail in our report, *The Union and devolution* (see paragraph 8 above).

21. We drew attention to the drafting of Schedule 1 to the Psychoactive Substances Bill as potentially lacking legal clarity. More broadly, we noted the wide powers of the Secretary of State to vary the contents and definitions in that Schedule, which is central to the defining the scope of new criminal offences created by the Bill. We drew attention to similar issues of legal certainty and the framing of Henry VIII powers in relation to the Charities (Protection and Social Investment) Bill.

Childcare Bill [HL]

22. Our next report highlighted the Childcare Bill as a particularly egregious example of the trend noted above of vaguely-worded legislation giving wide discretion to ministers.¹¹ This Bill conferred wide discretionary powers on the Secretary of State, including Henry VIII powers, with few indications as to how those powers should be used to achieve the objectives set out in the Bill.

The Strathclyde Review

23. In autumn of 2015, parliamentary scrutiny of delegated legislation rose to the top of the political agenda following a Government defeat in the House of Lords on the Draft Tax Credits (Income Thresholds and Determination of Rates) (Amendment) Regulations 2015. The Government subsequently appointed Lord Strathclyde to examine how the Government might “secure their business in Parliament” and to consider how to ensure “the decisive role of the elected House of Commons in relation to its primacy on financial matters, and secondary legislation”.
24. Lord Strathclyde’s subsequent Review put forward three options: removing the House of Lords from the procedure for passing secondary legislation entirely; passing a “clear and unambiguous” resolution or change to Standing Orders setting out the restrictions on the House’s veto over secondary legislation; and creating a new procedure in statute that would limit the House to inviting the Commons to “think again when a disagreement exists”.¹²
25. Given the constitutional importance of proper parliamentary scrutiny of the Executive, we considered and published a response to Lord Strathclyde’s Review. We concluded that Lord Strathclyde had been set too narrow a remit by Government.¹³ By tasking him to consider the balance of power between the two Houses of Parliament, the Government focused the Review on the wrong questions. It consequently addressed the wrong issues. The more serious concerns arising from the delegated legislation process relate to the relationship between Parliament and the Executive.

11 Constitution Committee, *Childcare Bill* (3rd Report, Session 2015–16, HL Paper 16)

12 Cabinet office, *Strathclyde Review: Secondary Legislation and the primacy of the House of Commons*, Cm 9177, December 2015: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486790/53088_Cm_9177_Web_Accessible.pdf

13 Constitution Committee, *Delegated Legislation and Parliament: A response to the Strathclyde Review* (9th Report, Session 2015–16, HL Paper 116)

26. For that reason, our report examined not only the options considered by the Strathclyde Review, but wider issues relating to the delegated legislation process that were outside the remit of that Review. We concluded that the Government should not seek to move forward with proposals based on the Strathclyde Review without proper consideration of the delegated legislation process in its entirety. We are pleased that the three other Committees that examined the proposals in the Review—two in this House¹⁴ and one in the House of Commons¹⁵—came to the same broad conclusions as we did.

Other legislative scrutiny

Immigration Bill

27. We drew the attention of the House to several elements of this Bill.¹⁶ The Bill proposed that the Government could offer support to failed asylum-seekers only if, among other criteria, they faced a “genuine obstacle” to leaving the UK. The meaning of the term “genuine obstacle” was thus pivotal—and yet was undefined on the face of the Bill. Given that there might be significant consequences for individuals should the term be ascribed a relatively narrow meaning, we recommended that the House consider defining it in greater detail on the face of the Bill.
28. Our report also drew attention to issues related to two of the broader topics covered above: devolution and delegated legislation. We questioned the approach taken by the Government in making provisions for England (and in some cases Wales) in primary legislation but relying on secondary legislation for Scotland, Northern Ireland and (in some cases) Wales. We also highlighted differing views as to whether clauses that applied to England only, but which could be extended to the other nations of the UK by secondary legislation, should be subject to a Legislative Consent Motion under the Sewel Convention.
29. We were concerned that the Bill proposed allowing the Secretary of State to overrule the First-tier Tribunal to increase the conditions set in immigration bail cases or to impose conditions where the Tribunal had not done so, including residence conditions and electronic monitoring. We noted that these proposed powers, which would allow a Minister to override or alter independent judicial decisions about immigration bail conditions, sat in tension with the principles of the rule of law. The Government subsequently tabled amendments which addressed these concerns.

European Union Referendum Bill

30. While the referendum on EU membership will itself be of great constitutional significance, this Bill simply set out how and when it should take place. In our short report,¹⁷ we welcomed the Government’s implementation of many of the Electoral Commission’s recommendations. We highlighted, however, the Government’s ability to create exemptions to the rules governing purdah

14 Delegated Powers and Regulatory Reform Committee, *Special Report: Response to the Strathclyde Review SLSC and DPRRC reports* (25th Report, Session 2015–16, HL Paper 119); Secondary Legislation Scrutiny Committee, *Response to the Strathclyde Review: Effective parliamentary scrutiny of secondary legislation* (32nd Report, Session 2015–16, HL Paper 128)

15 House of Commons Public Administration and Constitutional Affairs Committee, *The Strathclyde Review: Statutory Instruments and the power of the House of Lords* (Eighth Report, Session 2015–16, HC 752)

16 Constitution Committee, *Immigration Bill* (7th Report, Session 2015–16, HL Paper)

17 Constitution Committee, *European Union Referendum Bill* (5th Report, Session 2015–16, HL Paper 27)

through regulations, and the potential (if unlikely) situation that the absence of a designated lead campaign group for one side in the referendum would prevent the designation of a lead campaign group for the other.

Criminal Cases Review Commission (Information) Bill

31. This Private Member’s Bill proposed increasing the powers of the Criminal Cases Review Commission to require people to supply it with material relevant to a case under review. In our short report,¹⁸ we highlighted the potential tension between the public interest arguments in favour of expanding the powers of the Criminal Cases Review Commission and the right of professional legal privilege. We made no specific recommendation but called for the issue to be addressed during debate on the bill. The matter was subsequently discussed during the Committee stage of the Bill.¹⁹

Energy Bill [HL]

32. Our report on this bill focused on the issue of retrospective legislation.²⁰ Retrospective legislation is, as a rule, inherently constitutionally suspect. Any such provision therefore requires a compelling reason in the public interest. We drew these provisions to the attention of the House, inviting it to consider whether the Government had offered sufficient justification as to their necessity.

Education and Adoption Bill

33. The Committee wrote to Lord Nash, the Parliamentary Under Secretary of State for Schools, in relation to the Education and Adoption Bill. We noted the contrast between the manner in which the Bill augmented the Secretary of State’s powers, often at the expense of local authorities’ powers, and the Government’s ‘localism’ agenda which emphasised the importance of local communities running their own affairs.
34. We also drew attention to the lack of any definition on the face of the Bill for the term “coasting” (in the context of powers allowing the Secretary of State to intervene in respect of “coasting schools”). In response, the Minister stressed the role of Regional School Commissioners and their supporting panel of local head teachers. He highlighted the publication of illustrative regulations (including a definition of “coasting”) and the Government’s ongoing consultation on its suggested approach.

Northern Ireland (Stormont Agreement and Implementation Plan) Bill

35. The Northern Ireland (Stormont Agreement and Implementation Plan) Bill was a piece of fast-tracked legislation. We wrote to the Minister asking for an explanation of why it did not include a sunset clause (as recommended in our report on fast-track legislation²¹). We also questioned the extent of the privileges and immunities being granted to the Independent Reporting Commission established by the Bill.

18 Constitution Committee, *Criminal Cases Review Commission (Information) Bill* (8th Report, Session 2015–16, HL Paper 104)

19 See HL Deb 11 Mar 2016, [col 1556–1563](#)

20 Constitution Committee, *Energy Bill* (4th Report, Session 2015–16, HL Paper 27)

21 Constitution Committee, *Fast-track Legislation: Constitutional Implications and Safeguards* (15th Report, Session 2008–09, HL Paper 116) para198

36. The Government’s response stated that a sunset clause was inappropriate because the Independent Reporting Commission established by the Bill would require inter-governmental agreement between the UK and Irish Governments. Additionally, the Fresh Start Agreement that the Bill enacted was the subject of cross-party agreement in Northern Ireland that could be undermined by sunset provisions. The Minister also set out the Government’s justification for the privileges and immunities for the Independent Reporting Commission provided for by the Bill.

Applicability of legislation to Parliament

37. It is a principle of legislative drafting that legislation does not apply to Parliament unless either by necessary implication or it states expressly that it applies. When bills contain provisions that could apply to Parliament, the authorities in each House are meant to be consulted at an early stage. This was set out in guidance from the Treasury Solicitor in 2002 and again in 2014 by the then-Leader of the House of Lords during a debate on this issue.²²
38. The Chairman of this committee wrote to the Leaders of both Houses highlighting the failure of the Government to follow this agreed practice in relation to the Immigration and Trade Union Bills. In a joint response, both Leaders agreed that identification and consultation at an early stage was important. They stated that they would write to the House authorities setting out a procedure the Government would follow in future.

Annual evidence sessions²³

Chancellor of the Duchy of Lancaster

39. Prior to giving evidence for our Union and devolution inquiry in February 2016, the Chancellor of the Duchy of Lancaster, Oliver Letwin MP, gave evidence to the Committee in July 2015. The session covered: his responsibilities as Cabinet Minister responsible for the constitution; the role of the Cabinet Committee on Constitutional Reform; ‘English votes for English laws’; and devolution, including principles of devolution and of the Union. Mr Letwin told us that he felt the Cabinet Manual was likely to be revised in the “not-to-distant future”. We welcomed his statement that the Cabinet Secretary would be likely to consult widely, including with this Committee and others in Parliament.

Lord Chancellor

40. In December 2015, we heard from the Lord Chancellor and Secretary of State for Justice, Michael Gove MP. Much of the discussion related to the role of the Lord Chancellor following our 2014 report, *The office of Lord Chancellor*. The session covered how the role of Lord Chancellor differs from other Cabinet posts; the particular responsibilities the Lord Chancellor has in relation to the rule of law; and the importance of the oath of office. We discussed briefly the Government’s proposed British Bill of Rights, including whether a Bill of Rights would be subject to legislative consent from the devolved legislatures and the potential for the Supreme Court to act as what Mr Gove called a “constitutional longstop”. We were also told that the long-overdue full Government response to the report of the Joint Committee

²² See HL Deb 20 Mar 2014, [col 345](#)

²³ Transcripts of these evidence sessions are available on our webpages

on the Draft Voting Eligibility (Prisoners) Bill²⁴ would be published after proposals for a Bill of Rights were made public. The session also covered changes to the Ministerial Code and the impact of the closure and merging of courts on citizens' capacity to access justice.

Lord Chief Justice

41. We heard from Lord Thomas of Cwmgiedd, the Lord Chief Justice of England and Wales, in April 2016. The topics addressed in that session included difficulties in recruitment and retention in the High Court; judicial appointments more broadly, including diversity and in particular the numbers of black and minority ethnic judges; the impact of the cost of litigation and changes to legal aid; and the ongoing HM Courts and Tribunal Service (CTS) modernisation programme.
42. Lord Thomas outlined a number of innovations being considered by the CTS, including plans for an “online court” which would provide individuals with information, forms for redress, and an intermediate level of assistance or mediation before a case was taken before a judge. The CTS had also successfully implemented the pre-recording of cross-examinations of witnesses. Touching on devolution issues, Lord Thomas told us that insufficient thought had been given to the implications of devolving primary law-making powers and some powers over tribunals to Wales without also devolving a justice function to the Welsh Government. The result was the development of separate law in Wales but without prior consideration having been given to how that would operate within the confines of a single legal system across England and Wales.

President and Deputy President of the Supreme Court

43. In our annual evidence session with the President and Deputy President of the Supreme Court, Lord Neuberger of Abbotsbury and Baroness Hale of Richmond, we discussed the status of ‘constitutional statutes’, and the differences between the UK Supreme Court and constitutional courts in other countries. The capacity of the Supreme Court to speak out on policy or legislation was also addressed. Lord Neuberger suggested that the judiciary could speak out on proposed legislation in two circumstances: where it might impact on the rule of law, and where it might affect the workings of the courts.
44. Turning to relations with the European courts, Lord Neuberger described a constructive dialogue between the Supreme Court and the Court of Justice of the European Union and the European Court of Human Rights (ECtHR), including both informal discussions and formal interactions through judgments. Lady Hale and Lord Neuberger pointed to the *Horncastle* case as an example of a formal interaction with Strasbourg: the Supreme Court argued in its judgment that the ECtHR had failed to give proper consideration to the UK’s common-law tradition, and the ECtHR “effectively accepted that we were right”.²⁵ Lady Hale noted that such instances were “very few and far between”, and Lord Neuberger concluded that the European Courts did not have “deaf ears” and that “aspects of our system are now being engrafted into their way of thinking”.

24 Joint Committee on the Draft Voting Eligibility (Prisoners) Bill, *The Draft Voting Eligibility (Prisoners) Bill* (Report, Session 2013–14, HL Paper 103, HC 924)

25 Details of the *Horncastle* case are available on the Supreme Court website: <https://www.supremecourt.uk/cases/uksc-2009-0073.html> [accessed 8 June 2016]

Concluding remarks

45. We conclude this report with some further observations about two overarching issues that arose repeatedly during our work last Session.

Delegated powers

46. The first is the extensive use of broad delegated powers, such as those seen proposed in several pieces of legislation put before the House last Session. We were concerned not only at the extent of the delegated powers put forward by Government, but at the effect this had on the effectiveness of parliamentary scrutiny of primary legislation and on the balance of power between Parliament and the Executive as a whole.
47. The House of Lords rarely uses its veto over delegated legislation, which cannot otherwise be amended. It is vital therefore that the House is able properly to debate and scrutinise the effects of legislation as it passes through Parliament in the form of primary legislation. Yet broadly drawn delegated powers leave ministers with significant discretion as to the content of subsequent delegated legislation. This can inhibit parliamentary scrutiny of primary legislation as members of both Houses are unable to assess how key elements of the policies before them will be implemented. Allied to this is a tendency for delegated legislation to be used for policy changes that would be more appropriately be carried out through primary legislation, subject as it is to more thorough parliamentary scrutiny and amendment.
48. We are concerned that these developments mark a constitutionally inappropriate shift of power from Parliament to the Executive. The Government appears to be seeking greater discretion in how it implements and interprets legislation while simultaneously seeking to restrict the right of the House of Lords to subsequently scrutinise and approve or reject the Government's use of delegated powers. We will continue to draw this issue to the attention of the House as it arises during the course of our legislative scrutiny work.

Government responses to reports

49. The second issue is the extent to which Government responses to our reports are often delayed and unsatisfactory—a concern we raised in our last Sessional Report.
50. Our scrutiny of what became the Scotland Act 2016 is a case in point. We received the Government response to our report on the Draft Clauses set out in the Command Paper *Scotland in the United Kingdom: An enduring settlement* on 10 November 2015, seven months after the publication of our report in March 2015. Despite the time taken by the Government to respond, the Minister's letter was perfunctory and made little effort to engage with the substance of our recommendations. The Government published a further response to our report a week later. While more substantial, it still did not properly address the constitutional concerns outlined in our report.
51. We have agreed to a delay in the Government's response to our March 2015 report *Inter-governmental relations in the United Kingdom* while the four administrations agree a new Memorandum of Understanding. We trust that the Government response to that report, and to our *Union and devolution* report published in May 2016, will engage more fully with the substances of the issues raised by this Committee.

52. During this Session, we intend to begin a series of small follow-up inquiries to assess the extent to which the Government have acted on recommendations made by this Committee, and abided by commitments made in response to our reports.