



HOUSE OF LORDS

Select Committee on the Constitution

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1st Report of Session 2017–19

# Sessional report 2016–17

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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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### *Committee staff*

The current staff of the committee are Matt Korris (Clerk), Nadine McNally (Policy Analyst) and Hadia Garwell (Committee Assistant). Professor Stephen Tierney and Professor Mark Elliott are the legal advisers to the Committee.

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# Sessional report 2016–17

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 2016–17 session, we published five legislative scrutiny reports, and corresponded with ministers on a further three bills. We began a large-scale inquiry on the *Legislative Process*, conducted in four parts: *Preparing legislation for Parliament; the passage of legislation through Parliament; the delegation of powers; and after Royal Assent*. We took evidence on parts one and three of the inquiry, but due to the calling of the general election, we will publish these reports in the new Parliament.
4. We published three reports in response to Brexit: *The invoking of Article 50; European Union (Notification of Withdrawal) Bill*; and ‘*The Great Repeal Bill*’ and delegated powers. We published a report on *English Votes for English Laws* and we also began a follow-up inquiry to our 2012 report on *Judicial Appointments*.
5. We held our regular evidence sessions with the Chairman of the House of Lords Appointments Commission, the Parliamentary Secretary (Minister for the Constitution), 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.

## Brexit

6. Following the referendum of 23 June 2016 and the UK’s decision to leave the European Union, we produced three reports that examined the constitutional implications of Brexit.

### *The invoking of Article 50*

7. We published our report, *The invoking of Article 50*, in September 2016 when the debate was about when and how to trigger Article 50 of the Treaty on European Union.<sup>1</sup> We concluded that Parliament was ultimately responsible for ensuring the Government acted upon the referendum result and undertook the Brexit negotiations in a way that achieved the best possible outcome for the UK as a whole. Our report noted that although the EU referendum was, in legal terms, advisory, it was also accompanied by a clear undertaking by the Government, based on a manifesto commitment, to implement the

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1 Constitution Committee, *The invoking of Article 50* (4th Report, Session 2016–17, HL Paper 44)

decision that was reached. We said that it was imperative that Parliament played a central role in the decision to trigger Article 50; and that Parliament should have a key role in scrutinising both the Brexit negotiations and in approving the final deal between the UK and the EU.

8. Subsequent to our report, the Supreme Court held in its judgment on 24 January 2017 in *R (Miller) v Secretary of State for Exiting the European Union*, that the Government could only trigger Article 50 of the Treaty on European Union and begin the process of the UK leaving the EU if Parliament enacted primary legislation empowering them to do so.<sup>2</sup>

*European Union (Notification of Withdrawal) Bill*

9. The European Union (Notification of Withdrawal) Bill was introduced in the House of Commons on 26 January 2017. The Bill was ‘semi fast-tracked’, in that both the House of Commons and the House of Lords were asked to waive the recommended minimum intervals between the stages of the Bill. In the House of Lords, the Bill had its second reading on 20 and 21 February, with committee stage taking place on 27 February and 1 March, followed by report stage and third reading on Tuesday 7 March. The Bill received Royal Assent on 16 March 2017.
10. In our report, we noted that the Bill was fast-tracked to meet the Prime Minister’s political deadline to trigger Article 50 by March 2017.<sup>3</sup> We concluded that, while the usual concerns regarding the fast-tracking of legislation were alleviated by the brevity and simplicity of the Bill, it should not be seen as setting “a precedent in relation to future measures of constitutional significance, such as the so-called ‘Great Repeal Bill’ and other Brexit-related legislation.”<sup>4</sup>

*The ‘Great Repeal Bill’ and delegated powers*

11. During the process of taking evidence for our inquiry on *The Legislative Process*, a number of witnesses drew to our attention the possibility that the forthcoming ‘Great Repeal Bill’ might contain exceptionally broad delegated powers, enabling the Government to effectively re-write the law across whole swathes of the statute book. In the light of this, we concluded that it would be appropriate for the Committee to take the unusual step of publishing a report to set out the issues liable to be raised by the ‘Great Repeal Bill’ in their wider constitutional context.
12. In our report, *The ‘Great Repeal Bill’ and delegated powers*, we proposed measures to safeguard the rights of Parliament as the process of Brexit gets underway.<sup>5</sup> We argued that Parliament should make sure the Government does not use delegated powers in the ‘Great Repeal Bill’ as a way of changing the law in areas currently governed by the EU without proper parliamentary scrutiny.
13. We recommended that Parliament should seek to limit the scope of delegated powers contained in the Bill by developing new scrutiny processes to ensure

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2 *R (Miller) v Secretary of State for Exiting the European Union*, [2017] UKSC 5

3 Constitution Committee, *European Union (Notification of Withdrawal) Bill* (8th Report, Session 2016–17, HL Paper 119)

4 *Ibid.*, para 13

5 Constitution Committee, *The ‘Great Repeal Bill’ and delegated powers* (9th Report, Session 2016–17, HL Paper 123)

that the Government uses the delegated powers it acquires under the Bill in an appropriate way. We argued that they should only be used so far as necessary to adapt the body of EU law to fit the UK's domestic legal framework and to implement the result of the UK's negotiations with the EU.

14. We also recommended strengthened scrutiny measures, including a requirement that a Minister sign a declaration in respect of each statutory instrument affirming that it does no more than necessary to translate EU law into UK law. In addition, the Explanatory Memorandum accompanying each instrument should explain what the EU law in question currently does, the effect of any amendment and why such amendment is necessary. This would allow Parliament to conduct more effective scrutiny on this important legislation.
15. The report also considered the devolution-related implications of repatriating EU laws. We recommended that the UK Government should make clear the role it sees for the Scottish, Welsh and Northern Irish Governments in preparing to incorporate EU law in areas that will, following Brexit, fall within their authority.
16. The Government acknowledged some of these points in its white paper, *Legislating for the United Kingdom's withdrawal from the European Union*,<sup>6</sup> however the substance of its response will be assessed when we come to examine the Bill itself.

## The Legislative Process

### *Legislative process inquiry*

17. Our major inquiry work focused on the legislative process, which followed up our 2004 report on *Parliament and the Legislative Process*.<sup>7</sup> The inquiry was broken down into four parts:
  - preparing legislation for Parliament;
  - the passage of legislation through Parliament;
  - the delegation of powers; and
  - the period after Royal Assent.
18. During the session we sought evidence on the parts of the inquiry dealing with preparing legislation for Parliament and delegated legislation. We heard oral evidence from the then Leader of the House of Commons, David Lidington MP, the Shadow Leader of the House of Lords, Baroness Smith of Basildon and the Leader of the Liberal Democrats in the House of Lords, Lord Newby. We also heard from the Chairman of the Delegated Powers and Regulatory Reform Committee, Baroness Fookes, from former Ministers, current and former Parliamentary Counsel, academics and expert groups.
19. For part 1 of the inquiry, *preparing legislation for Parliament*, we heard evidence on what it means to create 'good law'; how the impact of the UK's decision to

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6 Department for Exiting the European Union, *Legislating for the United Kingdom's withdrawal from the European Union*, Cm 9446, March 2017: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/604516/Great\\_repeal\\_bill\\_white\\_paper\\_accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604516/Great_repeal_bill_white_paper_accessible.pdf) [accessed 27 June 2017]

7 Constitution Committee, *Parliament and the Legislative Process* (14th Report, Session 2003–04, HL Paper 173)

leave the EU might affect the legislative process; how changes in technology might impact the legislative process, and the extent to which there might be public and stakeholder engagement in the legislative process, and the likely effectiveness of such engagement.

20. For part 3 of the inquiry, *the delegation of powers*, we heard evidence on the effectiveness of current parliamentary scrutiny of delegated legislation, the effects and appropriateness of Henry VIII powers, and the potential impact of Brexit-related legislation.
21. We expect to publish reports on these aspects of the legislative process later in this session.

### *Strathclyde Review: Government response*

22. On the subject of delegated powers, we received the Government’s response to our report on the Strathclyde Review in December 2016.<sup>8</sup> We concluded in our report 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.<sup>9</sup> We were therefore pleased that the Government decided not to bring forward legislation to implement the proposals in the Strathclyde Review.
23. We were however concerned that the Government’s response stated that they would “introduce the legislation if it becomes necessary to intervene to maintain the primacy of the House of Commons.”<sup>10</sup> This could be interpreted as a threat hanging over the House of Lords, such that if it decided to challenge secondary legislation in the future then the Government would seek to limit its powers. We maintain that such action would be inappropriate without a full assessment of the processes by which delegated legislation is scrutinised, especially in light of the greater numbers of statutory instruments that are expected in order to facilitate Brexit.

## **Devolution**

### *Inter-governmental relations in the UK: Government response*

24. We received the delayed<sup>11</sup> Government response to our report on *Inter-governmental relations in the UK* on 17 January 2017.<sup>12</sup> In our report, published on 27 March 2015, we emphasised the importance of effective inter-governmental relations between the UK Government, the Scottish and Welsh Governments and the Northern Ireland Executive.<sup>13</sup> We noted that

8 HM Government, *Government Response to the Strathclyde Review: Secondary legislation and the primacy of the House of Commons and the related Select Committee Reports*, Cm 9363, December 2016: <http://www.parliament.uk/documents/lords-committees/constitution/GovernmentResponse/Government-response-Strathclyde-Review-011216.pdf> [accessed 27 June 2017]

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

10 HM Government, *Government Response to the Strathclyde Review: Secondary legislation and the primacy of the House of Commons and the related Select Committee Reports*

11 We noted in our Sessional report 2015–16 that Government responses were “often delayed and unsatisfactory.” Constitution Committee, *Sessional report 2015–16* (1st Report of Session 2015–16, HL Paper 9)

12 Letter from Chris Skidmore MP, Minister for the Constitution, to the Chairman, 17 January 2017: <http://www.parliament.uk/documents/lords-committees/constitution/GovernmentResponse/Government-response-to-IGR-report-1701173.pdf> [accessed 27 June 2017]

13 Constitution Committee, *Inter-governmental relations in the United Kingdom* (11th Report of Session 2014–15, HL Paper 146)

the complexity of these relationships had increased as a result of further devolution and that a formal underpinning for managing them was essential.

25. We recommended strengthening the Joint Ministerial Committee (JMC), and bringing under its auspices additional formal bilateral mechanisms to manage some areas of devolved policy where there were shared competence and overlapping responsibility. We also recommended that devolution needed to be treated more effectively as a single cohesive issue by the UK Government and that there should be much greater transparency and parliamentary scrutiny of inter-governmental relations.
26. The Government's response affirmed the importance of inter-governmental relations, noting that the JMC had agreed to meet more frequently and that it would consider revisiting its Memorandum of Understanding in light of Brexit. The response also said that, in line with our recommendation, they were committed to revising and updating the Concordats and devolution guidance notes, and that transparency would be improved by laying JMC reports before both Houses of Parliament (this is expected in autumn 2017).
27. The Government rejected our recommendation to put the framework of inter-governmental relations into statute and did not fully engage with our call for the need to devise and articulate a vision for the future of the state and its devolution settlements.
28. We note that as a result of the UK's decision to leave the European Union, there have been more frequent JMC meetings in the course of the last year. However, given the concerns and requests for action set out in a joint letter from Scottish and Welsh ministers in June 2017,<sup>14</sup> there is room to improve the way the JMC operates, particularly by scheduling regular meetings, agreeing agendas further in advance, and by ensuring that the devolved administrations can initiate policy proposals.

#### *The Union and devolution: Government response*

29. We also received a late Government response to our report on *The Union and devolution* on 7 March 2017.<sup>15</sup> In our report, published on 25 May 2016, we explored the nature of the Union, and set out some of the risks arising from the devolution process to date.<sup>16</sup> We concluded that power had been devolved to Scotland, Wales and Northern Ireland in an *ad hoc*, piecemeal fashion and that successive governments had taken the Union for granted. We did not share the Government's confidence that all the pieces for a stable constitutional settlement would be in place with the implementation of the Scotland Act 2016 and the passage of the Wales Bill (see below).
30. In our report we set out practical measures to protect and strengthen the Union to ensure that any future devolution does not occur at the expense of its stability, coherence and viability. 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

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14 Letter from Mark Drakeford AM/AC and Michael Russell MSP to David Davis MP, 15 June 2017: <https://beta.gov.scot/news/scottish-and-welsh-governments-write-to-brexite-secretary-david-davis/> [accessed 27 June 2017]

15 Letter from Chris Skidmore MP, Minister for the Constitution, to the Chairman, 7 March 2017: <http://www.parliament.uk/documents/lords-committees/constitution/GovernmentResponse/CC42-Government-Response-to-The%20Union-and-Devolution.pdf> [accessed 27 June 2017]

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

at all times the responsibility of the UK Parliament and Government. The Government in its response declined to do so, beyond the headline areas of “defence, foreign policy and the constitution.”

31. 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. The Government noted that the Smith Commission and Silk Commission had been guided by principles in their work, but did not commit to making Devolution Impact Assessments for future devolution proposals.
32. A debate on these two reports and the Government responses is expected in this session.

### *Wales Bill*

33. We reported on the latest stage of devolution to Wales, in the form of the Wales Bill, on 28 October 2016.<sup>17</sup> We welcomed the decision to move the Welsh devolution settlement to a reserved powers model, putting it on the same footing as the Scottish settlement, however we raised a number of concerns about the detail of its implementation.
34. We concluded that there was no evidence of a clear rationale or fundamental principles underlying the scope of the powers devolved by the Wales Bill. We also argued that the complexity of the Bill increased the likelihood of demarcation disputes regarding the extent of the Welsh Assembly’s powers, and thus risked not only future litigation but the need for further legislation.
35. As with the Scotland Act 2016, the Wales Bill included a ‘permanence’ provision and a clause to put the Sewel Convention on a statutory footing. We reiterated our argument that setting these out in statute risked uncertainty about the lynchpin principle of parliamentary sovereignty and the potential involvement of the courts in discussions about the legislative competence of Parliament. Our concerns were realised during *R (Miller) v Secretary of State for Exiting the European Union*, when the interventions by the Lord Advocate on behalf of the Scottish government and the Counsel General for Wales on behalf of the Welsh government relied on the applicability of the Sewel Convention.<sup>18</sup> The Supreme Court judgment noted that “we do not underestimate the importance of constitutional conventions, some of which play a fundamental role in the operation of our constitution” but concluded that “policing of its scope and the manner of its operation does not lie within the constitutional remit of the judiciary.”<sup>19</sup>
36. The Government’s response to our report stated that the effect of including the Sewel Convention in the Bill was “to place existing practice on a statutory footing” while also saying that this did not “create new legal rights or obligations or in any way effect the sovereignty of Parliament.”<sup>20</sup> We nonetheless remain of the view that including a formulation of the Sewel Convention in the Wales Act, and the Scotland Act, created the undesirable

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17 Constitution Committee, *Wales Bill* (5th Report, Session 2016–17, HL Paper 59)

18 *R (Miller) v Secretary of State for Exiting the European Union*, [2017] [UKSC 5](#)

19 *Ibid.*

20 Government response to the Constitution Committee’s report on the Wales Bill, 13 December 2016: <http://www.parliament.uk/documents/lords-committees/constitution/GovernmentResponse/Government-response-to-the-Wales-Bill-131216.pdf> [accessed 27 June 2017]

risk of the involvement of the courts in discussions about the legislative competence of Parliament.

*‘English Votes for English Laws’*

37. During our 2016 inquiry on *The Union and devolution* we were asked by the then Leader of the House of Commons to consider examining the operation of the Government’s proposals for ‘English votes for English laws’ (EVEL), which were introduced in October 2015. We agreed to undertake a review of the constitutional impact of the new EVEL procedures, including their effect on the House of Lords and on Government, and their wider implications for the constitution as a whole.
38. In our report,<sup>21</sup> we agreed that the Government’s plan to review the impact of EVEL in the autumn of 2016 should not be seen as a final judgement on the procedures as it would be too soon to fully assess their impact on the Union and that the procedures should be retained on a trial basis until the end of that Parliament.
39. We recommended that after the next general election (which we then anticipated to be in 2020), a Joint Committee should be established to review the ‘technical and constitutional’ aspects of EVEL. We also recommended that the Joint Committee’s review should include an assessment of whether EVEL has altered public perceptions in England of a ‘democratic deficit’ and whether EVEL has affected public attitudes in the devolved nations.
40. The Government’s review of EVEL concluded that the procedures “will undoubtedly not remain unchanged, not least because the political makeup of the House and the devolution settlements have not remained static” and said that it would keep the operation of EVEL under review.<sup>22</sup>

**Judiciary**

*Judicial Appointments and Recruitment inquiry*

41. In March 2012, we published our report on *Judicial Appointments*.<sup>23</sup> It examined who should be responsible for the appointment of judges in England and Wales and Justices of the Supreme Court, and what the substantive criteria governing those appointments should be. It also set out concerns about the lack of diversity on the bench and made a number of recommendations to improve the judicial appointments process.
42. Five years on, we decided it was timely to conduct a short follow-up inquiry to examine the progress that has been made. As part of our annual evidence sessions with the Lord Chancellor, the Lord Chief Justice, and the President and Deputy President of the Supreme Court, we took evidence on these subjects.<sup>24</sup> We also heard from the Chair of the Judicial Appointments

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21 Constitution Committee, *English votes for English laws* (6th Report, Session 2016–17, HL Paper 61)

22 HM Government, *Technical Review of the Standing Orders Related to English Votes for English Laws and the Procedures they Introduced*, Cm 9430, March 2017: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/603540/2017-03-27\\_English\\_Votes\\_for\\_English\\_Laws\\_Technical\\_Review\\_Document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/603540/2017-03-27_English_Votes_for_English_Laws_Technical_Review_Document.pdf) [accessed 27 June 2017]

23 Constitution Committee, *Judicial Appointments* (25th Report, Session 2010–12, HL Paper 272)

24 Annual oral evidence taken with the Lord Chancellor and Secretary of State for Justice, 1 March 2017 (Session 2016–17), [QQ 1–14](#); Annual oral evidence taken with the Lord Chief Justice, 22 March 2017 (Session 2016–17), [QQ 1–13](#); Annual oral evidence taken with the President and Deputy President of the Supreme Court, 29 March 2017 (Session 2016–17), [QQ 1–12](#)

Commission and representatives of the Law Society, the Bar Council and the Chartered Institute of Legal Executives.<sup>25</sup>

43. We expect to publish a report with our findings later in this session.

#### *Investigatory Powers Bill*

44. Our report on the Investigatory Powers Bill, published on 8 June 2016, also examined judicial issues.<sup>26</sup> We were concerned that the Bill permitted the Prime Minister—subject to the consultation—to appoint Judicial Commissioners. Given the nature of their proposed role—and the expectation that they would be senior members of the judiciary—we questioned whether the arrangement would be consistent with the separation of powers principle, and with the constitutional interest in securing public confidence in the independence and impartiality of those who are appointed to judicial roles.
45. The Government acknowledged this argument, and during the Committee stage of the Bill in the House of Lords, tabled an amendment to the effect that the Prime Minister could only appoint a Judicial Commissioner after receiving a concurrent recommendation from the Heads of the Judiciary and the Lord Chancellor.
46. We also raised concerns about a Henry VIII power in the Bill that allowed the Government to modify certain functions of the Judicial Commissioners, and recommended that they should be limited to extending or augmenting functions to keep pace with technological change. The Government argued that, as the power was subject to the affirmative procedure, there was sufficient parliamentary oversight.<sup>27</sup>

#### **Delegated legislation and parliamentary scrutiny**

47. During our legislative scrutiny work in this session we examined a number of Bills which delegated powers to ministers to determine substantial policy issues.

#### *Children and Social Work Bill [HL]*

48. Our report on the Children and Social Work Bill [HL] raised concerns about the delivery of significant policy decisions wholly through delegated legislation.<sup>28</sup> These included the establishment of a new statutory body and the creation and definition of new criminal offences.

#### *Digital Economy Bill*

49. In our report on the Digital Economy Bill we also raised concerns about the extent to which details of the policy were to be left to guidance and guidelines to be published by an unidentified regulator—and which would not be subject to any parliamentary scrutiny.<sup>29</sup> We argued that this adversely affected the

25 Oral evidence taken with the Chairman and Vice-Chairman of the Judicial Appointments Commission, 1 March 2017 (Session 2016–17), [QQ 1–10](#); Oral evidence taken with the President of the Law Society of England and Wales, Chairman of the Bar Council Equality and Diversity and Social Mobility Committee, Bar Council of England and Wales, and the Vice-President of the Chartered Institute of Legal Executives, 15 March 2017 (Session 2016–17), [QQ 21–34](#)

26 Constitution Committee, *Investigatory Powers Bill* (3rd Report, Session 2016–17, HL Paper 24)

27 Letter from the Rt Hon. Earl Howe PC to the Chairman, 5 September 2016: <http://www.parliament.uk/documents/lords-committees/constitution/Scrutiny/Government-response-Investigatory-Powers%20Bill-050916.pdf> [accessed 27 June 2017]

28 Constitution Committee, *Children and Social Work Bill* (2nd Report, Session 2016–17, HL Paper 10)

29 Constitution Committee, *Digital Economy Bill* (7th Report, Session 2016–17, HL Paper 96)

ability of the House to scrutinise the Bill effectively. The Government in its response committed to table amendments to address these concerns.<sup>30</sup>

50. We also addressed the large number and wide scope of Henry VIII powers included in the Bill.<sup>31</sup> We drew the attention of the House in particular to a power that allowed primary and secondary legislation passed by the devolved legislatures to be amended by a statutory instrument without the consent or involvement of the relevant devolved legislatures or governments, or any procedural safeguards. The Government in its response argued that the consequential amendments that would result from the powers were relatively minor and subject to a Memorandum of Understanding and relevant concordats between the administrations.<sup>32</sup>

#### *Pension Schemes Bill [HL]*

51. The Committee wrote to Lord Freud, Minister of State for Welfare Reform, on the Pension Schemes Bill [HL].<sup>33</sup> We noted that the Bill delegated to Government the power to make regulations that would determine substantial policy issues, some of which were in areas where the policy had yet to be developed or where consultation was still underway.

#### **Other legislative scrutiny**

#### *Cultural Property (Armed Conflicts) Bill [HL]*

52. The Committee wrote to Baroness Neville-Rolfe, Parliamentary Under Secretary of State at the Department for Culture, Media & Sport, in relation to the Cultural Property (Armed Conflicts) Bill [HL].<sup>34</sup> We asked about the apparent prioritisation of Article 14 of the Hague Convention in the Bill over the UK's other obligations under EU and international law. In response, the Minister said that as long as the UK remained a member of the EU, the principle of the supremacy of EU law meant that it would take precedence over any contradictory provisions in domestic law.<sup>35</sup>

#### *Higher Education and Research Bill*

53. On the Higher Education and Research Bill the Committee wrote to Viscount Younger of Leckie, the Spokesperson on Higher Education, regarding the transfer of powers from the Privy Council to the Office for Students.<sup>36</sup> We

30 Letter from Lord Ashton of Hyde, Department for Culture, Media & Sport, to the Chairman, 16 February 2017: <http://www.parliament.uk/documents/lords-committees/constitution/GovernmentResponse/LS30-Government-response-Digital-Economy-Bill.pdf> [accessed 27 June 2017]

31 Constitution Committee, *Digital Economy Bill* (7th report, Session 2016–17, HL Paper 96)

32 Letter from Lord Ashton of Hyde, Department for Culture, Media & Sport, to the Chairman, 16 February 2017: <http://www.parliament.uk/documents/lords-committees/constitution/GovernmentResponse/LS30-Government-response-Digital-Economy-Bill.pdf> [accessed 27 June 2017]

33 Letter from the Chairman to Lord Freud, Minister of State for Welfare Reform, Department for Work and Pensions, 11 November 2016: <http://www.parliament.uk/documents/lords-committees/constitution/Scrutiny/Chairman-to-Lord-Freud-111116.pdf> [accessed 7 July 2017]

34 Letter from the Chairman to Baroness Neville-Rolfe, Department for Culture, Media & Sport, 15 June 2016: [http://www.parliament.uk/documents/lords-committees/constitution/Scrutiny/Chairman%20to%20Neville-Rolfe%20Cultural%20Property%20\(Armed%20Conflicts\)%20Bill%2015%20June.pdf](http://www.parliament.uk/documents/lords-committees/constitution/Scrutiny/Chairman%20to%20Neville-Rolfe%20Cultural%20Property%20(Armed%20Conflicts)%20Bill%2015%20June.pdf) [accessed 7 July 2017]

35 Letter from Baroness Neville-Rolfe to the Chairman, 27 June 2016: [http://www.parliament.uk/documents/lords-committees/constitution/Scrutiny/Government-response-Cultural-Property-\(Armed-Conflicts\)-Bill-270616.pdf](http://www.parliament.uk/documents/lords-committees/constitution/Scrutiny/Government-response-Cultural-Property-(Armed-Conflicts)-Bill-270616.pdf) [accessed 27 June 2017]

36 Letter from the Chairman to Viscount Younger of Leckie, Department for Education, 6 January 2017: <http://www.parliament.uk/documents/lords-committees/constitution/Scrutiny/Chairman-to-Viscount-Younger-of-Leckie-Higher-Education-Bill-060117.pdf> [accessed 7 July 2017]

asked under what circumstances the Government considered it appropriate for powers held by the Privy Council to be transferred to another body and what assessment had been made of the potential effects of removing these powers from the oversight of the Privy Council.

54. The response from the Minister set out the intention behind the changes in the Bill, but did not address the general principles. He noted that moving the power to grant degree awards from orders of the Privy Council to statutory instruments would result in greater transparency and parliamentary scrutiny.<sup>37</sup>

### *Annual evidence sessions*

55. As noted above, our annual evidence sessions with the Lord Chancellor, the Lord Chief Justice, and the President and Deputy President of the Supreme Court, informed work on our Judicial Appointments and Recruitment follow-up inquiry. We will discuss their evidence in more detail when we issue our inquiry report later this session.

### *Chairman of the House of Lords Appointments Commission*

56. In January 2017 we held our annual evidence session with the Rt Hon. Professor Lord Kakkar, Chairman of the House of Lords Appointments Commission.<sup>38</sup> The session covered the Commission's power to vet appointments; restrictions on the nominations of special advisers; the number of cross-bench Peers appointed by the Commission; the diversity of Members in non-political appointments; and the expectations on potential appointees to attend and contribute to the House of Lords.

### *Lord Chancellor*

57. We heard from Elizabeth Truss MP, the then Lord Chancellor and Secretary of State for Justice in March 2017.<sup>39</sup> The session covered the role and responsibilities of the Lord Chancellor, drawing on our 2014 report.<sup>40</sup> We also examined issues related to judicial appointments, the Bill of Rights, Prisoner Voting, and the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

### *Lord Chief Justice*

58. Lord Thomas of Cwmgiedd, the Lord Chief Justice of England and Wales, gave evidence to the Committee in March 2017.<sup>41</sup> The session covered judicial recruitment, appointment, career development, morale, diversity and succession planning. It also explored: judicial independence and the government's role in relation to it; the plans to modernise HM Courts and Tribunals Service; access to justice and legal aid; Brexit and devolution issues.

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37 Letter from Viscount Younger of Leckie to the Chairman, 24 February 2017: <http://www.parliament.uk/documents/lords-committees/constitution/GovernmentResponse/CC31-Letter-Younger-to-LangHE-R-Bill-240217.pdf> [accessed 28 June 2017]

38 Annual oral evidence taken with the Chairman of the House of Lords Appointments Commission, 18 January 2017 (Session 2016–17), [QQ 1–12](#)

39 Annual oral evidence taken with the Lord Chancellor and Secretary of State for Justice, 1 March 2017 (Session 2016–17), [QQ 1–14](#)

40 Constitution Committee, *The office of Lord Chancellor* (6th Report, Session 2014–15, HL Paper 75)

41 Annual oral evidence taken with the Lord Chief Justice, 22 March 2017 (Session 2016–17), [QQ 1–13](#)

*Minister for the Constitution*

59. In March 2017 we took evidence from Chris Skidmore MP, Parliamentary Secretary (Minister for the Constitution) in the Cabinet Office.<sup>42</sup> The session covered the Government’s plans for constitutional reform; ministerial responsibilities for coordinating constitutional reform; devolution and inter-governmental relations; legislating for Brexit; plans to revise the Cabinet Manual; and party political funding.

*President and Deputy President of the Supreme Court*

60. We heard from the President of Supreme Court, Lord Neuberger of Abbotsbury, and the Deputy President Baroness Hale of Richmond in March 2017.<sup>43</sup> The session covered judicial appointments and careers; the work of the Supreme Court; the relationship between the Supreme Court and Parliament; the working relationship with the Judicial Committee of the Privy Council; and the relations between the Supreme Court and the European Court of Human Rights and the Court of Justice of the European Union.

**Conclusion**

61. Our work in the last session identified trends in legislation, such as a lack of policy detail and the delegation of broad powers, which make it more difficult for both Houses to fulfil their scrutiny role. We expect the Government to take seriously the concerns we raised and address them in their preparation of legislation in the current session.
62. The decision of the UK to leave the European Union poses significant challenges for Parliament’s scrutiny of the Government and its legislation. This was an important part of our work in the 2016–17 session and we will prioritise scrutiny of the bills that seek to implement Brexit in the new Parliament. We are also aware of the need to consider any consequences of Brexit on the relationships between the UK Government and the devolved institutions, and on their respective powers, and we will pay close attention to these as part of our scrutiny work in the current session.

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42 Annual oral evidence taken with the Minister for the Constitution, 8 March (Session 2016–17), [QQ 1–8](#)

43 Annual oral evidence taken with the President and Deputy President of the Supreme Court, 29 March (Session 2016–17), [QQ 1–12](#)