



HOUSE OF LORDS

Constitution
Committee



The House of Lords is an essential part of the UK Parliament. Its committees investigate public policy, proposed laws and government activity. The remit of the Constitution Committee is ‘to examine the constitutional implications of all public bills coming before the House, and to keep under review the operation of the constitution.’

Contents

Background and role	1
Membership	2
Investigations and reports	3

Background and role

Why it was set up

The constitution is the foundation upon which law and government are built. The Constitution Committee was set up in 2001, following the Royal Commission on Lords Reform (the Wakeham Commission), which said that changes should not be made to the constitution ‘without full and open debate and an awareness of the consequences.’ The committee’s role is to ensure that any such changes are scrutinised and properly thought through.

What it does

The committee investigates matters relating to the constitution, such as how judges are appointed, how power is devolved, and the rules governing elections and referendums. Over a period of several months, the committee meets to consider written evidence (information given in writing) and oral evidence (information given in person) from government representatives, constitutional experts, civic organisations and members of the public. The committee writes a report of its findings for the House of Lords to debate. The government responds to its reports.



The committee also considers the constitutional implications of all government bills. If the committee thinks a bill raises constitutional issues, it may ask the government for information in writing or meet a minister to discuss the issues. It may also write a report explaining a bill’s constitutional implications. Members look at these reports before they debate a bill as part of the law-making process.

Membership

The committee has 12 members – including three former secretaries of state, leading lawyers and former judges.

Members

Lord Lang of Monkton (chairman)

Former Secretary of State for Scotland

Lord Beith

Former MP

Lord Brennan

Barrister

Baroness Dean of Thornton-le-Fylde

Former trade union leader

Lord Hunt of Wirral

Former Secretary of State for Wales

Lord Judge

Former Lord Chief Justice of England and Wales

Lord MacGregor of Pulham Market

Former Secretary of State for Education and Science

Lord MacLennan of Rogart

Former MP and leader of the SDP

Lord Morgan

Academic (modern British history and politics expert)

Lord Norton Louth

Academic (constitution and politics expert)

Lord Pannick

Human rights lawyer

Baroness Taylor of Bolton

Former Leader of the House of Commons



Constitution Committee chairman Lord Lang of Monkton questions witnesses

Investigations and reports

Delegated Legislation and Parliament: A Response to the Strathclyde Review

Checking the small print

Acts of Parliament (primary legislation) set out the key aims of legislation. Delegated legislation (known as secondary legislation) fills in the practical details needed for a law to operate in the way the Act intended. These details, such as the level of a fee to be charged, are set out in regulations, usually in the form of a statutory instrument (SI).

In 2015, the government asked Lord Strathclyde to review the relationship between the House of Lords and the House of Commons in relation to secondary legislation following a defeat in the Lords of secondary legislation altering the tax credits system.

Issues raised

The committee's report criticised the focus of the Strathclyde Review, saying it was:

- based on a misunderstanding about the difference between primary and delegated legislation
- not a proper basis for determining constitutional change.

It argued that proceeding with changes to Parliament's role based on the review would damage Parliament's role and reputation.

Misguided remit

The report stated that the remit set by the government for the review should have focused on the relationship between Parliament and government, rather than on the relationship between the Commons and the Lords. Consequently, the review considered the wrong questions – and addressed the wrong issues.

The committee recommended that the government should not seek to move forward with proposals based on the Strathclyde Review without further consideration, by both Houses, of the delegated legislation process in its entirety.

Key findings

- The House of Lords' rejection of the tax credits regulations did not represent a constitutional crisis.
- The starting point for reviewing how Parliament scrutinises government should not be how the government can secure its business. Instead the focus should be on how Parliament can perform its scrutiny role effectively.
- The government should consider the extent to which it is appropriate to make legislative changes with significant financial implications through delegated legislation. The House of Commons already has its financial privilege assured in relation to measures contained in finance bills.
- The government should recognise the need for restraint in its use of delegated powers and take care to ensure that proposals for delegated powers are appropriately detailed and narrow in scope.

Scotland Bill

The committee published its report in November 2015, shortly before the first debate on the Scotland Bill in the House of Lords. The committee expressed deep concern at the process leading up to the introduction of the Scotland Bill into Parliament, stating that a prior agreement between the leaders of the main UK political parties meant that Parliament had been 'excluded from the decision-making process'.

A lack of crucial information

The committee's report echoed the Economic Affairs Committee's recommendation (see the Economic Affairs Committee briefing) that the House of Lords should consider delaying the committee stage of the Scotland Bill (during which the bill is examined line by line) because of a lack of crucial information. It argued that Parliament needed to see a revised fiscal framework (setting out the financial arrangement between the UK and Scottish governments) and a new Memorandum of Understanding (setting out how the relationship between the UK government and the devolved administrations is managed), in order to properly scrutinise the bill.

The committee also:

- stated that the bill seemed to undermine Parliament's sovereign right to make law—a fundamental principle of the UK's constitution
- noted a risk that the courts would be drawn into adjudicating on the way Parliament passed laws
- highlighted a potential problem should the Scottish government seek to lower the voting age in Scotland to 16 without also seeking to give at least some prisoners the vote (to comply with a judgment of the European Court on Human Rights).

“ Former Secretary of State for Scotland Lord Lang, who is the chairman of the committee, said peers should consider delaying the Bill until a new Memorandum of Understanding is published setting out how the UK and Scottish Governments will work together to resolve disputes. ”

Huffington Post UK



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