



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’.

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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.

During the 2016-17 session, the committee published five legislative scrutiny reports and corresponded with ministers on a further three bills.

the Crown
Parliament
the state Government
Citizens
the law the courts
civil service

Membership

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

Members

Baroness Taylor of Bolton (chairman)

Former Leader of the House of Commons and former government chief whip

Lord Beith

Former MP

Baroness Corston

Former chair of the Parliamentary Labour Party

Baroness Drake

Former president of the Trades Union Congress

Lord Dunlop

Former Parliamentary Under-Secretary of State for Scotland and Northern Ireland

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 of Louth

Academic (constitution and politics expert)

Lord Pannick

Human rights lawyer

Investigations and reports

The ‘Great Repeal Bill’ and delegated powers

During the 2016-17 session, the Constitution Committee published three reports in response to Brexit. These included ‘The Great Repeal Bill and delegated powers’ in March 2017, which considered the process for making UK law ready for leaving the EU.

How it came about

The committee highlighted that the government would need broad delegated powers to convert EU law into UK law and adapt it to make Brexit possible. It recommended that the scope of these powers should be limited as much as possible and that new scrutiny processes should be established to ensure that Parliament has proper control and oversight.

Safeguarding delegated powers

The report sets out the issues liable to be raised by the Great Repeal Bill in a wider constitutional context and proposes measures to safeguard the rights of Parliament as the process of Brexit gets underway. The Constitution Committee argues that Parliament should make sure the government does not use delegated powers in the Great Repeal Bill to change the law in areas currently governed by the EU without proper parliamentary scrutiny.

It argues that delegated powers should only be used when 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.

Strengthened scrutiny measures

The committee also recommended more effective scrutiny measures requiring that ministers sign a declaration for each statutory instrument (SI) affirming that it does no more than necessary to translate EU law into UK law. An explanatory memorandum accompanying each SI should explain what that EU law currently does, the effect of any amendment and why the amendment is necessary.

Devolution of EU laws

The report also considers the devolution-related implications of repatriating EU laws. The committee recommends that the UK government should clarify the role it sees for the Scottish, Welsh and Northern Irish governments when preparing to incorporate EU law in areas within their remit after Brexit.

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 are set out in regulations, usually in the form of a statutory instrument (SI).

Wales Bill

The Wales Bill, published in October 2016, is a highly detailed and complex piece of constitutional legislation. It primarily amends the Government of Wales Act 2006 (GWA 2006), which, in its amended form, will remain the principal constitutional text concerning the Welsh devolution settlement.

The committee's report summarises a number of constitutional issues raised by the bill. It draws upon the committee's recent reports on constitutional change, the devolution of further powers to Scotland, and 'The Union and Devolution'. In addition, it made use of the Welsh Assembly's Constitutional and Legislative Affairs Committee's recent report on the UK government's Wales Bill, and met with members of that committee to discuss their views.

A lack of clarity

The Wales Bill report states that the lack of clarity over the demarcation of powers between the UK Parliament and Welsh Assembly not only risks future litigation, but the need for further legislation to clarify the settlement.

The committee also:

- welcomed the move from a 'conferred powers' model (where the Welsh Assembly can only legislate on matters specifically devolved to it) to a 'reserved powers' model (where Welsh Assembly can legislate on any subject not 'reserved' by the UK Parliament).

- highlighted the complexity of the settlement set out in the Wales Bill, in which numerous legal tests interact with hundreds of matters reserved to the UK government and Parliament.
- calls on the government to explain whether the Wales Bill is intended to reduce the legislative competence of the Welsh Assembly in some areas and what steps they plan to take to ensure that the Assembly's competence is not reduced.
- notes that absolute restrictions on the Assembly's ability to modify criminal law relating to sexual offences may affect its ability to exercise its legislative competence relating to the protection and well-being of children and young adults.

A coherent strategy

The committee notes that there is 'no evidence of a clear rationale' for the powers devolved by the Wales Bill and calls on the government to explain the principles which underpin the devolution proposals set out in the bill.

The committee points out that in its recent report, 'The Union and Devolution', it recommended that further devolution should be managed in a coherent way based on sound principles and clarity about the purpose of the proposed devolution. It says the government has failed to provide a clear rationale for the scope of powers devolved by the Wales Bill.



The Senedd,
National Assembly for Wales

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