



HOUSE OF LORDS

Revised transcript of evidence taken before
The Select Committee on Secondary Legislation Scrutiny
Inquiry on
GOVERNMENT CONSULTATION PRACTICE

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TUESDAY 9 DECEMBER 2014

3.45 pm

Witness: Rt Hon Oliver Letwin MP

Members present

Lord Goodlad (Chairman)
 Baroness Andrews
 Lord Bichard
 Lord Borwick
 Lord Bowness
 Baroness Humphreys
 Baroness Stern
 Lord Woolmer of Leeds

Examination of Witness

Rt Hon Oliver Letwin MP, Minister for Government Policy in the Cabinet Office

Q16 The Chairman: Minister, can I, on behalf of the Committee, welcome you back? You are extremely generous with your time for us. This is a formal evidence-taking session that is on the record and is being webcast live. A verbatim note is being taken, which will be put on the public record in printed form and on the parliamentary website. We shall, of course, send a copy of the transcript for the amendment of any errors, in the most unlikely event of there being any. Before we start, could I ask Members of the Committee who have any relevant interests to declare them so that they can be recorded in the transcript? There are no relevant interests. We are likely to be interrupted by Divisions, and ping-pong diplomacy between the two Houses, so if you are content, we will kick off.

Minister, are you concerned that the Committee has criticised the consultation practice of the Government in, I think, one in seven of the instruments that we report to the House?

Mr Letwin: Thank you, Chairman. I would obviously like to reach a situation where the Committee did not feel it needed to criticise anything ever, but I doubt we shall ever achieve that and I do not harbour any resentment whatever about the Committee criticising what it seeks to criticise; that is its role. I do not agree with all the Committee's criticisms, but some of them are valid and we will no doubt have a chance, as we go through, to talk about each of those categories. Where you have made valid criticisms, which I hope we will also have a chance to discuss, we can make some adjustments in both our practice and our principles.

The Chairman: I take it that you think that the departments will keep their overall approach to consultation under review. Could you enlighten us as to the likely role of the Cabinet Office, in your view, in learning lessons from the monitoring of consultation practice?

Mr Letwin: Yes, willingly. I want to stress that not even the Prime Minister, let alone the mere Cabinet Office, is in charge of the entire operations of every department. Those fall to

the relevant Secretaries of State in our system, so I cannot command. The general guidelines, the principles, although the property of Cabinet as a whole are of course things over which we have a considerable influence, so one of the things we will continue to do is to keep those under review. I am sure you will want to call me, if I am still here, or my successors in kind if not, before you, and I imagine that these principles will evolve through time as a result. The Cabinet Office can certainly make proposals to change them, and provided those are approved by Cabinet colleagues, that will happen.

Secondly, we perform a function, which is to keep looking at how departments are acting. We may want to talk later, if the Committee wishes, about things like the average lengths of consultations, which are things that we continuously look at across Whitehall.

A further point is that you have highlighted some cases in which some departments have not followed the principles properly, which I cannot cure by changing the principles but I may be able to assist in improving by drawing their attention to things the Committee has criticised and asking for either explanations or improvements in future. As I say, I do not want to mislead the Committee. I do not think this is going to lead to an instant or permanent Elysium. I do think that you will continue to need to criticise and the Cabinet Office will continue to need to prod, because the fact is that on the one side there are the needs of democracy, which the Committee represents—the desire to make sure that things are properly done for Parliament and for the wider public—and on the other side there is the fact that the Government have to dispatch their business. This is a continuous tension and it is productive, but the Committee should raise issues and we should raise them with the departments, and they, by those means, are kept on the *qui vive*.

The Chairman: Thank you very much, Minister.

Q17 Lord Borwick: There is a theme in this particular discussion, as in the previous one, of the conflict between administrative convenience and stakeholder interests, and our feeling that many of the departments regard consultation as inherently administratively inconvenient. Is that a fair analysis, and what has the Cabinet Office done to ensure that departments do not arrange consultations to prioritise administrative convenience over stakeholder interests?

Mr Letwin: I half accept that. I do not think I would put it in terms of administrative convenience. (Sorry, to be clear, I should not wish to deny that there are cases in which particular officials in particular departments are concerned about administrative convenience, but I do not think that is the overriding motive of a department of state). What they are mainly trying to do is to dispatch the Government's business, which is jolly tricky. It takes a long time to work out what you want to do, it takes a long time to discuss it with colleagues, it

takes a long time to formulate it properly, it takes a long time to clear it internally, and it takes a long time to legislate about it and then implement the legislation. There are things that I myself was much involved in conceiving four and a half years ago that we are just on the point of trying to deliver, so it is a very long process in many cases. Therefore, if you are in a department of state, you are constantly trying to avoid that process stretching out ad infinitum and doing nothing. It is a natural thing. I do not think that is because people are malignly trying to put administrative convenience over other considerations. It is just that they are trying to get on and dispatch business against the background of a lot of checks and balances, quite rightly, in our system. We do not run things the way authoritarian states do, and that is inherently inefficient but it has other benefits.

I do think that from time to time a result of that inevitable pressure is that departments, at a certain stage in a process—it may occur at many different stages, and the one that you are particularly concerned about is consultation, but there are others—can be prey to cutting corners. That is what you and, reflecting some of your criticisms, I or whoever is doing my job need to be alert to.

Q18 Lord Bichard: It seems like a moment in time, but it is two years since we discussed holiday periods and since I thought you agreed with me that you might spell out more explicitly in the guidance to departments that it was not a great idea to concentrate consultation on holiday periods. I am not sure that anything happened as a result of that conversation, but I would be interested to know whether it did. The fact is that if you look at the Department for Education, which we spoke to recently, of the 39 consultations that took place between January and August this year, 28 fell at least partly in a school holiday period. The department makes the point that not all consultations have schools as their principal target, but in a way that misses the point, because others take holidays as well as schools. Are we any closer to making it clear to departments that this is not acceptable practice? Are we any closer to an improvement in the practice?

Mr Letwin: The first thing I should say is that in the consultation principles as we finally issued them, reflecting the points that you and other Members of the Committee, and indeed the review critics, made, we said, “where the consultation spans all or part of a holiday period policy makers should consider what if any impact there may be and take appropriate mitigating action”. In many cases, that would mean issuing them rather earlier or continuing them rather later and hence being rather longer than they would otherwise be if they had not spanned a holiday period.

Lord Bichard: Can I just comment on that? That is not the agreement that I thought we had. That says that where you consult during a holiday period you should do other things. I thought the agreement that we had was that people would be discouraged from consulting in holiday periods, which is a very different point.

Mr Letwin: Sorry if I gave the impression that I thought one could avoid holiday periods entirely. I do not think one can; it is quite impossible. There are lots of holiday periods through the year. A lot of government business gets done, for example, between Easter and the summer holiday, and you could not possibly, in every case, wait until October.

Lord Bichard: However, you could suggest that, where possible, holiday periods should be avoided, and that certainly the kind of consultation the Department for Education was involved in over the promotion of British values, which fell almost entirely in the holiday period, is not good practice.

Mr Letwin: That is a different point, which is covered by the principles, and what I was about to go on to say is that I think it is a fair cop. I am talking here about the school premises regulations, the independent school standards and the children and young persons regulations, which you have looked at. I have also looked at them, because you looked at them, and I have seen the transcript and so on, and it seems to me that not enough care was taken in those three cases to make sure that there was a sufficient additional period outside the holiday. I do not think it was wrong for them to consult on those inter alia in the holiday period, but I do think there was not enough time around them, and I am going to be writing to the Department for Education to say so. Incidentally, I think that David Laws, in his response to you, made it pretty clear that he did not think it was optimal either, so I do not think I am going to encounter stiff resistance on that point. However, I want to be very clear; I am not saying that departments could entirely avoid holiday periods. I do not think that is feasible.

Lord Bichard: Nor am I, Minister.

Mr Letwin: However, I do not even mean that they should only exceptionally tread in them. What I think is reasonable is what we say here: that we need to make sure it is the practice, when you are in a holiday period, that you should allow some mitigating action—either to have gone into the thing before you get to the holiday period with the relevant people quite carefully or to extend beyond the holiday period afterwards—so that people do have a chance, if they are on holiday, nevertheless to respond in an appropriate way. As I say, I do not think that in those three cases enough of that was done. As a matter of fact, there is a fourth case, not in the Department for Education, that you have also looked at, which is the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2014, which

had five weeks' consultation. That was between 29 July and 2 September. Now, employment agencies are not like schools, in the sense they are in business and have to continue in business during the school holiday period. However, your point is well taken that it is not only schools that go on holiday, and that too, in the spirit of the principles, should have been commenced earlier, extended later or shifted in time, to some degree, because it was too located in the August period. I am not disagreeing with your general principle.

Lord Bichard: However, it worries us, or it certainly worries me, Minister, that in a way we sometimes feel that we are the only people who are taking any interest in this issue. When we spoke to the Ministers from the Department for Education and asked them if they could give us some statistics on these issues, they were not able to do so, which is why the correspondence took place. You have said that we drew your attention to these cases. Is there not room for some better monitoring of just how this consultation process is being managed, and when it is not being managed well some action taken or some advice given to departments, rather than waiting for us to identify all the bad practice that exists?

Mr Letwin: My answer to that is yes and no, in the sense that it is necessary for us to make sure that people take seriously the principles that we have all agreed to, and the Department for Education was one of those departments that agreed to these principles. That is a job for us, and we will take some action now to try to make sure that they pay more attention to that as we move forward. However, I have to say that the Committee is ideally placed to keep alerting us to things that have fallen away from the principles. I do not think it makes sense for the Cabinet Office to be doing an individual study of each case, given that you are doing so and that you have an enormous amount of capacity to do that and you do it with extraordinary, dogged perseverance, quite rightly. It is a sensible role for us to set the right principles, for the departments to try to follow them, and when they fall from the path of virtue for you to highlight it and then for us to do something to make sure that they do not ignore that.

Lord Bichard: I am sure we could have a debate, Minister, about who has more capacity, but we will not.

Mr Letwin: Well, there are a lot of you and only one of me.

Q19 Baroness Andrews: At the risk of being called dogged again, I want to pursue something that came up in the previous question in a slightly different way. When you spoke to the Committee last, you also said that formal consultation should be aimed at people whose rights and interests might be affected by new legislation, which is clearly the case. However, as you say, government cannot always know who those people are. Consultations should be

public enough so that people who you did not know were going to be affected could come up and say, “I am going to be affected”. That makes perfect sense, except that we do quote an instance here, which is really very important and there was a big debate in this House about it: the Defra draft Working Time (Amendment) Regulations and the proposed abolition of the Agricultural Wages Board. Then we found that there was quite a narrow constituency of people who were being regulated by the board and many apparently said they had been kept in ignorance about Defra’s intention for a long time, and then they were told that a consultation would take place and it would start in 24 hours. Although ideally one would like the people affected to be well informed and part of the iterative process, clearly there are instances where this does not happen, where the consultation suddenly appears and they still may not be able to take advantage of it. The question is: do you think that consultation can always act as a failsafe mechanism to pick up those voices? Does it not reinforce the case for very judicious, careful determination of the length of consultation and the way that consultation is conducted?

Mr Letwin: It is difficult to generalise from a very specific case, but let me start with a specific case. We need to disentangle two different things. There is the question of the abolition of the Agricultural Wages Board, which is the underlying measure, and there is the question of the adjustment of the 1998 regulations in an amendment, which changes the nature of the leave arrangements and makes them consistent with leave arrangements for the minimum wage operation in the normal economy, so to speak. One, the leave regulation amendment, is consequential on the other, the abolition of the Agricultural Wages Board.

Now, as to the underlying measure, on the Agricultural Wages Board, obviously I do not know whom the Committee will have talked to, but what I do know is that anybody who is in the agricultural business in any capacity or associated with it, as the NFU or the unions or whatever were, who was not aware that the Government were moving towards the abolition of the Agricultural Wages Board was peculiarly removed from the scene of political action in this country. It had been discussed to my certain knowledge, because I was involved in it, since about 1998. It was a very long-running concern of the Conservative Party and could have been expected to be something that would be discussed and proposed. As far as I am aware, nobody suggested that there had not been sufficient debate about it. There were, indeed, debates in both Houses about it. There was a great deal of interest in it.

Now, I do accept that there was a great oddity about the whole process, because it interacted in a way that was not foreseen with what may or may not have been a genuinely devolved power in what is certainly an unfortunately confused constitutional scene in relation to the

powers of the Welsh Assembly as they then were. We are all trying to move to a clearer definition of devolution now, where I hope these issues will cease to arise. It is a very good test case, incidentally, of why the original settlement on that was not everything that might be desired, but that goes beyond my scope—it was not our Government—and, undoubtedly, beyond your inquiry here.

Given that the Welsh Assembly stepped in and decided to legislate to retain an Agricultural Wages Board in Wales, there was obviously this very unfortunate and inelegant occurrence that a debate that had been planned in the House of Lords two days hence could either have been continued, which it was but in very odd circumstances, or, equally oddly, disrupted and stopped. That is a misfortune, but that is nothing to do with the consultation and it is nothing to do with the leave arrangements. In fact, it is not even to do with the Agricultural Wages Board; it is to do with constitutional unclarity about the position of the Welsh Assembly in such matters.

So far as the leave arrangements are concerned, I am not aware of any substantial issue. They were mainly a technical change. I am not aware of any problems that have arisen since they were adjusted to cohere with the rest of the arrangements in the rest of the economy. I do not think that anything went particularly wrong with the provisions, except that, of course, having got them all ready and consulted about them, once it was decided not to continue there and then with the Agricultural Wages Board abolition in England, because this had changed in Wales, we needed to go back and redo them so that they applied only to England. There was, again, an inelegance, but it again is traced back to the constitutional issue. When I started looking at this, because the Committee alerted me to it, I was horrified by the sequence. The more I looked at it, the more I became clear that, while pretty inelegant, to put it mildly, and messy, the messiness is a constitutional one and not a consultation one.

Q20 Baroness Andrews: You certainly know more than I do about the internal processes and it is possibly an exceptional case in many ways, but there is a general point about how you reach people in order to make sure that when a consultation period starts you capture the people, particularly the ones who have less of a voice and are going to be impacted greatly. I am straying slightly outside my brief, but is there anything prior to the consultation process or within the consultation process or a demand placed upon the consultation process to make that more effective, as it were, or more democratic?

Mr Letwin: Yes. There, I am entirely with you. A great part of the answer on that is to move away from overemphasis on, but not to stop doing, the formal consultation process itself. We have been trying—and I think we are making some progress—to lead and put pressure on

departments to be much more imaginative in the ways in which they go out and try to get people engaged who need to be engaged. There is an advantage to government, an advantage to those people and a general advantage, because you find things out that you did not know previously. They may object to what you are doing on ideological grounds and you will not pay any attention, but they may bring up all sorts of technical issues and consequences that you just had not properly understood. They may raise further problems that you would love to see cured that you did not know existed and so on. There are all sorts of advantages of that kind of engagement for everyone, and we have been trying to lead by example on that. In the Red Tape Challenge and the Focus on Enforcement, which are two projects that I am leading across government, we have tried to use every possible modern means of getting to people. We have had panels, we have had tweets, we have had extensive use of targeted websites, we have had efforts to get into the trade press, for example, to get people to participate in those websites, we have drawn people in and so on. These are beginning to pay dividends and other departments are following suit.

I will give you just one example, which I was delighted to see, on the very interesting question of how care homes are regulated. We all know that care homes desperately need to be regulated. They have been under-regulated in some respects and over in others. There has been much too much attention on whether the radiators are correctly docketed on some piece of paper and much too little attention on whether Mrs Jones is being maltreated. The CQC has upped its game, which is terrific, but nevertheless, we issued a thing called *Transforming Regulatory Enforcement*, which was a written document announced by a press notice. We waited three months, the Committee will be delighted to hear, and we received 110 replies, almost entirely from the usual group of representative bodies. Then we did a care homes Focus on Enforcement review, so we tried to engage with the sector. We still got the traditional responses, but because we did this on blogs and Twitter and so on, first of all about 85% or 90% of all the things that came in turned out to be useful. We made changes because of what people said, because we had gone out there and tried to get people who were running care homes, people who had relatives in care homes and so on to come and tell us about things. I will give you just one example. We sent a care homes tweet, which the pyramid process led to contacting 8,278 people who were in or were deeply associated with care homes individually. That is when you really start getting away from the formulaic “here is a piece of paper, here is a consultation process” to something that is meaningful engagement where you end up by finding out things you really need to find out. That is what I hope we can do much more of.

Baroness Andrews: One final question on that basis, Lord Chairman. Can any of those sorts of methodologies be incorporated into the consultation process in order to make it more effective? You are talking about degrees of complexity and big impacts, and if the consultation process is to make sense and to be credible, can any of that sort of methodology be put within the consultation process itself to make it more effective?

Mr Letwin: I completely agree with you. That is the next frontier. Who knows who is going to be the next Government, but if we are and if I am still doing my present job, the next thing on my agenda from this point of view is precisely that. We need to take the process of engagement that is being pioneered in a few areas and generalise it so that it is the norm for consultation, but long before we get to consultation too. In the pre-development of policy we need to be using that kind of technique much more. The real reason why government used not to get out there and do this was that it was phenomenally expensive to do. Now it is very cheap.

Baroness Andrews: You say that you take account of what people say and you have changed policy.

Mr Letwin: Yes.

Baroness Andrews: Then not to do it is negligent, is it not?

Mr Letwin: I agree. We should be doing that as a norm and people across the world are beginning to realise this. We are at the frontier here. We have a new technology available to us, we can do that and, as I say, sometimes you will hit a massive ideological reaction to something where they think this and we think that. Well, that is life and you settle that at a general election. Governments must go ahead and implement their programme often against deep unpopularity of a particular measure. That is what good government is about. However, where you have people who are involved in something bringing up practical points you had not thought of that require you to add things or subtract things or change things, you need to know that. That is a much better way to govern.

Q21 Lord Woolmer of Leeds: Could I just turn to the question of informing Parliament about the outcome of the consultation process? When you were with us two years ago, you agreed that departments should complete an analysis of responses to consultation and put that analysis in the public domain. There are two areas where it may well be possible to improve on the reporting of this to Parliament, and it would be worthwhile, from the Committee's point of view, if we could discuss that now.

First, occasionally statutory instruments are laid before consultation outcomes are published, so Parliament is in the very odd situation of considering draft instruments without knowing

what went on and what the outcomes were. I think we would both agree that is not really desirable from a parliamentary point of view.

A second area that particularly affects this Committee, but that point does also, is that when matters come to us—and this is a very brief Committee today with all these documents; sometimes it is this big—there is always, typically, an Explanatory Memorandum. It would be enormously helpful if the Explanatory Memorandum included a summary of the key issues that came up that influenced the draft instrument that is now put before Parliament, if any changes were made as a result of the consultation. That rarely happens, from our point of view as a Committee, so we do not know sometimes either the outcome of the consultation or if anyone took any notice of what the consultation produced.

Therefore, if I may I will ask you two things. First, as a principle, is it fair to expect Parliament to assess new secondary legislation without access to full consultation summaries, and could the principles be revised to deal with that point? Secondly, given that by the time a draft statutory instrument or legislation is laid the department must have considered a consultation, they must have decided how to respond to any points raised and they must have decided what was important in the draft put before Parliament. Therefore, I put it to you that it cannot be a difficult problem for the department to set out in the Explanatory Memorandum the key points that they had in mind when the draft is put before Parliament. Both those ideas would make a big difference to the way in which Parliament could consider these. I wonder if you could comment on that.

Mr Letwin: Yes, by all means. On the first point, basically, I agree with you. This is not a decision that I can make, but it is one that I will recommend to my colleagues and try to clear in Cabinet. We should put into the principles that, except in extraordinary circumstances, the department concerned should complete its response to consultation and publish that at or before the time when it lays the instrument. Therefore, by the time Parliament is considering the instrument it has available to it the response to the consultation. That is a totally reasonable request and we should include that, in my view, in the principles.

Turning to Explanatory Memoranda, I could scarce forbear to cheer. I cannot remember exactly where it was, but in some transcript of one of your proceedings somebody made some statements about Explanatory Memoranda not being very explanatory, and I could not agree more. I have been fighting a prolonged battle to reduce the size of documents produced by government, to clarify the language in which they are expressed and to clarify the drafting of legislation. Certainly, it is very imperfect in all those respects now, although I think it is much improved. It is quite extraordinary how many times, if you send a document back to a

department that is 100 pages long and ask for it to be 25, it comes back two or three days later at 25 pages and twice as clear, simply because nobody previously thought that it mattered. There is a tendency in Whitehall to think that you get paid by the weight of the object you produce.

One of the last frontiers on this is the Explanatory Memoranda. I will not regale you with stories of some Explanatory Memoranda that are the very opposite of explanatory. They are completely incomprehensible. I often find that the legislation is clearer than the explanation, which is mad. I think the reason for this is that somebody attends to the regulation more than they attend to the Explanatory Memorandum, and somebody is sent off into the wilderness, so to speak, to write an Explanatory Memorandum who is terrified of saying anything that could cause any trouble in court, so the thing is hedged around and written in legalese. I do not know whether we are going to be able to crack that, but again it is certainly something that we should attend to. I will have to think about your very interesting suggestion that the Explanatory Memorandum should, at least normally, contain some observation about any major item in the regulation that has been altered from the time when it was being consulted about as a result of the consultation. I do not think I could possibly ask colleagues to agree to replicate even the summary of the full response; these tend to be quite large things. However, your key issue is something that we could consider and I will certainly talk to colleagues about that and try to get some reference to that into the principles as well.

Lord Woolmer of Leeds: It would certainly be very helpful. I simply repeat the point that by the time the draft is laid the department must have considered or should have considered—let us put it that way—and got in their own mind the significant issues and indicated the way in which the Government have listened to the consultation. If departments came back and said that they did not want to repeat everything in the full report, of course one does not want that, but one does want to get a feel of how the Government have responded.

Mr Letwin: Yes, a crisp couple of lines that make a point. Exactly. I agree with you. That would be a good thing to think about.

Q22 Baroness Humphreys: You referred earlier to devolution, and of course since devolution the consultation experience is now different in Scotland and Wales. Have you looked at the experience in Scotland, where the Scottish Government require that consultations must allow consultees at least 12 weeks to respond, except in very exceptional circumstances, and the experience in Wales, where the Welsh Government have an open consultations website that links to all consultation documents and shows for each how many days are left to respond? How do you respond to the view of the Chemical Business

Association that the Scottish and Welsh approaches are more helpful to the business community?

Mr Letwin: I would distinguish between the two. The Scots, as you say, operate the 12-week principle. We used to. The Committee will be aware, because it has been a long-running discussion between us, that we do not subscribe to that principle and we do not intend to change our view about that.

The Welsh case is different. We already have, through GOV.UK, what we think is a slightly better website arrangement, but they have an advantage over us because they have a ticking clock where you can see how many days there are to go. That is a jolly useful thing for somebody who is trying to respond. It means that you can work out how to plan if you catch the consultation in the middle. We should introduce that, so I am going to approach the Government Digital Service and see whether we can install that on our website and I am grateful to the Committee for raising that issue. I think it will be an improvement.

Q23 Baroness Stern: Minister, I would like to ask a question about what might be regarded as politically sensitive issues and what happens when there is consultation on them. The example I want to give is the Welfare of Animals at the Time of Killing Regulations 2014. I hope not to make you unhappier by just recounting what happened. There was a six-week consultation on these regulations at the end of 2012 and a summary of responses was published in May 2013. The regulations were laid in May 2014 and then immediately revoked because the Government wanted to consider, and I quote, “aspects of religious slaughter”. My question is: was this an effective way to handle this matter? I think you would probably say no to that, so I will, perhaps, put it another way. To quote you, Minister, was this a fall from virtue that will not be repeated?

Mr Letwin: The first thing to say is that your account is, I fear, accurate. The second thing to say is that it was certainly suboptimal and I hope the answer is that it will not be frequently repeated by any future Government, ours or otherwise. I cannot guarantee that there will never be a change of policy at the last moment, which is essentially what happened here. It took a very long while after the consultation to make up any minds, and just after minds thought they had made themselves up, they unmade themselves up and reversed tack. That is not a perfect way to conduct these affairs.

It is, it should be said, an extraordinarily tricky area, with genuine and very deep and very important, interesting conflicts between two principles, both of which, personally, I hold very dear: on the one side religious freedom, and on the other side avoiding cruelty to animals. For

anyone who cares about both, this is jolly tricky terrain, so it went back and forth and back and forth.

The next thing I would say is that I do not think the problem really lay in the consultation. It really lay in the intrinsic difficulty of the case and the difficulty of arriving at a certain view of it. The complaint of the RSPCA on the first consultation, as you say, a long time before the subsequently revoked regulations were laid, was that on the contrary not enough time was going to be available between the end of the consultation and the implementation. As it turned out, a very long time was available, but oddly enough, in theory at least, they were probably right. So if there was a deficiency as a consultation process it lay in the fact that the department at that stage harboured the ambition of moving to implementation rather too quickly after the consultation period was finished. In the event, that optimism proved very ill founded indeed. It was not our finest hour from the point of view of process, I accept, and I do think it leads to a general point about consultation, as opposed to that specific case. I want to talk to colleagues about this, but we ought to at least think about adding—to the points that Lord Woolmer was making—something in the principles about leaving a reasonable period between the ending of the consultation itself and the moment of laying. So in addition to Parliament needing to have a little time, a department needs a little time at least to ponder the response. Now, there will be cases where the thing is pretty technical in character, they have done a lot of pre-consultation and, because of the speed that is required, they should be willing to proceed fast. However, as a norm, there should be a decent interval.

Baroness Andrews: Can I just ask you a question about the types of questions in this context? I cannot see how you can ever guarantee that this will not happen again, because there are bound to be issues of a certain nature that produce polar opposite responses. However, I just wonder whether there is something to be said for the way the consultation is crafted, so that questions are designed to elucidate a consensus. Do you see what I mean?

Mr Letwin: I see exactly what you mean.

Baroness Andrews: I do not know quite how you would do it, but rather than then consultation reinforcing polar opposites it flushes out where there may be some common ground.

Mr Letwin: That is a consummation devoutly to be wished.

Baroness Andrews: Fair enough.

Q24 Lord Bowness: Minister, in the last session apparently we looked at 1,000 statutory instruments or thereabouts, most of which were subject to consultation procedures, and the Association of School and College Leaders said that between 1 January and 31 August of this

year the Department for Education issued 38 consultations that were relevant to them. In the light of your telling the Committee that the Government wanted to reduce the amount of legislation and regulation on the statute book to get to the point where we all have a clearer view and are not taking on so much, which I understand were your words, how well are you succeeding with that particular aspiration? Are you able to ensure that people do not suffer from consultation fatigue and lack of resources to deal with all the papers?

Mr Letwin: The paradox is that the answer to your question is that we are doing rather well, but the result of doing rather well is rather a lot of consultations and rather a lot of regulation. It is a rather odd fact. We have been through 6,000 statutory instruments. There were about 24,000 when we looked at the whole terrain, if I remember correctly, but if there were 24,000, 18,000 of them were tiny and technical in character—the change of a rate in social security legislation. Six thousand were substantive. This is why I have greyer hair than when I first appeared before the Committee; we have been through 6,000 regulations. Of those, we have identified almost exactly 3,000 as worthy of either repeal or significant amendment. That is allied to our effort to go through and reduce guidance and standards, where—I am going to get this figure wrong, probably—I think we have removed or will have removed about 105,000 pages of guidance and standards issued by government by the end of this Parliament. Now, the result of that huge effort to simplify, consolidate, deregulate and so on is that, unfortunately and paradoxically, there has been a lot of legislative activity bringing forward negative and affirmative statutory instruments, as well as the Deregulation Bill, to remove things, change things or consolidate things. There has been an increase, ironically, in the activity of Parliament in order to reduce the level of regulation and complexity facing the public and business. I am sorry about that. It has caused several of my colleagues heartache, because we had to press them to produce lots of this work. It has caused considerable addition to your workload and Parliament's workload, but I do not see any alternative. In a western, liberal democracy you cannot remove things from the statute book or change them to make them a lighter load without going through the proper parliamentary process. You have to do that and, of course, those consultations brought to light some things that have led us to change some things, so it has been worth doing the consultation too.

My impression is that on the whole we have the balance about right in the sense that I do not think we have been accused, so far, of over-rushing the activity. There have been, of course, some controversial things that we are doing, but on the whole because we went through, for example, pre-legislative scrutiny on the Deregulation Bill and we have taken the whole pace

of the deregulatory activity quite slowly, I do not think we have been accused of not giving people time to respond. However, it has been a big effort.

The Chairman: Minister, thank you very much indeed for joining us.

Mr Letwin: Thank you. I should just say that I genuinely believe that the Committee performs, from our point of view, annoying as it is to be constantly criticised, a very valuable role, so I am grateful to you.

The Chairman: Thank you very much. The Committee will now deliberate.