



Select Committee on the Constitution

Corrected oral evidence: The constitutional implications of Covid-19

Wednesday 24 June 2020

10.15 am

Watch the meeting

Members present: Baroness Taylor of Bolton (The Chair); Baroness Corston; Baroness Drake; Lord Dunlop; Lord Faulks; Baroness Fookes; Lord Hennessy of Nympsfield; Lord Howarth of Newport; Lord Howell of Guildford; Lord Pannick; Lord Sherbourne of Didsbury; Lord Wallace of Tankerness.

Evidence Session No. 6

Heard in Public

Questions 65 - 78

Witnesses

[I](#): Baroness Smith of Basildon, Shadow Leader of the House of Lords; Lord Newby, Leader of Liberal Democrat Peers.

Examination of witnesses

Baroness Smith of Basildon and Lord Newby.

Q65 **The Chair:** This is the House of Lords Constitution Committee. Our inquiry is on the constitutional implications of Covid-19, particularly the response within Parliament. Our witnesses today are Baroness Smith and Lord Newby. May we start by asking you for your general impression of how well the House of Lords has adapted to the significant challenges that the pandemic has caused us in fulfilling our role and responsibilities?

Baroness Smith of Basildon: It has been mixed. There is also a bit of a danger. We sometimes see all this through technology. As technology goes, I think we have done better than most people anticipated. We have improved as we have gone along after a slow start in many ways. However, on how we handled the Coronavirus Act, for example, there is a lot of room for improvement. That was at the start of it all. We were under huge pressure to reduce the amount of the time that we had for Committee consideration of that Bill—not, I have to say, from the usual channels but from the Government at the Commons end. In the end, we came to an agreement that we would take Second Reading before the Commons had finished its consideration in Committee. That was a sensible thing to do, and we agreed an out date, but how we responded has implications for legislation generally.

In terms of the technology, we have improved. It was initially very frustrating; I think that we were all frustrated that we could do so little business, and that is still work in progress. We have to accept that a hybrid or virtual Parliament will never be as good as the real thing, but we should make it as good as we can to do as much business as we can.

Lord Newby: I agree. Just as the Government were pretty unprepared to deal with coronavirus in a sensible manner, Parliament was completely unprepared for the concept of no one being able to come for a period. There was no contingency planning. We had had contingency planning for what would happen if somebody blew the place up, but not for these circumstances. We had to run quickly to get going at all. Although there was frustration at the pace of that, we have ended up, as Baroness Smith said, with a process which, technologically, is just about as good as it could be. Somewhat to people's surprise, we have found that most people, when faced with the choice of either participating and using IT—whatever their history of dealing with it—or not participating, found that the IT was not that difficult.

A number of challenges remain, which we will probably come on to, about how Parliament retains its spontaneity and puts pressure on Ministers. There is also challenge presented by people putting their names down to speak because it is a way to get an allowance rather than because they are expert. All those are issues that we can and will deal with. On balance, if somebody on Easter Monday had asked whether the House of Lords would by now be operating successfully a hybrid system which included among other things completely electronic voting, they would

probably have been sceptical about whether it could be done. I know that some staff were sceptical about it, but we have done it, so we should take some satisfaction from that.

Q66 Lord Dunlop: Following on from what Lord Newby said, obviously the House has now built up quite a bit of practical experience of virtual and hybrid proceedings. What do you think have been the benefits, drawbacks and challenges of Virtual Proceedings for the House? Do you think they work better for some types of business than for others?

Baroness Smith of Basildon: We could probably have an entire session on that question alone. The great benefit is that the House is now dealing with legislation and having Select Committees. It is a huge benefit that we are functioning properly as a second Chamber. Also, our participation levels are increasing.

The downside, for me, is something Lord Newby referred to: we are missing spontaneity—the interventions and the reactions. We do not get a sense of the mood of the House and I think some Ministers have taken advantage of that. When a Minister gives a poor response to a debate in the Chamber, the House will make its view known—it might be a collective groan or sigh, because we are very well behaved—but a mood of the House is recognised. We cannot replace that at the moment.

Another disadvantage has been the time constraints, as we saw with the Corporate Insolvency and Governance Bill. We got into a pickle last week. I was talking to the Leader on the phone at about 9.30 pm because we had to end the proceedings. They should have ended at 7 pm; they continued until 8 pm, with the broadcasting team staying on. Normally, to complete the Bill, the House would have sat until it was finished, but there was a constraint on time because it was a Virtual Proceeding.

That can be resolved, and we are looking at that; we have ongoing discussions in both the Procedure Committee and the commission, and in the usual channels, to deal with that. I am confident that we will be able to deal with the particular aspect of the constraints on time.

You are right that it works better for some things than others. On legislation, we are getting better, but there is still room for improvement, in particular around the lack of interventions to press the Minister. I think we have gone as far as we can, though it is always open to discussion—the Procedure Committee feels like it is in permanent session at the moment—to see how we can do things better.

The Minister gives their response, and the mechanisms for challenging that response are time-consuming and not as satisfactory as they should be. It is not the case that, if something occurs to you, you can just jump in with a point of clarification or correction. That makes it difficult.

We can look at the technological limitations, and they are being addressed now, so that we can increase capacity. But there is still a way to go, and I am not sure that, in a hybrid system where so many people

are participating virtually, we can ever have the spontaneity and the kind of cut and thrust of debate that we are used to.

The other difficulty is that, where you feel that an Answer to a Question is inadequate, the House cannot express a view. We have seen a huge increase in Written Questions. To be fair, the departments are under huge pressure, and probably departmental offices are unable to cope. That is exacerbated by the fact that the responses that come back are slow, and often inadequate in answering the Question. That spawns more Questions. If the House sat physically, and we could have more debates and Questions and be more responsive, with more people able to take part, it would reduce the pressure in that direction.

I pay enormous tribute to the digital teams, the Clerk of the Parliaments and the House administration for getting things up and running as well as they are, but there will be drawbacks. As much as we do, there will always be drawbacks in a system that is not fully physical.

Lord Newby: Again, I agree. One unexpected benefit is that everybody can participate, even people who have disabilities and who, in normal times, find it difficult to get in. I can think of one or two people in that category. That is a good thing.

I suspect that what has worked best are committees, like this one. I am not on one, but it seems to me that witnesses, wherever they are, are able to participate. Given that there is a small, limited number of people on committees, and a set way of doing things already, I suspect that they are working pretty well, and do not have some of the problems that Baroness Smith referred to.

The two challenges I must mention are these. We have not been able to maintain the normal rule that everybody who wants to speak can speak. That is partly because more people want to speak, for reasons that we understand. However, on the Agriculture Bill, only two-thirds of the number of people who wanted to speak were allowed to speak. That is a pity, and it is challenging a facet of how we do our business of which we were pretty proud.

The other challenge relates to time constraints on business. That is driven by the broadcasters. That is a real problem, and an unnecessary problem. We could get round it, over time, by working more closely with the broadcasters to avoid things such as, for example, long delays in business. Yesterday, there was a three-quarter of an hour gap between the end of Questions and a Statement. When questioned about it, the clerks seemed to imply that it was to do with the broadcasters' rostering system. Frankly, that is not a good reason for mucking about with the normal way we do things.

The Chair: Lord Howell, you may want to follow up on some of that. I thought that what Lord Newby said might be music to your ears.

Q67 **Lord Howell of Guildford:** It is. In fact, I thought that Baroness Smith

and Lord Newby put the whole issue very well.

We have to be realistic. The plenary Chamber performances have not really been debates at all. As Baroness Smith rightly said, the spontaneity has gone. The Ministers' answers are, to put it kindly, extremely brisk, and do not always elucidate.

To me, the general implication is that if the committees work better, in both the short and longer term, we should think about more power for committees, and a greater ability for them to influence the legislative process. That was my thought, which I offer to them.

Lord Newby: The committees work very well, but one of the essences of politics is the timeliness of things. Issues arise, and are huge for a short period, and then they disappear from the public gaze. The challenge with committees, and something committees will never be able to do—this brings us back to Questions and Statements on the Floor of the House—is dealing with the immediate. Given the way that Lords committees work, much more so than in the Commons, by the time the committees have had an investigation, quite a lot of time will have elapsed.

On Statements, for example, and topical questions, timeliness is the essence of it. We want to know. Tomorrow, the Prime Minister's Statement will be repeated, and I will be asking where we have got to on track and trace. By the time a committee had looked at that, either it would have been resolved or we would have moved on.

I am a huge fan of our committees, but there are limitations to what they can do in the overall business of politics.

Baroness Smith of Basildon: I have a slightly different take on that. I wonder sometimes whether we should make better use of committees in legislation. You will recall that we did that on the Trade Union Bill, where we asked a committee to look at a very contentious part of the Bill. The work of the committee went alongside that of the House, and it worked quite well.

Perhaps we ought to look at things in a different way and try to improve the ministerial responses. I recall one particular debate on the post-Covid economy. It was a really good debate, despite there being very short speeches—I really do not think we should have speeches shorter than two minutes, minimum. All the contributions were excellent, but the Minister sounded bored in response. He referred to only one Member who had taken part in the debate, as though he had written his response before the debate had even taken place. You would not have got away with that in the Chamber; it would not have happened.

Can I say one thing about Statements which I think has been quite helpful? We have a system now where, if there is a Statement in the Commons, we take it the next day, or sometimes, for various reasons, two days later. That is due partly to the constraints on time, which Lord Newby mentioned, although there is work in hand to deal with that. The system works really quite well, because when a Minister or the Prime

Minister makes a Statement in the Commons, sometimes it is two or three days before issues arise from that Statement. Those issues could not be dealt with at the time, but the Lords is able to pick them up and deal with them.

I take Lord Newby's point about things that are immediate, but there is also time for reflection and a different kind of scrutiny from the Lords. That part is working quite well.

I have a mixed view on committees, but I would like committees to be used more on legislation. That would be very helpful to the House.

Q68 Lord Howarth of Newport: One of the significant changes that arrived with a hybrid House is the move to remote voting. That has produced higher turnout, with more people voting in Divisions, including perhaps people who otherwise would not have found it easy to cast their vote. Some people think that that is a plus: that participation is bigger and that we ought to keep remote voting in the future, even when we are back to more normal proceedings.

But there is another point of view, which is that it has been our tradition and culture in the House of Lords for Peers to be present, to listen to debate and to interact, formally and informally. A Minister and the Government have never been able to be confident of winning a vote simply because they have the numbers in the House—people respond to the arguments.

There may be a danger that, with the new system, the outcome is determined by people who are disengaged from the debate. What do our two witnesses think about remote voting, and should we look to perpetuate it?

Baroness Smith of Basildon: I think you are right, Lord Howarth, about advantages and disadvantages. It is a slight myth, on a number of votes, that everybody is quite so engaged and listening to the Minister, but in many cases, they are. The atmosphere when the House fills up for a Minister's response on a contentious issue and people want to hear it is really important; I enjoy that.

There are benefits. At the moment, remote voting is essential, because otherwise we could not conduct our business fully or scrutinise legislation, so it is important that we have it. I am not convinced that we want remote voting for everybody for ever, but we could use the technology around the Chamber. In other countries, quite often they do not have to file through a lobby; they use IT to vote, but they have to be in the environs of the Chamber. That is quite a good way forward.

One thing that has been hugely successful and which I have really liked is the PeerHub—the information that you get there about votes and results of votes is something that we have never had so quickly before. I would like to maintain that.

For some colleagues we might want to retain remote voting, but my personal view is that I would not want to maintain it for ever when we are fully back in the House.

Lord Newby: I wonder whether we cannot seek to get the best of both worlds once we get back to greater normality. Obviously, having remote voting has been crucial at this point. It has proved, again, that virtually the entire House is capable of dealing with the technology. Interestingly, while the party groups are whipped on votes, it has been clear that quite a number of Cross-Benchers have listened to debates because there have been unpredictable outcomes. We have thought, “Why on earth have they done that?” The answer is that they have listened to a debate and formed a view. That is good, but the numbers doing it have probably not been very high.

We should retain electronic voting in the longer term for those who cannot get in but who are mentally agile and would make a contribution if they could. For those who can get in, we should require them to be on the estate to vote. I am not his greatest fan, but Jacob Rees-Mogg’s jibe in the Commons about people being able to vote while playing a round of golf underlined the risk of us being brought into disrepute if it were a long-term system.

However, we should look at how we could use electronic voting on the estate. I gather that the Commons have just moved to a system whereby you register your vote by scanning your pass against a reader, which we looked at in the Lords a number of years ago. Finding a way of voting that does not require everyone to spend a quarter of an hour shuffling through the Lobbies is a good thing. Equally, I would not want there to be a permanent situation where people could be at a distance and vote without paying the slightest attention to what had been going on. As an ex-Government Whip, I always found votes a challenge because people did listen to the debate and did not always do as I wanted. Although that annoyed me considerably, it was good for Parliament.

Baroness Smith of Basildon: I think that more people listened to the debate yesterday than we anticipated. The voting figures show that people did not all just vote according to party lines—there was some cross-voting. We certainly had a vote that was not whipped. Just from the feedback that I am getting from colleagues—via text messages and in conversations—I think that more people are engaging with parliament live than we perhaps give credit for.

The Chair: Thank you. I tend to agree.

Q69 **Lord Wallace of Tankerness:** On the new procedural changes, perhaps you can give some insight, as people who are in the usual channels, not only on how effective they may have been but on how they have come about. What are the respective roles of Government, of officials, of the Procedure Committee, of the commission and of Opposition? Given that we are a self-governing House, is there good-enough engagement of the Back Benches, or is too much power put in the hands of a few?

Baroness Smith of Basildon: I would probably just say blood, sweat and tears, because hours and hours of discussions and meetings have been had. I think that the Procedure Committee has met more often—certainly, Lord Newby and I probably qualify for Friends and Family on our phones given the number of the times that we have had to talk through things; the Leader may say the same. At times, it has been quite tense and frustrating, because we do not all go to a meeting with the same views. There is quite a lot of hammering-out and discussion about what we can do and how we can improve things. It can be frustrating at times, but I think that we come to the right place.

On whether there has been enough engagement with Back-Benchers, it is hard to know what the appropriate level of engagement is. Yes, we all get feedback and engage with our groups, but it is the usual mechanisms of the House to engage. There has also been a need to move quickly. If we had had much wider consultation on some of the moves, there may have been delays. The Senior Deputy Speaker is quite good on reporting back and putting papers to the committee on the comments and engagement that he has had. I think that both the Lord Speaker and the Senior Deputy Speaker have put out regular communications and had feedback on them. That has been helpful. I think that we all welcome suggestions and views.

If we were to consult every Back-Bencher and take things back to the Floor of the House, I think that we would find that, as with a lot of these things, if you have two Members you get three different views. It is quite difficult to reach a consensus. At times, we have struggled in the committee and have returned to things two or three times, and they are ongoing processes. The mechanisms have enabled us to move more quickly than some would have suggested, although there is still more that we can do in engaging on changes, of which a number are still needed and are in process.

Lord Newby: The formal processes have worked reasonably well, in that the Procedure Committee and the commission have met regularly, with lots of discussion between them. There was a bit of a wrinkle at an early stage about which committee was responsible for something, but that was dealt with.

As Baroness Smith says, the challenge has not been that the committees have not met or that people have not been in discussions; it has been just that people have had different views about the speed at which we should be doing things and returning to normal. That is inevitable.

One area in which the House collectively could have done better is communications. One bit of communications that has worked well is that the party groups and the Cross Benches have continued to have meetings and to discuss procedural issues at them. They have certainly put me, my colleagues and my Chief Whip under pressure about what we should be doing. Indeed, the number of people attending our group meeting on a Wednesday afternoon has been higher than the number who would normally attend in person.

There has been quite a lot of engagement at that level. What did not happen at the start—it has now been rectified—was that Back-Benchers were not getting regular communications from the Speaker, the Senior Deputy Speaker and the Clerk of the Parliaments. All that has been rectified and they are getting very good weekly comms. But it took a while and quite a lot of pressure before that got going. While they were hearing from me and my Chief Whip, people wanted to know what the other leaders in the House thought. Now that they are sending regular emails round at the end of the week, I think the communications issues are substantially better.

The staff have been very, very good at talking to individual Peers about the comms and IT issues. In that area, people get very irritable very quickly. Both Whips' office staff and, even more so, House staff have done a very good and patient job at bringing people along with the new system and getting them to operate it effectively.

Q70 Lord Sherbourne of Didsbury: I would like to follow up this question with both witnesses in a very precise way. Given that the House has had to deal with this new situation—we have talked about how usual channels and the committee system both work and about usual channels working in an informal way in committees, which have been meeting more intensively—what practical lessons for the future would you draw for future management of these issues?

Lord Newby: The principal lesson is that you have to accept that you have to spend longer in both formal and informal discussions about these issues. As any of us who have been on any of the House's internal committees know, even the smallest question—the kind of sandwiches in the Bishops' Bar—engages people to a very considerable extent, at least some people. There is, often, no unambiguously correct answer.

The challenge is how you bring along several hundred people who do a range of things differently in circumstances in which they cannot talk to each other normally. That has been our challenge. Hopefully in the future, we will not have quite the same challenge in quite the same way.

I would not suggest, and I do not believe, that this crisis has thrown into question whether the usual channels work or whether the committees work, because I think that they have. It has, I think, thrown into question the communications, the urgency with which we should be prepared to look at things and the speed with which we should be prepared to change things when we cannot go on doing things in the way that we have, because of external circumstances.

Baroness Smith of Basildon: The two things I wrote down as Lord Sherbourne was asking his question were "leadership" and "communication". I agree with Lord Newby that, on communications—both for getting information to colleagues and communicating between ourselves—the usual channels work at their best when they are talking regularly. Sometimes, if I am honest, it has felt like too regularly, because we are all talking constantly. Whereas you would normally get

everybody in one room, now you might occasionally Zoom, but you also have individual and separate conversations, all of which is very time-consuming. But the more we communicate, the better our decision-making processes and the more quickly we can act.

The other thing is leadership. At the beginning, it was not quite clear where decisions were being taken, how they were being taken or who was communicating them. As Lord Newby said at the beginning, communications were not going out. It would have been helpful at that time if there had been something coming directly from the Government to individual Members of the House. We were doing it within our party groups, and it has been picked up by the Lord Speaker and Senior Deputy Speaker. There was one communication that we signed very early on as leaders of the groups, but it would have been helpful initially, had there been something from the Government that went out to all Members saying, "This is what is happening and this is what we are doing."

To be fair, we have all learned lessons from this, and I do not think anyone would say that we got everything right the first time around. As we go forward—we do not know how long this will last; you hope for the best and prepare for the worst in many cases—we are all learning what has worked well for us in terms of communications and decision-making and what has worked less well. We have to make sure that we respond to that.

The Chair: Baroness Drake wants to talk about emergency legislation.

Q71 **Baroness Drake:** Good morning. My question is about emergency powers. Has Parliament, in your view, been able to scrutinise adequately the Government's use of emergency powers during the pandemic?

Secondly, do these laws, or the parliamentary procedures to scrutinise the use of emergency powers in order for the Government to be accountable, need to change?

Baroness Smith of Basildon: Some things have worked well and some things have worked less well. I had concerns about the Coronavirus Bill. I mentioned at the beginning how we tried to get the time to properly debate that Bill. We tend to be better than the Commons and, not to be difficult or for any other reason, we tend to be less sympathetic to fast-tracked Bills and emergency legislation. It is accepted by the usual channels that we have longer for these Bills than the Commons does. However, we were under huge pressure to limit our time on the Coronavirus Bill. The usual channels in the Lords responded quite well to that, and we got our two days in Committee.

I found difficult the reason why there was not standard emergency legislation that was ready, which could be taken off the shelf and adapted if need be. The reason we were under pressure was that it was introduced late into the Commons because—I do not fully understand the reasons why—they did not want to use the Civil Contingencies Act and there was nothing ready. I was told that they thought it was ready, but it was not—I do not know; I am not at the level to know how the

Government prepared the legislation. There was a huge gap while we waited for the legislation. We were told that it was being written before it was introduced and that there were new clauses to go in. To me, that process was not great.

There are two things I would pick up from that: there should be standard legislation regarding emergencies and there should be an automatic sunset clause in any emergency legislation. We had to fight for the sunset clause, which went in as six months. The amount of secondary legislation from that is huge. I did some work earlier and found that we have had 111 coronavirus SIs, going back to January, under 71 different Acts of Parliament. I had never heard of a "made negative" SI before, so I have learnt something during this process. There is a comparatively huge number of "made affirmatives". We are in a position now where new SIs have come forward to amend the original one, and we have not had the opportunity to debate the first one yet—I can think of a particular one that we have picked up. The process on SIs on this legislation is poor and needs to be looked at, whether that is by having very early discussions about them, or by limiting the number of "made negatives" or "made affirmatives", or we have a special committee to look at them before they are debated.

For me, the number of amended SIs under the legislation is unacceptable. We have accepted this because we are in a crisis, but it is in a crisis that you really most need to be able to do the work. If we are honest, what gets us up in the morning is that we believe that scrutiny, challenge and questions make for better decision-making and better legislation. That has been difficult to do. The key things for me are a sunset clause, why there is not ready-made—or largely ready-made—legislation for emergencies, and how we use SIs and Henry VIII powers. All those give me cause for concern.

Lord Newby: Of course, the Coronavirus Bill was introduced late and in a great rush when lockdown had just been imposed. The number of Peers who engaged in it was miniscule, because older Peers and people with underlying health conditions were told that they should not be here. Everybody was scrabbling round to decide on the priorities and concentrate on a very small number of issues because of the timing. Many of the people we wanted to talk to were literally travelling home, getting their IT systems up and running or whatever. It was very unsatisfactory.

Looking back on it, one of the interesting things is that some of the issues on which we concentrated, such as police powers to detain people who might have coronavirus, have, I suspect, not been used. If they have, they have not impinged on the public domain. The sunset clause is very important, but a slightly wider thing that ought to happen is proper scrutiny of how it has worked. As I said, we probably had no need to worry about the things that we worried about and there were other things that we passed over that have been more problematic. Thinking about how we keep primary legislation of that sort under review beyond having

a sunset clause is very important. It is possibly something for the coronavirus committee, or possibly we need to set up a sub-committee to do it. That Bill did not get proper scrutiny and it is very wide-ranging.

There are two problems with SIs. It is very hard to know under what legislation various restrictions have happened. I do not believe that there is a good guide to all this. As Baroness Smith said, SIs have been very slow to come forward to the House. SIs were being made in some number before Easter. They were not then debated immediately when we got back after Easter. Again, there needs to be a more rigorous approach to dealing with SIs when a lot of them are much more intrusive to people's lives than most others and on which there is legitimate debate. Clearly, because this is a unique situation, we are not geared up to do it. I hope that we will not find ourselves in this position again, but given that there seems to be an inexorable rise in the role of SIs in legislation, we need to look at this more generally. I do not think anybody could argue that we have a systematic and robust manner of dealing with the flood of SIs that we have seen since the start of the pandemic.

The Chair: I think Baroness Corston and others will want to follow that up in a slightly different way.

Q72 **Baroness Corston:** Both witnesses have alluded to the question I want to ask, but, in more detail, looking at the fast-tracking of Bills, what is your assessment of, and what lessons can be learned from, the scrutiny of the Coronavirus Bill and the Corporate Insolvency and Governance Bill, given that they were both substantial and complex pieces of emergency legislation?

Baroness Smith of Basildon: I am not sure that there is much more I can say about the Coronavirus Bill. It was lacking in scrutiny. Some of that was for obvious reasons, but some of it could have been done better.

Two or three things happened on the Corporate Insolvency and Governance Bill. First, there were time limitations. I mentioned earlier how the broadcast time ran out. That will be addressed and will not happen again, I hope. Secondly, if Bills are being fast-tracked as emergency legislation they should contain only those provisions that need to be fast-tracked. There were many other issues in the Bill that Members had a lot of issues about that had been around for a while and they wanted to discuss. It would have been much easier to fast-track a Bill where everybody understood that all the provisions were being fast-tracked for essential reasons, rather than thinking it was being loaded with things that were unnecessary, such as the use of Henry VIII powers.

A number of things could have been done differently. We had huge groups of amendments in the early stages to enable discussion. I think that the Government were quite anxious, thinking that there was not time to get the Bill through. I do not think that we can ever curtail discussion like that on things that are important. I hope that that issue will not arise when we can extend the time over which we can take Bills. We got there, but it was difficult and there could have been a better way

forward with more time and focus on issues that essentially needed to be fast-tracked because they were genuinely urgent.

Lord Newby: Both those Bills demonstrate that if you have long, complicated Bills it takes time to discuss them. You cannot do it properly and quickly. It is just impossible, because you are dealing with a range of complicated issues. You cannot make a case on some of the issues in the insolvency Bill in two minutes. It is just impossible. In theory, the answer to dealing with fast-tracked Bills and emergency legislation is that you need more time. The problem is that, by definition, you do not have it.

I agree with Baroness Smith about trying to make sure that the Government do not put into such Bills things that do not need to be there. It is almost as though civil servants have tried to get this through for years and that this is an easy way of doing it. However, the question really is: how can you review them after the event?

A sunset clause is sort of a blunderbuss for this, but having post-legislative scrutiny on fast-tracked Bills within a relatively short period—say six months of their going through—with acceptance on the part of the Government that you might need a short supplementary Bill to deal with anything that was not properly dealt with at the time would be a better way to deal with it than at the moment. It is a general problem, as we know, that legislation goes through, over which we take a huge amount of time, and a lot of it is not scrutinised in a post-legislative scrutiny framework adequately for years and years. With emergency Bills, the argument for a formal pre-agreed process to deal with post-legislative scrutiny will be a real benefit.

Q73 **Lord Pannick:** You have both mentioned the problems faced by Parliament at the time of the Coronavirus Bill in March. Do you think it is possible to have effective opposition when a crisis of this degree of magnitude hits the country? Is Lord Newby saying, in his focus on post-legislative scrutiny and sunset clauses, that the answer to that question is no, it is not possible to have effective opposition at that time?

Lord Newby: I would not use the word “opposition”, because nobody was opposed to the principle of an emergency Bill. We knew that there had to be an emergency Bill. We did not necessarily adopt the kind of partisan approach that we might to other legislation. We were just seeking to probe those areas where we were worried that the legislation either gave the state, in various forms, too much power, or, in one or two cases, left things out that ought to be done. I do not think that you can scrutinise long, complicated pieces of legislation effectively if you literally have no time to do it.

Baroness Smith of Basildon: I was going to make the same point about scrutiny. One thing that has happened during this process is that, on the corporate insolvency Bill, there are a lot of government amendments. A lot of those have come about because the Government has had discussions with people who are interested in the Bill at the different stages. When you are talking about the scrutiny of emergency

legislation, those off-grid discussions will become as important as the scrutiny in the House. If we do not do that, we will not be doing our job well at all. We need to balance how we do it, and it is a difficult balancing act.

The Chair: Baroness Fookes, would you like to move us on a little?

Q74 **Baroness Fookes:** I was going to ask originally about how Parliament would need to operate to be seen to do so effectively, but to some extent you have provided answers already. What further procedural or practical changes should be considered since we are, I assume, continuing as a hybrid House for some time to come?

Baroness Smith of Basildon: I had thought that a hybrid House was not something that would be static, but a process for returning to normality and, as such, it will change as circumstances allow. I must admit that I am slightly confused about the two-metre to one-metre rule and the implications that it will have, but if social distancing changes then that has an impact for us as well. We can look at those kinds of issues. At what point do more people return if 50% of the House can attend virtually? Do we change the proceedings then?

One thing I have asked, which may seem like a small matter but could be quite helpful, is whether we can have a split screen so that whenever someone is talking, they can see the Minister who is responding to them. It seems a minor point, but having a split screen means that the Minister could nod or shake their head while you are talking and it removes a question, which would help with the interventions.

We should look at how to get greater spontaneity into proceedings if we continue in a hybrid way. It is difficult, and we have tried a bit with committees and emailing questions. We had it a bit on the private international law Bill, but nobody knows about it, because it was basically the Minister and the shadow Minister in the Chamber having a bit of to and fro, which they enjoyed, but *Hansard* did not catch it and neither did the recording, so it was all a mystery. We long for that to happen again, because that is how we do our business.

It is a case of keeping everything under review. At the moment, we keep parity between those operating virtually and physically, which I think is very important, but there will come a point in the process where that balance will shift. It will be quite a difficult moment for us to decide when that will be appropriate.

Q75 **Lord Faulks:** I take your point, Baroness Smith, that hybrid proceedings are not one form of proceeding and that they evolve. We have now had quite a long period where hybrid proceedings have been going on. What, if any, of the features of those proceedings do you think could profitably be retained when we return to our normal practices?

Baroness Smith of Basildon: We have only had hybrid proceedings for a few weeks, really, because we were fully virtual initially. I think there is some discussion on this because there are different views. I know of a

number of colleagues who say they very much like the list system in Questions, because it gives more Members a chance to get in, you do not have to have the loudest voice to come in on a Question, and a wider choice of Members participate. The downside is that you lose spontaneity—somebody responding to a ministerial answer, or responding to the spontaneity of the House responding to a ministerial answer. I think there will be quite a bit of discussion about it.

The two things I would really like to keep are PeerHub—more of us are using that hub; the information on it for Members is extremely useful—and, while you may not always want to meet virtually as a Select Committee, we now have capacity for a wider choice of witnesses, if you are able to question witnesses in a hybrid way. Most Members can be present, but your witnesses can be via Zoom, Teams or another system. That is quite a useful mechanism for the House.

Some thought has to be given to those with disabilities or illness or who are unable to attend for some reason and how they participate. That is quite difficult, because it has to be that somebody genuinely cannot participate, rather than just wants to participate virtually. There are discussions and decisions to be had on that, but I think there is a way forward where we do not just throw the baby out with the bathwater. We should give real consideration to whether there are things that we have learnt now that would be useful to us in the future.

Lord Newby: We have to get back as far as possible and as quickly as possible to some of the ways in which we have operated in the past, in particular with the spontaneity and the ability of people to intervene on Ministers and others. We have lost a lot of that. At that point, the current parity of status between people in the Chamber and not in the Chamber will go; that is inevitable. The benefits of having spontaneity outweigh the downside.

There are two things generally that I would like to keep. First, this point about people who for some medical reason are unable to attend is something we ought to look at. It is difficult, because there are some people with certain medical conditions who might still like to attend but are not really in a good state to do so, whereas there are others who are physically frail who have a unique perspective on public policy and from whom the House has benefited a lot in the past and who we would benefit from in the future, even if they can only participate remotely. We should see how to enable them to do that and to carry on voting.

The other change, which I mentioned earlier, that I hope will happen, is that we do not return to voting through the Lobbies. I do not want to retain the electronic voting for everybody permanently, but we could improve our efficiency by having an electronic voting system, possibly just based on scanning our pass against a card reader, as they do in the Commons.

Some of these things make particular sense as we look towards a temporary decamp with R&R, where having people who are able to

participate from other parts of the estate, for example, could make it easier for us to do that and possibly even save some money at the same time.

- Q76 **Lord Hennessy of Nympsfield:** On the long-term effectiveness point, would you agree that the House of Lords needs to justify its utility and value afresh, not just in the classic scrutiny, challenge and revision functions, but in our capacity as a very considerable storehouse of knowledge that amounts to a very substantial think tank for the nation in what are going to be terribly uncertain times?

Baroness Smith of Basildon: In many ways, yes, though I think our role is appreciated by us perhaps more than it is by the Government, which is unfortunate. I have always thought, as I said earlier, that the whole role of scrutinising, challenging and asking questions gives better legislation and better decision-making. A confident Government should welcome that. The ability to use expertise in the House, or for the House to use its functions to draw in expertise from witnesses, is extremely valuable. We are in a position where the House has to justify what it does a little more. We cannot take anything for granted, and there is a manifesto commitment from the Government for reform of the House of Lords—we have seen the proposals to move us to York.

On how we operate, perhaps we ought to look and think a little more about the models we could use to face the challenges of the future. Some really big thinking needs to be done longer term. I am not convinced that we are in a position to do so, or that the House of Commons is able to do a lot of that work and that we may be able to assist. Incidentally, talking about ill health, Jeff Rooker has just signed in today. He would not be able to attend regularly physically because he is undergoing chemo, but he can now participate in the House's proceedings, which is of great value to us. He often describes the House of Lords as almost a Select Committee of the House of Commons. It probably underplays our role a little bit, but it is about using our ability to draw in expertise and then draw the threads of that expertise together, which can be useful for both Governments and Oppositions.

Lord Newby: There is no doubt that there is a huge amount of expertise in the House of Lords on any issue. Debates in recent days, whether on fisheries or corporate insolvency, have shown people who know a huge amount; that is of value. The challenge is how we promote it. That is difficult at a time when there is huge cynicism about politicians generally.

I do not want to intrude a party-political point here, as it were, but there is also the Government's failure to grapple with the size of the House. All our efforts to persuade the country that we are a great bunch of thoughtful people doing work for the public good will be undermined if a great slew of new people come in with a strong party-political bias. In my view, there is no effective attempt to reduce the size of the House.

- Q77 **Lord Howell of Guildford:** The House of Commons and House of Lords Chambers have been described as political theatre. The cut and thrust is

great for sketch writers and makes amusing—even interesting—watching, but do all the remarks and answers you have wisely given to this committee not point in another direction? If the scrutiny is really to be effective and to get into the huge and expanding powers of the Executive at every level—much of which is never exposed to public gaze at all—we need not many good committees but much more powerful committees. I know this raises fundamental constitutional issues, but should we not start learning lessons from some of the committees of Congress in the United States or other parliaments, which have much more control and influence over the legislative procedures and in some cases the budgets?

Baroness Smith of Basildon: Indeed, the European Parliament, which we are leaving, has that committee system in place as well. There are huge roles for committees, but you need a Government that want to engage with and listen to those committees. You are right that there is huge value in that.

Where I disagree with you is in describing the Chamber as political theatre. There are moments of political theatre that sketch writers and we ourselves love—we take part and think it is great fun—but that is not really the nuts and bolts. The Chamber is probably at its best after the dinner break on a Wednesday evening when people are going through the detail of a Bill. There is not much theatre; it is like what you describe as committee work. There is huge value in committee work, and I would be quite content to see a greater role and authority in committees. I suspect that few Governments would, though.

Lord Newby: I rather agree. One element of the work of the House of Commons that I fail to understand, having never been a Member, is its almost total failure to scrutinise projected levels of expenditure. The Budget and the Finance Bill are debated at immense length, and expenditure is hardly debated at all in the same way. In that specific area, at least, I am with Lord Howell.

Having stood at the Dispatch Box and attempted to justify government policy, the only thing I say about the political theatre is that the pressure on Ministers trying to defend a poor or weak policy is such that they are very unkeen to pursue it. That pressure is more in the Commons than the Lords, because the Commons Ministers have more power, but if you stand up at the Dispatch Box in the Lords when it is full and try to justify a policy that, frankly, is very difficult to do, you really get the message. That is a very valuable function, and I do not want to see us downgrade it.

Baroness Smith of Basildon: It is also a good argument for getting back to a physical Parliament as soon as we can.

Q78 **The Chair:** I have one further question about how Parliament can react during this pandemic period. We had an Easter Recess during the lockdown when it was impossible to hold the Government to account because Parliament was not sitting. We will shortly go into a Summer Recess for August. Do you have concerns or ideas about how Parliament

can fulfil its responsibilities and track what is happening during that recess time?

Baroness Smith of Basildon: I have given some thought to this because it is difficult, particularly this year when, with the work people have done—virtually, I know—and the hours they have put in on things, they are ready for a break. On the other hand, that cannot be an excuse for no scrutiny.

We have seen the nonsense of a Sunday evening press conference from the Prime Minister rather than a Statement to the House of Commons. Statements to Parliament are always a good way to test things. I wonder whether it is possible to have a committee or a Joint Committee of both Houses in that gap. We have seen this in places such as New Zealand, at the start of the coronavirus crisis, where there was a committee chaired by the leader of the opposition—but it could be a committee chair. That committee has a public-facing role holding to account and scrutinising the Government.

It can also be a committee just trying to get information. Otherwise, there is no avenue for the Government to give information and be questioned. The Government are not doing the nightly press conferences now, which I think is a good thing, but I wonder whether something should replace that so that there is some way of monitoring, tracking and seeing what goes on—not in a hostile way but in an informational, helpful way. Otherwise, we will come back in September and will have lost that. We could again find ourselves in the position of having hundreds and hundreds of Written and Oral Questions being tabled to try to get answers to things that have not been addressed during the Recess.

Lord Newby: It is a good thing that we have reduced the Recess to August; we would have been in real difficulties if we had not. The other thing is that in my experience of talking to my colleagues in the Commons, they are exhausted. They have had an immense avalanche of individual constituency issues, some about health but quite a lot about the economic circumstances of individual constituents, which has meant that their workload has exploded. We have to have a recess of some length to deal with that.

Building on what Lady Smith has said, I wonder whether there needs to be some process whereby, if the Government plan to make any announcements on coronavirus during the summer, they have to have some interaction with some parliamentary body, rather than just leave it for a month. Hopefully the summer will be quite quiet, but it might not be. At the moment, there is no easy way for them to do that. As Lady Smith said, if there were a committee, not in perpetual session but on standby, in front of which the Prime Minister or Health Secretary would have to appear were they to make a significant Statement—a mini-Parliament, as it were—that would be a good thing and a corrective to government not to push things through when Parliament is not sitting. It would be reassuring to the country that Parliament was still on the case.

The Chair: Thank you for your evidence this morning; it has been helpful

to the committee. We know that you are both extremely busy, so thank you both very much for coming this morning. I will pause proceedings now and ask Members to stay on the line before we go on to our next witnesses.