



Select Committee on the Constitution

Corrected oral evidence: Minister for the Constitution

Wednesday 14 March 2018

10.05 am

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Members present: Baroness Taylor of Bolton (The Chairman); Lord Beith; Baroness Corston; Baroness Drake; Lord Dunlop; Lord Hunt of Wirral; Lord Judge; Lord Morgan; Lord Norton of Louth.

Evidence Session No. 1

Heard in Public

Questions 1 - 9

Witness

I: Chloe Smith MP, Parliamentary Secretary (Minister for the Constitution), Cabinet Office.

Examination of witness

Chloe Smith MP.

Q1 The Chairman: Good morning, Minister. Thank you very much for coming, especially earlier than we would normally meet, but I know you understand the reasons why.

The Constitution Committee, not surprisingly, is very keen to monitor the Government's thoughts on the direction of the constitution and what is happening. We have spent a lot of time on the European Union (Withdrawal) Bill. Some very basic concerns have been raised in that Bill, and many people are talking about it. We are not sure that the Government have taken on board the idea of ensuring constitutional propriety during the passage of that legislation and in the whole Brexit process. In a sense, that is indicative of some of our general concerns about the way the Government think about their constitutional responsibilities. There used to be a Cabinet committee, which we understand no longer exists.

Perhaps you could set out where the Government are coming from in taking on board all those collective concerns, because it strikes us as quite worrying that responsibility for the constitution does not rest anywhere at senior level. Do you talk to David Lidington about it? What actually goes on in thinking about the constitutional implications of the various changes that the Government propose through legislation?

Chloe Smith MP: I would be very happy to try to cover all that. Perhaps I could start by summarising my own role, as this is the first time I have come to see the Committee. I am delighted to be here. I saw a few of you last night in a meeting about the withdrawal Bill. No doubt we will come to those issues.

As you know, my title is Minister for the Constitution. It might be helpful at the outset to summarise that that includes constitutional policy, electoral policy and a number of other functions that the Cabinet Office performs on behalf of the whole Government. That is classic Cabinet Office business. In my case, it is a role looking at reform of public bodies and at fraud, error, debt and grants, for example, and it has responsibility for the Government communication service. Those are a number of classic functions that the Cabinet Office performs on behalf of the whole Government. No doubt today we will focus on the first of those three categories, constitutional policy, although also perhaps a little on electoral policy if you want to.

Your central question was: where does full responsibility for the constitution sit in government? I would point primarily to the role of David Lidington, whom you mentioned in your question. I certainly see him extremely regularly. I support him in his functions in respect of the constitution, and we work together very closely. At the moment, as is very clear to all involved, we are giving a lot of time, priority and effort to the work on the EU (Withdrawal) Bill, in particular its devolution clauses.

To give you a flavour, that is very much one of the Government's priorities. It is one of his priorities and one of mine.

The responsibility for the constitution across government comes to him. He is the senior Cabinet Minister responsible for these issues, so it would not be true to say there is not one. There is; it is David Lidington. Naturally, he supports the Prime Minister on those issues. Of course, the role of the Prime Minister is where all things stop, and certainly where ultimate constitutional oversight rests. A key part of David's role, and mine in support of him, is to ensure that the Prime Minister is advised and supported on constitutional matters.

One of the mechanisms we use to do that is Cabinet sub-committees. David has the joy of chairing or participating in no fewer than 17 of those. You might ask what else he finds to do with his time. You may have him in front of your Committee in future months to ask him that. I am not making light of this; it is a rather important point. To be able to bring together all things constitutional requires the ability to work across committees. We have a committee system in this Government, and that is where he carries out that role.

To give you an example from that list of 17, one that I am sure will be of interest to you is the EU Exit and Trade (Domestic Preparedness, Legislation and Devolution) Sub-Committee; another might be the Social Reform (Home Affairs) Sub-Committee, both of which he chairs. That is how he brings together issues to do with the constitution, and how he enables the Government at the most senior levels to take decisions accordingly. May I also say a word about the civil servants who support that operation? Would that be helpful?

The Chairman: We will come to that. We are concerned that there used to be a Cabinet committee that had oversight and now there is not. I understand that your Minister is on other sub-committees, but when it comes to legislation, are you on what used to be called the Legislation Committee, which I think is now called the PBL Committee?

Chloe Smith MP: David is.

The Chairman: We are getting all this legislation, and we feel that its constitutional implications have not been looked at. It used to be the case that at the PBL Committee the Treasury would say whether a Bill was fit for purpose in its terms. Then it had to be ticked off on human rights. Is anybody looking to tick off legislation as to whether constitutionally it will be acceptable?

Chloe Smith MP: Yes, they are. We may come to questions on the legislative process. I do not know whether you want to bring in any of those at this point. I was going to note, perhaps later when we come to that, the way in which some of those committees work together to do the full set of functions we ask of them in ensuring that legislation is fit, ready and proper.

You asked specifically about constitutional matters. These matters are absolutely at the forefront of the Government's mind at the moment. There are no two ways about that. Given the context of EU exit, it is very easy to see why. At present, David's goal and mine in this area is to ensure that constitutional matters are appropriately considered. The breadth of the work to exit the European Union gives us the imperative to do that, and we are using a range of government committees to make sure that we do so.

Lord Beith: Could you clarify how many Cabinet committees you attend?

Chloe Smith MP: David attends those 17; I do so on an ad hoc basis to present papers and to be part of decision-making, as required. I can almost anticipate the line of questioning you might go down now. You might ask how I could be responsible for the constitution in my job title if decisions are being taken elsewhere. I might almost say in response that you cannot have it both ways. Either it is dealt with at senior Cabinet level or it is not. My job is to support Cabinet Ministers by being able to assist them with the range of detail that sits beneath the decisions they need to take.

The Chairman: I have to say that, if the system was working well, we would have had an EU (Withdrawal) Bill that was nearer to being fit for purpose than we felt this particular one was, but we must move on.

Q2 **Lord Judge:** We do not have a constitutional reform committee at all and no committee has replaced that under a different title. Forgive me for asking—it is not intended to be discourteous—but, given your huge responsibilities, are you not really a Minister for the Cabinet Office?

Chloe Smith MP: I am indeed one of the Ministers at the Cabinet Office. That is true in itself.

Lord Judge: It seemed to me from your evidence that that was your prime responsibility, and that constitutional matters were an important part of the brief.

Chloe Smith MP: Every Minister has a range of responsibilities. It would be rather difficult to find a single Minister across Whitehall who has only one thing to do. The point goes to the status of my own job title. You might know that I had this role before; I was previously in post from 2012 to 2013. At that point, my job title included constitutional reform; I was Minister for Constitutional Reform. Therein lies the point of your question. You are looking at the loss of a committee that was about constitutional reform, but you are now looking at a Government who are focused on ensuring that constitutional issues are appropriately considered rather than necessarily reforming everything they can lay their hands on. We are at a critical time and we need to proceed carefully, rather than focusing on reform per se.

Lord Judge: I understand the evidence you have given us. Any department looking at legislation has lawyers to look at the constitutionality of the proposal, but who at the end of the day stands

back and says, "Actually, you're wrong about this", or, "There may be a question about this"? What happens? What does your department do in the context where, standing back, someone says, "The Department of X has produced this. The lawyers say it is constitutional. I am worried about it"? How does that work?

Chloe Smith MP: Both David and I would discuss any such matter and use the committees to help us.

Lord Judge: But does every piece of legislation come to your department?

Chloe Smith MP: Yes, if a constitutional matter is thought to be in there.

Lord Judge: Can you tell us how many lawyers you have in your department?

Chloe Smith MP: I do not have the figure; I would be happy to write to you with the figure.

Lord Judge: Give us a generality. Is it two, 10, 20?

Chloe Smith MP: Shall I at this point give you a slightly broader answer about constitutional civil servants overall?

Lord Judge: Yes.

Chloe Smith MP: That might help to come to the answer. I thought you would be interested to know about the work of the UK Governance Group. I recall that you spoke about this to my predecessor last year. It has come into its own in the year since you spoke to my predecessor. That is the group of officials where you would find expertise on constitutional matters. There are lawyers within that, and I would be happy to provide you with the exact number.

The group works between the Cabinet Office and the Department for Exiting the European Union, the Scotland Office and the Wales Office. It does not include, but it works very closely with, the Northern Ireland Office. That is where we see the expertise of officials on constitutional matters; indeed, I have with me today a number of officials who are part of that group. Within that, David and I together ask of our officials that they do what you describe and look across the work of the Government, and spot where we need to give it attention.

Lord Judge: When was the last time your department spotted that there was a constitutional problem that the department in question had not spotted?

Chloe Smith MP: If I take as an example the Chair's characterisation of the EU (Withdrawal) Bill as a problem, we have been working on that very issue extremely intensively over a number of months. I would say that we are in the middle of ensuring that the Government are properly considering all the aspects of that.

Lord Judge: Your department has drawn to the attention of the Government the fact that the Bill has problems constitutionally?

Chloe Smith MP: No. My department is ensuring that Clause 11 is in a state on which the UK Government and the devolved Administrations can agree. That is what we are aiming to do. We are ensuring that the devolution elements of the Bill are fit for the purpose we ask of them and, ultimately, that the Bill can do its job, which is to serve citizens in the way that has been outlined.

Lord Judge: Let me see if I have got this right. At the head of this pyramid is Mr Lidington; then you and all those other committees. The line of authority goes up ultimately to Mr Lidington.

Chloe Smith MP: Yes, broadly.

The Chairman: The EU (Withdrawal) Bill has wider constitutional issues than just Clause 11 dealing with devolution.

Lord Norton of Louth: Minister, you mentioned that there are major constitutional issues that the Government are considering—Brexit, devolution and so on—and you have a Minister responsible for that. What is the process within government whereby Ministers actually consider the constitution as the constitution?

Chloe Smith MP: I start by saying the thing we all know to be true, which is that we do not have a written constitution, so that, when we do such a thing, we are dealing with concepts rather than necessarily a document. The function for doing that is taken up by some of the committees I have spoken about. When consideration might need to be given in respect of the constitution on any other issue, as I have just been exploring with your colleague, committees might consider that.

The Prime Minister and the Cabinet ultimately would take the consideration you are driving at. If I stick with devolution as one of the biggest examples in the body of constitutional work we are doing today, consideration of that as a constitutional issue in its own right, which needs broad attention, would be done at Cabinet level. Indeed, David Lidington does that, and I support him with a programme of work to strengthen the union. As I think you know, that is in itself a prime ministerial priority, so Cabinet ultimately does what you are asking.

Lord Norton of Louth: Does Cabinet actually consider our constitution? Otherwise, there is a danger that our constitution is a consequence of disparate and discrete changes rather than those changes being set within a clear view of what we want to achieve with our constitution. I am just wondering what the process is within government to make sure that those disparate measures fit into a clear view of the appropriate constitution for the United Kingdom.

Chloe Smith MP: Considering the historical position that, frankly, our constitution has come about as a consequence of various decisions over various centuries, it does not have the status of a single thing we could

point to and look at. What we are really talking about are concepts of stewardship and appropriate consideration. Necessarily, some decisions relating to that might be ad hoc because they are presented by a particular piece of legislation, a particular development or a range of things. Cabinet would be the ultimate arbiter, and the place where that process culminates. My department is where the detailed stages of any such process would happen. I hesitate to characterise it as a single process. I do not think that fits with what our common understanding would be of our constitution.

Lord Norton of Louth: On process and whether there is a framework, when this Committee was set up, one of its first reports looked at the process of constitutional change. The then Lord Chancellor, Lord Irvine, provided a flowchart of how government dealt with it. It might be useful if we were able to have something similar on the process within government when a constitutional issue comes forward. Is there a clear, structured process?

Chloe Smith MP: I would be happy to take a look at that previous report. Forgive me: I did not do so before coming to today's meeting. Now you have drawn my attention to it, I will take a look at it and see whether it might be possible to give a similar expression. It may not, but I certainly undertake to look at it.

The Chairman: Thank you. That could be helpful.

Baroness Drake: The EU (Withdrawal) Bill gives exceptional powers for an unprecedented purpose. I was rather taken by your response to Lord Judge's question when you said the Government were in the middle of considering the constitutional implications of the Bill. My immediate reaction was that it was rather late in the day. It implies that the Government have not decided their view on the constitutional implications of the Bill. Given that these are extraordinary powers and exceptional circumstances, that seems a bit ad hoc and uncertain.

Chloe Smith MP: If my comments were unclear, I am delighted that you have given me the chance to clarify them. What I meant when I said "in the middle of" was quite simply the respect due to this House, in that you are in the middle of considering the Bill in Committee. We are in the middle of the Bill in the sense that Commons and Lords are rightly giving it detailed consideration. The Government, quite properly I think, are responding to the debate as it occurs, while also conducting very detailed discussions with the Scottish Government, the Welsh Government and civil servants in Northern Ireland to be able to ensure that we have agreement on key parts of the devolved powers of the Bill. That was what I meant when I responded to Lord Judge.

Baroness Drake: That answer rather reinforces my concern. You are of course responding to the debate, but we have not seen a clear outline of the Government's view of the impact of the Bill on constitutional propriety. Yesterday, I went to the Library and asked whether there was a publication, other than reading through all the things that have come

out, that captured the Government's assessment of the impact of the Bill on constitutional propriety. They could not find anything.

Chloe Smith MP: This is very interesting. I suppose it leads to two points. The first is that I must simply assert in answer to your question that the Government have done their proper consideration. We prepared the Bill; we brought it forward; we think the Bill does the job we are asking of it, but we are, quite rightly, as the Committee would expect, also responding to the debate arising on the Bill as it moves through its stages.

The second point your comment raises is the idea of whether there ought perhaps to be a constitutional impact assessment of every Bill, in the same way as we do an equality impact assessment, an environmental impact assessment or what have you. Is that the thought behind the question?

The Chairman: Absolutely. That is the logical conclusion. When I mentioned PBL earlier, that is what I was getting at. There is almost a need to have another exercise that says it is not only environmentally acceptable and acceptable to the Treasury; you should have a constitutional impact assessment.

Chloe Smith MP: I wonder how the Committee thinks we could do that against, as we said, a non-written constitution.

The Chairman: The Committee would be very happy to do some work on that.

Lord Judge: The idea that the constitution is unwritten does not mean we do not have one. We have some pretty clear constitutional principles, such as parliamentary sovereignty.

Chloe Smith MP: Yes.

Lord Dunlop: To follow up on the organisation of the UK Governance Group, you mentioned political leadership and how that voice is articulated in sub-committees, but what about civil service leadership of the UK Governance Group? If you are to embed sensitivity to constitutional implications, I wonder how that is done through the civil service machine. For example, who at the weekly colleagues meetings of Permanent Secretaries speaks for the UK Governance Group?

Chloe Smith MP: In short, it would be its leader, Philip Rycroft. He is also, as you know, Permanent Secretary at DExEU, which I rather think is a virtue in these times, because it allows a very important link to be made between constitutional matters and what is obviously the pre-eminent constitutional example of our times.

Lord Dunlop: I can see the benefit of that, but departments have different agendas and interests. How would he manage what might be potential tensions between DExEU and the UK Governance Group's interests, because they will not on all occasions be absolutely the same?

Chloe Smith MP: I think that is right. You might wish to ask him those questions.

Lord Dunlop: As you are the Minister responsible, it might be interesting to know what you think.

Chloe Smith MP: Forgive me. I missed out the Office of the Advocate-General whose staff are also in that group.

David Lidington and I, and the other Ministers I listed, would expect that the leadership of the group helps us to give the appropriate constitutional consideration, which has been the theme of our discussion here this morning, and that, to the best of its ability and the individuals' ability, it deals with those trade-offs. Government is, of course, about trade-offs. I think we all know that. At the moment, given the size of the job of EU exit and its complexity, it is very much a good thing that those issues come together with Mr Rycroft and his senior team, rather than being managed in some way separately.

Q3 **Lord Morgan:** I was just wondering where initiatives and statements of priorities come from. I recall very little in the last Conservative manifesto on proposals for constitutional reform, other than Brexit. Do the Government have priorities? If so, how can one discover them? Do you personally have priorities for constitutional reform? There are issues every week, for example, about Executive/legislature relations that generate further questions. Would you be able to spell out what the Government's main priorities are?

Chloe Smith MP: I return to a theme I raised earlier, which is that now is not necessarily the time for constitutional reform, compared with stewardship and the right consideration of the issues as we deal with other very large priorities for the Government. I am confident that this Committee understands the priority in parliamentary time that has to be given to EU exit, which really demonstrates that there is relatively little time for other initiatives—the word you chose.

I mentioned at the beginning that I am responsible for electoral policy, which, lest we forget, is a very important part of the constitution in its own right. That means that two of the three subjects I mentioned as my role are constitutional. Electoral policy is an area where I would describe my goal as ambitious stewardship. There are things we need to do to ensure that the electoral system continues to function. There is no doubt that it is one of the largest systems we run in this country; others might be the NHS or the pension system. They are types of system that touch millions of people. The electoral system is self-evidently one of those. We therefore need to make absolutely sure that it functions every time. It is as simple as that.

I have ambition for that system because I want to continue to improve it. I want to protect it against fraud; I want to protect its integrity, which was a point noted in the Conservative manifesto. There are a number of initiatives I am taking to protect that system. There are a number of

ways in which we can improve it. For example, only last night I was speaking to people connected to the field of domestic abuse. An initiative I have recently taken is to ensure that it is easier for survivors of domestic abuse to register anonymously in the electoral registration system.

I want to ensure that the system is opened up. To pick another example, there are still people with certain disabilities who find it very difficult to register to vote and cast their vote. That is a case where we must open up the system; it is the right thing to do to tackle what are in fact types of injustice. I hope that gives a couple of examples of the initiatives we are taking. I emphasise that I see good stewardship as a very important part of our constitution. That is the kind of focus you would expect to see from this Government, making sure that things are properly stewarded and that other constitutional issues are properly considered, rather than necessarily setting out to reform things from top to bottom, given that we have the other self-evidently large priority of exiting the European Union.

Lord Morgan: Quite a lot of that sounds a bit like monitoring the work of other departments and seeing that they conduct their affairs openly, efficiently and so on, which would be part of the operation of government in any case. Would the Government not have rather more fundamental thoughts on the way institutions interlink and form a coherent whole? In this, I see no great sense of priority, to use the word I used before.

Chloe Smith MP: Forgive me, Lord Morgan. The work of the electoral system is my responsibility; it is not that of other departments. The bulk of what I just said to you was about my department's work. To take your point more broadly, it is also the role of the Cabinet Office to facilitate other departments in their work. That is absolutely what the Cabinet Office is there to do. It means that, when it comes to constitutional matters other than, for example, the electoral system, we are there to do that. We use various mechanisms to do so. We have spoken about the civil service structure and committee structures. I do not think it is wrong to say that the Cabinet Office is there to facilitate other departments; that is what we do.

Q4 Lord Hunt of Wirral: Turning to the question of how Parliament might scrutinise treaties post Brexit, in the wash-up session in 2010 the remaining bits of the Constitutional Reform and Governance Act 2010 gave the House of Commons powers to block approval of a treaty, and the Lords briefly to delay approval, but no other involvement. What role might Parliament have in shaping future treaties while negotiations are ongoing? Looking ahead post Brexit, with the anticipation that there will be a number of treaties, what role should Parliament have, and how are you testing views on that?

Chloe Smith MP: This is potentially a rather complex area of questioning, and certainly one that requires thought—and we recognise that. Would I be right in thinking that you are seeking to ask about treaties that relate to future free trade agreements after we have exited the EU, or would you be thinking of other types of treaties?

Lord Hunt of Wirral: All treaties. The 2010 Act does not differentiate types of treaty. I am looking at treaties in the generic form, but, as I understand it, the consultation paper that is being issued by the Government talks of preparing for our future UK trade policy. Of course, there are other treaties that come under the 2010 Act. How are we going to look at all of that post Brexit?

Chloe Smith MP: When you talk about consultation, I think you are referring to a technical note recently published.

Lord Hunt of Wirral: Yes, on trade.

Chloe Smith MP: Indeed. Everything in it speaks for itself; there is relatively little I can add to what has been said there.

The shortest answer to the breadth of your question is that the procedures set out in the CRG Act remain in place, so I would expect Parliament to use those procedures as appropriate, depending on certain categories of treaty, because there will be different types of things to deal with occasioned by our leaving the EU. Those that require implementation, or are subject to ratification, will use those procedures.

Q5

Lord Beith: The Leader of the Lords told us at an earlier session that the Parliamentary Business and Legislation Committee is now “overseeing secondary as well as primary legislation ... to improve the quality and ensure a consistent flow of SIs to Parliament”. I am not quite sure about the latter point in the context of Brexit, but let us leave that for a moment. Has it made a difference in any way?

Chloe Smith MP: Yes, I think it has. The main difference so far, in about six months of operation of the system, is avoidance of big peaks and troughs in secondary legislation coming forward. Commonly, that might have been to get some of it out of the door before recess or common commencement times—for example, springtime. We have seen a much smoother flow of SIs coming forward. What we have tried to do starts from the acceptance that it ought to be done better and that the system could be improved. One example is inconsistency in laying instruments throughout the year, which causes difficulty for all parts of Parliament in doing their job.

What we were aiming to do was to be able to manage secondary legislation better as a more coherent single programme. We want to raise the quality. For example, we are conscious that explanatory memoranda at times are not good enough, so we want to address consistency and quality. We are also very conscious of the imperative on our time of Brexit. The numbers will be familiar to you. Potentially, between 800 and 1,000 SIs are needed to correct the statute book, so we do not exactly have the luxury of space and time, but we have the opportunity to think again about how we manage secondary legislation.

We have done two things. We have used PBL, which is a Cabinet sub-committee, to give central oversight to the whole problem. We think that is beneficial and that it assists with one of the themes of your earlier

questions: where do we have oversight of constitutional issues? One mechanism we have is using PBL, and making sure that secondary legislation is part of that as much as primary might have been.

Secondly, we want better management in departments. We are asking departments, essentially, to have better triage of secondary legislation. We are asking departments to provide SIs to the committee in a manner that means they can be better triaged and managed.

Lord Beith: Do you think there is anybody in the system, in the departments, who says, "We are chancing our arm a bit here doing this as a negative; it will never get past Chloe Smith"?

Chloe Smith MP: Maybe that could be my legacy.

Lord Beith: Would it not be a good thing if it were so?

Chloe Smith MP: I should fess up. It would be more likely to be Andrea Leadsom and Baroness Evans in the hot seat. It would not be a bad outcome at all. If departments can have a better understanding of Parliament, it is no bad thing. It is not just about getting past a Minister or the committee. The whole point is that legislation should be of good enough quality to pass through Parliament itself. One thing we all care passionately about is that Parliament should be in the driving seat of that. If departments, Ministers and officials think more carefully about whether a piece of legislation correctly and capably can pass through Parliament, I shall be pleased that they are doing that.

Lord Beith: Looking at the 800 to 1,000 existing statutory instruments, and then those that will arise from the withdrawal agreement, do you have a calendar in mind as to when they will come before Parliament?

Chloe Smith MP: Roughly speaking, we do. That is something we are able to do, having asked for the process to come into play. We have a better sense. It is not in a format I could offer to share with you, if that is the next question, because an amount of planning still needs to be done in respect of the withdrawal Bill itself. Given that it has not yet completed its progress, I cannot tell you what the calendar looks like, but we are aiming to get to the point where we have a better and smoother sense of when SIs are coming through, so that we can manage them in an orderly way.

Lord Beith: Do you think there will be more SIs after any withdrawal agreement, because of the things it has not been possible to do prior to that, than we face before the withdrawal agreement?

Chloe Smith MP: In short, yes. Partly, that is because of the nature—Excuse me, I am sorry. I thought you were referring to the withdrawal Bill, not a withdrawal agreement. Let me start again.

Lord Beith: We already know about the SIs that will result from the current withdrawal Bill. What I am trying to get at is whether that mass is greater or smaller than those that are likely to result from the withdrawal

agreement Bill, when we get it.

Chloe Smith MP: Yes, I see. I do not think I am in a position to answer that question at the moment.

Lord Judge: I am still left with uncertainty. Forgive me: this sounds very rude, but it is not intended to be. Who read the debate we had on Monday about constitutional issues, which went on until three o'clock in the morning? Whoever it was deserves a medal, but did somebody?

Chloe Smith MP: Yes, absolutely.

Lord Judge: Did you?

Chloe Smith MP: Yes.

Lord Judge: What conclusions did you draw from the debate about the constitutional issues?

Chloe Smith MP: That they are important and deserve appropriate consideration, as I hope I have been saying throughout.

Lord Judge: Which of them did you think was the most important and difficult from your point of view as the Government presenting their legislation to the House?

Chloe Smith MP: I am not trying to be elliptical, but in the context of the recent session of the Committee and all the sessions you are having in this House on the Bill, it might be helpful if I clarify for the record that obviously we have a team of Ministers involved. I am one of the Bill Ministers because I have responsibility for the devolution clauses, principally Clause 11, but also those that fall from that. You in this House have an excellent and capable team of Ministers in Lord Bourne, Lord Keen and Lord Duncan, in particular in relation to the devolution clauses. Other Ministers are part of the team and are taking up many of those very impressive hours of debate.

We all, as a team of Ministers, and, more broadly, officials involved in the Bill, meet regularly through the week to assess the issues raised in the debate, to reflect on them and ensure that we are properly prepared for the coming stages of the debate, as you would expect. What I have described is no more than would happen on any Bill, but what I want to get across is that we have a very large team on this particular Bill. That is probably a virtue rather than a hindrance. It is a good thing, because it means we have the breadth of expertise of your colleagues in this House who are able properly to answer their Lordships' questions. I and a few other Ministers from the Commons end are just as much part of that team, because we have policy responsibility for it.

Lord Judge: I understand that. That is a team of Ministers, but you are the Minister responsible for constitutional issues. Obviously, you can get advice from Lord Keen.

Chloe Smith MP: Yes.

Lord Judge: At what stage does somebody say, "The constitutional issue here has to be addressed, and I am going to address it"?

Chloe Smith MP: If I may, can we start talking about the specifics of the constitutional issue rather than its being a generic one and the idea that the Government have a list of constitutional issues hanging around their neck? I think we have one in particular that we are keen to talk about, do we not?

The Chairman: We do, but the other important thing is that a lot of the problems we are seeing on this Bill are things we have seen in other legislation. For example, it is not just the number of SIs; it is the fact that SIs fundamentally change things in a way that was not the case 10 years ago. That is the trend that underlies much of our concern. Some of it is coming out in the EU Bill because of its peculiar nature, but those trends and concerns, the lack of overview of where legislation is going, the balance of power and Parliament's ability to keep track of things and hold the Government to account, are pretty fundamental to what we are talking about. But we are very short of time, so I will bring in Baroness Corston.

Q6 **Baroness Corston:** How are you getting on with updating the *Cabinet Manual*?

Chloe Smith MP: It is something we are aware needs to be done. As you know from previous sessions of this Committee, Ministers have said that it will need to be done. We think it would be best done after our exit from the European Union for some slightly obvious reasons. There is a section in the manual that relates to issues that would be changed by our exit, so we intend to do it at that later time.

Baroness Corston: Therefore, nothing has been done at all since 8 March 2017 when we took evidence from your predecessor, who seemed to suggest that there was some urgency.

Chloe Smith MP: The simplest thing to say is that we intend to do it at that later time after leaving the EU.

Baroness Corston: What role do you expect this Committee to play?

Chloe Smith MP: I would be delighted if the Committee took a view on the updating. I would very much like to work with the Committee to do that.

Baroness Corston: Your predecessor undertook to keep us updated.

Chloe Smith MP: Indeed, hence my welcoming the ability to answer the question this morning, to convey to you that we think we should do it at that later time.

The Chairman: It might have been helpful to know it had been deferred.

Q7 Lord Dunlop: Minister, can I bring you on to intergovernmental relations in the context of devolution? Obviously, it is a very live issue, not least today when the Joint Ministerial Committee (Plenary) is meeting. You will be aware that the Committee produced a report on intergovernmental relations, before my time, which highlighted significant concerns about the way the whole JMC process was working. In December 2014, a review of the devolution memorandum of understanding was initiated, and on two previous occasions the whole issue of the MoU was remitted for further work by the secretariat. Could you tell us where that work is getting to, and perhaps offer some reflections on how thinking might have to change as a result of Brexit?

Chloe Smith MP: I very much welcome the Committee's thinking and its previous work on this. It is very important. The point I have been trying to make this morning is that we have the duty at the moment to consider constitutional matters appropriately in the context of EU exit. This is one of the biggest examples where they arise, so it is excellent that we have your focus and expertise.

Perhaps the first thing to say is that there will be more for the Committee to see this very afternoon, when the Prime Minister chairs JMC(P), obviously with the First Ministers and with civil servants in attendance from Northern Ireland. There, a number of things will be said that relate to intergovernmental relations, and I think they will be positive. I hope the meeting goes well and that it will give you some points of interest and reassurance.

It might be helpful if I answered this question along with a quick summary of what we have been doing in relation to work with the devolved Administrations on both Clause 11 and frameworks. Would it be helpful, Chairman, if I do that at this point, to inform the broader discussion?

The Chairman: Yes.

Chloe Smith MP: Colleagues, Peers and Members of the Commons, will have had a letter from David Lidington within the last 48 hours that sets out the breadth of what I will summarise now, so there is plenty more to refer to. Essentially, as you know, we have tabled a substantial amendment to Clause 11 and published our analysis of where frameworks will be needed. That work is driven by twin objectives. One is to increase devolution and the other is to protect the UK common market and provide certainty to people.

I would like to draw out what that means for intergovernmental relations. We have spent a considerable amount of time talking with the devolved Administrations, principally Scotland and Wales, for obvious reasons, to try to get this right. I place on record my thanks to the Administrations for that work with us, and certainly my thanks to the very many officials who helped to do it. It has been somewhat hidden from view. The newspaper headlines have given a certain flavour to the work, but that has slightly hidden from view the amount of detail that has been going on

in pieces of work that are really all about wishing to have strong intergovernmental relations both to make this piece of work a success and to set up those relations for the future.

The overwhelming desire of the Government is to be able to secure the agreement we seek, to improve the EU (Withdrawal) Bill in relation to Clause 11 and set up frameworks in the very small number of areas where we think legislative ones will be required, and to do all of that in a way that creates strong and successful relationships between the Administrations.

Lord Dunlop: Does reforming the MoU form part of that? One of the criticisms that has been made of the JMC is that sometimes it feels a bit ad hoc. When meetings take place, is the agenda agreed? This is about the general administration. How close are we to getting a common understanding between the UK Government and the devolved Administrations on how the whole JMC process should work?

Chloe Smith MP: I think we are close to that. I hope that today's meetings—

Lord Dunlop: Is how the MoU might be reformed on the agenda?

Chloe Smith MP: Not the MoU per se, because there are a number of things; the MoU is one part of a suite of things that make up those relationships. You will have to forgive me; necessarily, I cannot explain too much of what I hope will be discussed this afternoon, but we are certainly looking to make sure that all the things that underpin those relationships—the products that underpin them—are in the best shape they could be. There is no doubt about that.

Q8 Lord Morgan: The problems are not new, are they? Have you taken on board the torrent of criticism of the inadequacy of intergovernmental relations in the way the constitution has worked post devolution, and the very widespread criticisms of the Joint Ministerial Council, which, in the view of Edinburgh and Cardiff, seems to be a body that has been very ineffective, casual and lacking in authority? It does not matter what my views are, but their views count. The problems emerging now could have been anticipated, could they not?

Chloe Smith MP: I am aware of the discourse over time about that, and primary in that are your Committee's reports. As I said at the start, I very much welcome your attention to this.

I am aware of those concerns. In recent months, certainly in the year since you saw my predecessor, the JMC apparatus has been greatly improved. A series of meetings are taking place and they are well publicised and well attended. They have to take place in a way that is convenient to all concerned. We have taken the decision that they should be done in such a way that it is possible to have full attendance, so they have to be scheduled around busy First Ministers' and Prime Minister's diaries, and similarly at the level of JMCs that do not involve the most senior individuals.

We have taken the view that they ought to be flexible to get the benefits of flexibility to suit the participants, and that they should be done in a way that relates to the subject matter of EU negotiations. As we know, that is one of the major items of interest for that apparatus at the moment, so there is a rhythm of meetings that fits with the negotiations, rather than trying to be in some way otherwise arbitrary around those pieces of work.

The JMC(P), which we have spoken about, is meeting this afternoon. I have every hope that it will be a positive meeting and will allow for strong relationships going forward. The JMC(EN) has been very much under focus recently and has been used in a very positive way to take forward the joint work that has been needed to look at Clause 11 of the Bill and the frameworks. Alongside that piece of work, David Lidington, on entering the role, absolutely made it one of his first priorities to be on the telephone to the devolved Administrations to begin the kind of relationship he wants, and that the Committee would expect him to be able to have.

There are a couple of other types of JMC where I have every hope that we can continue to improve the way the set of meetings operates, so that it is convenient to all involved, suitably flexible to the subject matter it has to discuss and fundamentally geared towards maintaining strong relationships between the Administrations.

Q9 Lord Norton of Louth: My question is on devolution and the place of the Civil Service. Obviously, if it is to work effectively, civil servants need to understand the structures and processes of devolution and how they fit within our constitutional arrangements.

Chloe Smith MP: Yes.

Lord Norton of Louth: What is the Government's strategy for making sure that they have that understanding and are involved in the devolution process?

Chloe Smith MP: It is a really important thing for the Government at the moment. I hope that I have been able to get that across in my responses today. This is absolutely a core priority for the Government. I have somewhat resisted saying that there are other constitutional reform items. What I have tried to do today is focus on the requirements to make sure that we appropriately consider constitutional issues, because some of the biggest ones available are on our plates now. That means that both Ministers and officials have to be able to deal with them. You are absolutely correct to try to look for that, and we have structured our officials to be able to do that.

I spoke about the UK Governance Group. We have a focus from the very top of government in the Prime Minister's priority to strengthen the union. That means we have marching orders from the very top, if you like, for our officials throughout the Civil Service. We have a number of mechanisms inside the Civil Service for training to be able to help civil

servants do their jobs; for example, there is a programme called Devolution and You. I could supply the Committee with more details of that, if you wish. We are making sure that it is refreshed to keep up with matters as they arise, which does not mean that we had not thought about matters before we launched the programme; it means that I want such a programme to continue to be responsive. I emphasise that the Government have considered, consider and will continue to consider constitutional matters at every level.

Lord Norton of Louth: More pervasively, there is another dimension of civil service understanding. Section 3(6) of the Constitutional Reform and Governance Act places a duty on the Minister for the Civil Service to make sure that civil servants who advise Ministers are aware of the constitutional relationship between Parliament and Government. What are you doing as Minister for the Constitution to oversee that to make sure that departments deliver on it?

Chloe Smith MP: It is something that David Lidington himself as Minister for the Cabinet Office will hold responsibility for. The Cabinet Office more broadly, and all Ministers there, are responsible for doing that, and obviously it is one of the functions we supply for the whole of government.

I would like to draw to your attention, because I think you will find it positive, the fact that we are operating a kind of exchange programme between the civil servants of the different Administrations. We have various mechanisms, which I would be happy to set out in writing, for bringing together officials across the Administrations, so that they mutually understand each other's work, and ensuring that that is spread across other departments that might not necessarily have seen that devolution was related to them.

In conclusion, the Cabinet Office regards it as very important, and I personally see it as extremely important, that we make sure that other departments, Ministers and civil servants, consider constitutional and devolution matters. It should not just be something that is hived off to the Cabinet Office. We want to ensure that the whole of government is looking towards the union and what we can do to strengthen it.

The Chairman: We must finish, because the Lords is about to start sitting. Thank you for your evidence. We will follow up some of the points that have been raised.