



Select Committee on the Constitution

Corrected oral evidence:
The legislative process: the passage of legislation through Parliament

Wednesday 6 June 2018

11.30 am

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

Evidence Session No. 2

Heard in Public

Questions 161 - 167

Witnesses

I: Professor Cristina Leston-Bandeira, Co-director, Centre for Democratic Engagement, University of Leeds; Dr Louise Thompson, Lecturer in British Politics, University of Surrey.

Examination of witnesses

Professor Cristina Leston-Bandeira and Dr Louise Thompson.

Q161 **The Chairman:** Welcome. You came in to hear the end of the previous session which touched on some of the areas that particularly interest you. You have given us some information and evidence, so let us talk about how Parliament facilitates public and stakeholder engagement in legislation. You say that everybody should be properly involved, as much as possible, so what is your current thinking about how Parliament is doing at present?

Professor Cristina Leston-Bandeira: Before I give an overview of the current state of Parliament's engagement in the legislative process, my general comment is that quite often public engagement is thought of as a linear process when in fact it includes many different forms and roles, which you will see coming through in our answers. In short, you could divide the role between legitimacy and trust and transparency and scrutiny. From that point of view, you can fulfil different purposes and have different audiences. They may be pressure groups and large organisations, or they may be local community groups and the general public. You will be undertaking public engagement with different types of audiences in different ways.

As to how Parliament is doing it currently, the process of engaging in the legislative process through traditional routes works quite well. There are a number of routes, such as submitting evidence and consultation, but they are geared mainly towards large organisations and interest groups. Quite often, we talk about interest groups as if they are all the same, but they are not; they could be a large organisation such as the BMA, or a local community in Leeds doing work with refugees. They have very different resources. At the moment, the process of engagement with outside participants is geared mainly towards those who have resources—for example, knowledge of how the parliamentary process works, expertise in legislative drafting and time. Most of the large organisations have a dedicated member of staff with the time, expertise and knowledge to do that engagement, whereas smaller groups or the general public would not.

At the moment, Parliament has a number of resources and tools. Some of the material is very good, but it tends to be more at the educational level rather than for following through the scrutiny of legislation. Parliament internationally has very good examples of the use of educational resources to explain to schools and the public how the legislative process works in general. There are lots of useful tools, but their purpose has more to do with education than with the ongoing legislative process. It is that gap that needs to be filled to reach a number of different audiences.

Dr Louise Thompson: In our written evidence, we talked about rethinking the way the public are encouraged to engage with the legislative process. In particular, we talked about perhaps tailoring it a little more, offering specific kinds of approaches to engage with

legislation. We think that engagement should be used very carefully. Consultation should be organised only when it is really needed and will add value to what Parliament is doing. There are already some good examples of that with stakeholders, but it could be opened up a bit more to the public, considering very carefully the different audiences that are reached. Cristina has already alluded to the different types of public engagement, whether large lobby groups, smaller organisations or individuals, and tailoring it to exactly what Parliament, or the House of Commons or the House of Lords, really need at a particular stage of the process.

Q162 Lord Morgan: I am just wondering how one defines the public. If the public consist of a large number of atomised individual groups, how could one be sure that the public view is really reflected?

Professor Cristina Leston-Bandeira: That is a very important and difficult question. It is a challenge that is not easy to address, but it is important to do so. Parliament is doing increasingly well in other areas but not necessarily in the legislative process. There is a lot of good practice. Staff and Parliament understand better different audiences and where to engage—for example, on an issue to do with schools and disabilities and how to reach out to parents who may be experiencing difficulties. It is part of a learning process. The more that staff and Parliament are doing that, the greater the understanding of how to reach those audiences.

Obviously, there are more generic tools that can be used for publicity and dissemination, but it is very much about knowing where the target groups are and being more proactive. To give an example, I have done a lot of work with the Petitions Committee recently. It has strong awareness of the areas where people are not necessarily engaging with petitions, so maybe one needs to be more proactive in going to those areas and disseminating more information. That example is not legislation, but it could be adapted to other cases. There is increasing expertise in the UK Parliament. All parliaments struggle with how to do their job, but just because it is challenging does not mean it should not be addressed.

Q163 Baroness Corston: In your evidence to us you said the public should be asked to comment on legislation at the earliest possible stage. When is the earliest stage?

Dr Louise Thompson: There are two reasons why it should happen at the earliest stage. First, the key principles of a piece of legislation will be fixed once it has been debated at Second Reading and there has been a Second Reading vote. From then on, the opportunity to make changes to legislation is reduced; it is more difficult to set the agenda for what will be discussed, what will be important and that sort of thing.

Secondly, it is important to avoid repetition of continuous kinds of consultation. When we talk about the earliest possible stage, it might be right at the start of the process; it might be before a Second Reading

debate, if that is appropriate for what Parliament needs and if the public can add some value, but it might be that the earliest point at which it is valuable is a bit later. It might be after the Committee stage; it might be at the point when a Bill leaves the Commons and moves to the Lords, or vice versa. That becomes the point at which public comment is really valuable.

The entire Bill might not be opened up to consultation. We both feel there would be a lot of benefit in isolating a couple of clauses in a Bill that may have come to light during a Commons Bill Committee. Maybe when the Bill moves to the Lords, there could be a lot of focus on those particular clauses, or new clauses or amendments could be moved. There may be some value at that stage in opening it up to the public, getting extra comment and hearing a broader range of views.

Baroness Corston: You have just said “might be” six times. Are you suggesting that there is no common view and, depending on what the legislation is, the approach may be different?

Dr Louise Thompson: Yes, definitely. Tailoring the approach Parliament takes is really important. It will avoid duplication, and will work to add more value to public consultation and bring the benefit of those types of comments into the legislative process.

Professor Cristina Leston-Bandeira: The important element is the added value. For instance, maybe not all Bills would be opened up for public engagement. Ruth Fox on the previous panel alluded to that. For some Bills, there is more value in bringing to light specific areas, or the unintended consequences of the legislation, or where it may be useful to know more about how specific clauses affect people’s daily lives, while bearing in mind that it has to be as early as possible and it has to be specific to the Bill and what has been discussed.

The Chairman: Who would decide it, and what would trigger the kind of consultation you are talking about?

Professor Cristina Leston-Bandeira: Members together with staff. Depending on which stage it is at, it will be different people. For instance, if it is right at the start and there has already been a lot of consultation from government before it even comes here, there is awareness. If there is a lot of consultation happening here already, we should not be talking about the same thing. The public can get the sense that they are not being listened to because they keep being asked the same thing. At that point, there might be awareness that there is not much point in doing an overall consultation, but maybe it would be really useful on a couple of clauses. It is about learning from what has already happened in the process.

Q164 **Lord Dunlop:** Can I ask about reliance on intermediaries? You have already talked about well-resourced lobby groups. Are we in danger of hearing only from the usual suspects? Is that a problem? How realistic is it to hear directly from the public? How great a problem is this?

Professor Cristina Leston-Bandeira: It is definitely a problem. At the moment, you are hearing mainly from the better-organised interest groups, which tend to be the larger ones. That is not to say that they do not perform an important role; they do. The way to open it up to other types of groups and the general public is very much about how the information is presented and disseminated—what we refer to as the translation job Parliament needs to carry out. Parliament needs to be more aware when it is communicating or asking for evidence. If it is just using the current processes, which are the traditional routes for submitting evidence, the people who react will be the well-established ones who know how to do it. There needs to be an awareness that you need to go beyond that.

A number of things can be done. Part of it is about how the information is transmitted. For example, Explanatory Notes are seen as very good at explaining what the Bill is about. That is all great, but if any member of the general public tries to read the Explanatory Notes, they will not understand them; they will not see the relevance of them. The notes explain, but it is still a technical legislative drafting process. There is a translation job to be done in identifying the key areas where the public could give their own experiences. It might be about their own experiences.

One example that keeps coming back to mind is a study we did of a family whose child had very severe allergies. The child was very much affected by the school experience. In the study, comments were provided first by the mum and then the dad about the day-to-day problems they were facing in their child not being able to go on field trips, or the child not being able to have lunch as normal, or not being able to be with other children. Those sorts of experiences are much more about understanding how things affect people. An area such as that will not be for the Explanatory Notes. It might be dealt with by an email sent to particular organisations that have contacted those people through social media, or by a website in a more public-oriented type of language.

Lord Dunlop: You are arguing for a more proactive, tailored approach. That sounds to me as if it has significant resource implications. Is Parliament resourced to adopt that sort of approach at present?

Dr Louise Thompson: Some of the things we are suggesting are more about presentation. It is mainly about how Bills and legislation are presented on Parliament's website, for instance.

To come back to the point about whether it is realistic that somebody will be looking at legislation, taking Cristina's example, if the parents of a child in a school are interested in a particular topic in a Bill, they might not be interested in the entirety of the Bill; they will be interested in one particular element of it that affects their lives. Going on to Parliament's website to try to find that information would be a bit of a challenge because everything is presented in the form of the entire Bill, not the topics in it. It is presented through the stages of the legislation.

Just adapting the way it is presented on the website to make it more topic-based would allow somebody who really does not understand the process to say, "I'm interested in changes to do with children with disabilities or medical problems in school", and then look at what that element of the Bill is about.

Professor Cristina Leston-Bandeira: On resources, Parliament is already doing a lot of this, but it is not necessarily linked to the legislative process.

Lord Dunlop: It is about adapting.

Professor Cristina Leston-Bandeira: Yes. A lot of the examples we are using are already being implemented in the work Select Committees are doing, but that is not necessarily linked to the legislative process.

Lord Dunlop: Do you think parliamentarians feel more comfortable and are more likely to engage with intermediaries than, for example, individuals, when they scrutinise legislation and cite examples? What is your experience? What does the evidence suggest?

Professor Cristina Leston-Bandeira: There are different aspects. Members realise that there are different audiences; they understand very well what interest and pressure groups are and what talking with the public is about. In a study we did on the public reading stage, there were not many examples of the use of consultation with the public in the actual debate. The only ones used were stories involving real people. The life experience of the public brings something to Members that they understand instinctively; they realise what the issue is. An interest group or a pressure group might do a very good summary of all the situations, but they do not necessarily have the element of how they affect people.

Lord Dunlop: It is the human factor.

Professor Cristina Leston-Bandeira: Yes.

The Chairman: Members often get that from their constituency work.

Professor Cristina Leston-Bandeira: Exactly.

Q165 **Lord Norton of Louth:** Dr Thompson, looking at the legislative process, you have done a lot of work on Public Bill Committees and their impact. Of course, they are confined to the House of Commons. The House of Lords has provision to appoint evidence-taking committees when Bills are going through, but we do not. There is a very strong argument that we should, as I mentioned at the end of the previous session.

Back in 2004, this committee recommended that every Bill should be subject to consideration by an evidence-taking committee when it goes through. At the moment, if it starts in the Lords, it does not get that. Would it be a good idea that the Lords should do that? If it is, drawing on your work, what are the lessons that can be taken from the Commons? What is best practice and what should be avoided, so that we can hit the

ground running and do it well?

Dr Louise Thompson: The short answer is yes; it would be very valuable if the traditional kinds of evidence-taking were used in the House of Lords as well as in the Commons. The particular benefits of that are providing information, or ensuring that everybody who participates in scrutiny receives the same briefings, information and specialist knowledge about a Bill. That has been very important in the House of Commons Bill Committees in ensuring that all members of committees level the playing field of knowledge about a Bill. It has also been very important in helping Members to draft and table amendments and identify precise areas of a Bill that may need amending or thinking about, so in that sense it is very useful.

On lessons to be learned, there is an issue about making sure you do not simply duplicate what has already been done in the House of Commons. If a Bill is starting in the Lords, obviously there is a real case for that. If it starts its scrutiny in the Commons, to go back to some of the things we mentioned earlier, you should think about where the House of Lords can best add value. It might be by isolating particular features of a Bill on which to take evidence.

There may be broader lessons. There is a big issue about who is giving evidence. Even if it is restricted to traditional stakeholders—the usual suspects—how do you go beyond that? How do you make sure it is not somebody who has already given evidence to a committee in pre-legislative scrutiny and again in the Commons and again in the Lords? What does that bring? There is also the issue of the time between receiving written and oral evidence and when it will be considered. With Commons Bill Committees there is often a difficulty, in that oral evidence will be given and it will finish on the Thursday of one week and the Bill Committee will move to its line-by-line scrutiny on the following Tuesday. There are only a few days for Members to reflect on the evidence that has been given. Often, only a day or two are available to table amendments, if they want them to be considered in the first session, so there are issues of time alongside thinking about value.

Lord Norton of Louth: The Lords would probably be stricter on creating the time following the committee. It is the earlier bit you touched on that is the difficult one: knowing whom to call and getting them in. As you say, there is a tendency to rely on the usual suspects. That is because they are usually available; you can get them in and you know who they are, and usually they have something to offer.

The question is how you complement what they have to offer and identify people who are out there. That can be the difficult exercise, can it not? We rather assume that people out there are desperate to talk to us and that the public want to have some input, but quite often they do not. Getting input and knowing that it represents some wider body out there is difficult. Is there anything you have learned from research on Public Bill Committees in the Commons that would aid the Lords in that respect, in tailoring each committee to a particular measure?

Dr Louise Thompson: Some of the lessons we learned from our study of the public reading stage may come in. If you offer consultation on an entire Bill, that may restrict it to the people or organisations with the resources to understand what the Bill involves and its implications. If you break it down a little more into particular elements, topics and themes, smaller organisations that have a big interest in it may be more aware of the opportunity to engage.

Professor Cristina Leston-Bandeira: There is a wider picture, which is what Parliament does in general to build awareness that the public can engage with Parliament. Although we are talking specifically about the legislative process, there is a whole other picture of what Parliament is doing with outreach officers and sessions with the public. There is quite a good story; it just needs to be explored further and tailored more to the legislative process.

To go back to what Louise was saying about how the public may be interested, they will not be interested in the legislative process itself, but they will be interested in how the legislation affects them, and the topics and issues.

Lord Norton of Louth: I presume an issue would be at what point you put out to the public that you are considering a Bill. You do not wait until it is going into Committee. It is a question of how early you get the information out. Perhaps you do it electronically by online consultation to get input.

The Chairman: Lord Beith, I think that brings us to your area of interest.

Q166 **Lord Beith:** Dr Thompson, in your evidence you say: "Parliament generally performs legislative scrutiny well, but its work and impact often go unseen and underestimated ... Parliament should find ways to express the true nature of scrutiny more clearly to the public". That is quite difficult at the moment because, if we suggest various ways in which the EU withdrawal Bill is technically deficient, and pass amendments to that effect, we are described as "enemies of the people", and the conflict aspects of the argument around the Bill, certainly in the more widely selling newspapers, entirely overtake the scrutiny process. Do you have an answer to that problem for us?

Dr Louise Thompson: Maybe not to that precise problem. When I say that what Parliament is doing is not always presented well, I imagine that is also something the previous panel mentioned. It is the result of two things. One is the political environment in which scrutiny takes place. Much of the really good stuff that happens in scrutiny occurs outside the formal legislative process; it often happens outside the formal spaces of the committee rooms and the Chamber. It does not work in the way it is often presented to the public, whether by the media or by Parliament on its website.

The scrutiny process is often presented as having specific stages and as being very conflictual. It is all about conflicts between Parliament and government, and ignores the spaces for co-operation and discussion that make scrutiny so valuable and work so well. That comes back to how things are presented.

If you went to Parliament's home page to find out what was happening on scrutiny of the EU withdrawal Bill, you might click on the Bill page and find lists of amendments. I looked yesterday at some Bills. You might find lists of notices of amendments; you might find the Marshalled List of amendments. There are just documents with different amendments, PDF after PDF. It does not really give a sense of what is happening. It gives the volume of amendments being put forward, but it does not say what is happening in reality. The challenge for Parliament is how it presents that, because the documents themselves do not mean very much. They tell you a lot about quantity but not really about the quality of the scrutiny.

Professor Cristina Leston-Bandeira: There might be another occasion to talk more about specific tools. Better integration between those documents, the legislative process and the actual debates would be good. That would be a simple way of showing that the legislative process is not just about a document, but about how people participate and what they have to say. That technical integration is not really there. It is not easy; it is not smooth for people to find that information.

The contrast between the formal and the informal is difficult. What is the formal process and what is actually happening in practice? For instance, if I go back to the very basics, Parliament has very good education resources on the legislative process, but in some ways they paint a picture that is not really what happens in practice, with government having a say most of the time, and Parliament, if anything, discussing it, looking at it, amending it and doing the scrutiny. From some of the information videos about the legislative process, the public expectation may be that Members can change lots of things when in reality that is not necessarily the case. It is not necessarily visible; it is more invisible.

There is not necessarily that awareness in presenting information to the public. I am talking more about educational resources, but in the actual legislative process, better integration of committee hearings, debates in the Chamber and that sort of thing would at least provide another element, and it would not be so PDF-heavy.

Lord Beith: I am not sure that I quite understand. Are you saying that some part of the parliamentary system can offer an illuminating commentary on the process that is taking place, and that some document which does not look like all the PDF documents you mentioned or *Hansard* should be produced to explain in relatively objective terms how things have been changed in the course of the Bill?

Dr Louise Thompson: Some of it is about linking a bit more comprehensively elements that are already there. If you were reading a Commons Committee stage debate in *Hansard*, you might see that reams

of amendments were being discussed; you might read that an MP stood up to say he wanted to speak to Amendment No. 43, but you would not know what Amendment No. 43 was. If you could just click on Amendment No. 43, and it brought up the text of the amendment, or an explanatory note, it would help people to follow the process a little more.

Some of it is about how *Hansard* itself lists things. Often, at the end of a debate, there might be lots of lists of government amendments that have been passed, but it will not tell you what they are; it will just say, "Government Amendments 46 to 73". You have to know where to go to look for them. Some of it is about that sort of thing.

Another thing would be to break down the Bill and put amendments in particular places. If you were interested in a particular element or section of the Bill, you would be able to follow amendments that had been moved that affected that section, and perhaps what had happened to them. There could be quick links to Parliament TV so that you could watch an MP talking about them. That would avoid having to navigate Parliament's website to try to find out precisely what happened in the Bill's scrutiny.

Q167 **Lord Pannick:** On the same subject, you say in your evidence: "Technology is key to encouraging public participation in legislative scrutiny". Is it just a question, albeit a very important question, of adding links in the way you have just described, or is it more fundamental? Dr Thompson, you said earlier that we needed to do more to present the reality. Is it just a question of technical links, or is it something more fundamental than that?

Dr Louise Thompson: The ideal starting place would be the sorts of simple things that are already there. Obviously, for the real detail and behind-the-scenes things that are happening, there is no way you would ever be able to present a Minister meeting an MP to discuss an amendment somewhere outside. There is no way of presenting that; it is about giving people the opportunity to explore a bit more, to find out more precisely and easily all the good work that is actually happening, and to watch it and read it, and understand it better.

Lord Pannick: The problem with Parliament is that so much of what happens is hidden; it is invisible, and it is absolutely vital to the way in which Parliament works. At the moment, I do not see how one can easily present that reality, and it is a reality, to the public. It is also very subjective. I am struggling as to whether you are suggesting practical means by which that can be made more transparent.

Professor Cristina Leston-Bandeira: One practical thing would be integration. For instance, Parliament TV is getting a bigger and bigger audience for debates, committee hearings, and that sort of thing. It plays a very important role in opening up what is happening in Parliament. If you want to match that with, say, a piece of legislation, or something else, you have to go to a completely different place. Some of it is the very simple thing of integrating one system with the other, and for someone to be able to click on Lord So-and-So talking about something

and go from the video, which is much more about engagement and accessibility, to a bit of the website that explains what the clause is about. That integration might seem to be a simple thing, but it can be quite important.

I was talking earlier about more educational resources. Another side of things is to explain better, or to be clearer, that the legislative process is not just that the Government propose a Bill, then there are amendments that everyone happily discusses and they are made, but that it is more complex than that. Things are happening in discussions. Members and Peers might meet Ministers and put questions. That is the richness of our system, and it works really well. That is what leads to good outcomes in amending legislation, so we could probably do more to talk about those things.

The Chairman: You are saying that there is easy scope for improving cross-referencing and explaining to people what is happening, but you are implying that people can more likely influence what is going to happen because they are able to have greater sight of the situation. I am slightly worried about managing expectations. People will think that if they see what is happening and press a button, or write to one person, they can have an influence. We have seen how easy it is to get tens of thousands of people to sign petitions. They may get debated, but people may not get the outcome they want from signing that petition. Is there not a problem of managing expectations and explaining the whole process of democracy, as well as just making it easier to click links?

Professor Cristina Leston-Bandeira: Definitely. A lot of this is about managing expectations. To go back to my example of educational resources, in some ways we are raising the expectations of the public. We say it is very simple; they should talk to their MP and they will be able to table an amendment that will be approved. Explaining the complexity of that is important.

Part of the engagement is about understanding the system and feeling empowered to participate, and about feeling listened to. I have done a lot of research on petitions. Someone else's research, not mine, shows that people's trust in Parliament improves if they feel they have been listened to, even if they do not get the outcome they want. The Petitions Committee in the House of Commons has been trying to manage expectations, so that people do not think that the debate is the end of it, or that the debate will reach the outcome. The debate is just another way of raising awareness of the issues they have raised. If you had the debate, but the petitioners knew nothing about it, you would not do a feedback loop, which is very important when you do public engagement.

It is about listening to the public. The public might bring ideas; they feel empowered to participate, but they also need to understand the possible outcomes, what a campaigning process is and that it might take some time. That process definitely needs to be managed; otherwise, there are very high expectations and then very huge frustrations. In those cases, it is often better to do nothing.

To go back to the points we made earlier, some Bills might not be suitable for engagement because they are so party political, or there are so many different issues, or they are very technical, or whatever it might be. For other issues, it might be really good to have public engagement.

Lord Norton of Louth: To follow that up, there is a problem if you provide the means for people to put something in, such as a petition. When they are writing in, at least they feel they have been heard, but sometimes the problem is that, when they do not get the outcome they want, they complain that they have not been listened to. It is not the case that they have not been listened to; they have been disagreed with, and that is different, because there are two sides to the argument.

If they are just feeding in their opinion, they are not always aware that there is an alternative that parliamentarians have to listen to. Is part of the challenge making all the evidence accessible so that people realise that other advice is coming in that we wish to respond to as well? At least they would be aware that it is not just them, and they are right and nobody else can challenge them. That is part of the challenge.

Professor Cristina Leston-Bandeira: Definitely. It is about understanding the whole process. Coming back to people giving a view, we had a really good quote; one of the interviewees who made comments at a public reading stage said it was like tossing a ball into the ocean. They made a comment, but they heard nothing else after that. There was no feedback whatsoever; they did not know whether anyone had even read their comment. Responsiveness is really important.

I have interviewed petitioners who had a debate that did not go the way they expected, but if they felt they had a fair hearing they were fine with that. They accepted that there were different points of view and they proceeded with their campaign to try to make their point. The petitioners or participants who were not as happy with the process were the ones who felt they did not have a fair hearing. The element of being listened to is really important.

Lord Norton of Louth: Your point is that, if there is no response, it is probably worse than doing nothing in the first place.

Professor Cristina Leston-Bandeira: Definitely.

The Chairman: Thank you very much indeed for your time, and for the evidence you have given us.