



Select Committee on the Constitution

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

Wednesday 13 June 2018

10.25 am

[Watch the meeting](#)

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; Lord Wallace of Tankerness.

Evidence Session No. 3

Heard in Public

Questions 168 - 175

Witnesses

I: Sir David Beamish KCB, former Clerk of the Parliaments; Lord Lisvane KCB DL, former Clerk of the Commons.

Examination of witnesses

Sir David Beamish KCB and Lord Lisvane DL.

Q168 **The Chairman:** Welcome. Sir David has just said that now he is retired he can say what he likes, so this should be a rather interesting session. Thank you both for coming. Your expertise is very obvious to us all, so we look forward to your comments.

Because there has been a lot of work done on how to improve the legislative process and you have all commented in the past, I will start with a general question. Where do you think we are now, as a Parliament, in our effectiveness at scrutinising legislation, and where are our real strengths and weaknesses? There is lots of talk, criticism and froth, but getting to the meat of it, where are we? What are our strengths and weaknesses?

Sir David Beamish: I should start by saying that I have no great expertise in relation to the House of Commons. On the whole, we are not in a bad place, because things have evolved, as with much in Parliament, and, although the basis of the procedures may be rather ancient, they have adapted to be moderately effective.

A particular strength in the House of Lords is the flexibility of the proceedings. First, there are three stages at which amendments can be moved and discussed, which provides for some kind of iterative process to get to the right outcome. Secondly, in contrast to the Commons, any Member can table as many amendments as they like, and they can be discussed. There are plenty of opportunities to try to get it right. Whether they get it right on a particular Bill perhaps depends on the amount of interest taken and, to a considerable extent, on the amount of interest taken outside. You will know better than I do what sort of material you get from outside bodies. When people take an interest and come up with points and proposed amendments, they will be discussed and some sort of suitable result should be reached.

A welcome development in the last 20 years or so is the increased use of pre-legislative scrutiny, because for Bills where there is time to do it there are yet more stages and more opportunities for people both within and outside Parliament to feed things in. By the time you get a Bill, as opposed to a draft Bill, it should be in reasonable shape.

In other cases, obviously, it takes a while during the process to get there. I have been following quite closely the European Union (Withdrawal) Bill, which is an interesting example. The issue of handling devolved policy areas came up in the Commons, but the Government were not even ready to come up with something until Report stage in the Lords. That may show the need for stages in both Houses. Perhaps I should stop and let Lord Lisvane say a word.

Lord Lisvane: I would not dissent from anything that David said. The good thing is that there is general recognition that good legislation is a

good thing, but how to get from where we are to there is a much more difficult proposition.

You are looking at the scrutiny of Bills, which is very tempting because it neatly corrals an area of parliamentary activity, but you need to look at it against the background of the way Bills are developing, particularly the way that the threshold between secondary and primary legislation has moved upwards, and delegated legislation is used for matters of policy and principle, which 20 or 30 years ago would not have been thought appropriate.

I will take two examples from the tail end of the last Parliament. On the Childcare Act we were asked to take on trust that the cost of childcare—who would administer it and who would be eligible for it—would all be contained in regulations to be consulted on after Royal Assent, which was an extraordinary situation. It was the same on the Housing and Planning Act as regards what the Secretary of State could charge local authorities for unoccupied high-value housing, what high-value housing actually was and what high-income local authority tenants were. There is that subplot, as it were. One ignores what is below that threshold at one's peril.

There are a lot of good things. Picking up on what David said at the end about bicameralism, like him I have long been an enthusiast of bicameralism in the sense of complementarity and not competition, because two Chambers are doing similar things but in very different ways. The sum of parliamentary influence thereby exerted is much greater than if the two Chambers were competing. Perhaps we can explore some of those aspects in more detail.

Sir David Beamish: One thing that the Lords have done particularly well is the appointment of the original Delegated Powers Committee in 1992. It may not have stemmed the flood, but it certainly made quite a big difference in limiting secondary legislation, or at least increasing the extent of parliamentary control over secondary legislation.

Lord Hunt of Wirral: We rely, of course, on the expertise and experience of our clerks in the Office of the Clerk of the Parliaments. Sir David said that he did not have much knowledge of what happened in the House of Commons. He may recall, and certainly his predecessors will, that on several occasions I expressed the view that there should be some exchange, particularly at the more junior level of clerks, between the two Houses so that one can learn and be aware of *Erskine May* and how it operates in both Houses of Parliament. I wonder whether Lord Lisvane, from his experience, could see the benefits in that or not.

Lord Lisvane: David is being much too modest in his claims to know little of what goes on down at the other end. In procedural work, I do not think there is a strong argument for that suggestion. We have both been chief executives, and there are 25, 26 or 27 areas of shared competence between the administrations, where one House provides services to the other. Exchanges there are extremely useful, but specialisation in, and understanding of, the procedural hinterland of each House is really

valuable. Of course, you want to avoid any sort of conflict of interest, because, where, in legislative terms, the two Houses are at loggerheads, it is no bad thing to have a team that is firmly identified with advising one House to the best of its ability and another team that is advising the other House to the best of its ability.

Sir David Beamish: I agree with all that and will add only that the two Public Bill Offices have always worked very closely together, so that you do not get inconsistent advice or rulings.

Lord Lisvane: I can supplement that from my experience of three years as Clerk of Legislation in the House of Commons. Typically, counsel's opening letter on a Bill before introduction, seeking the view of the House authorities that it complies in every way with the rules of the House, normally starts, except for Lords starters, at the Commons end, and there are very detailed, co-operative and friendly discussions between the authorities of the two Houses on matters such as scope—although not money, obviously, as that is a Commons matter. There is a great deal of co-operation in that sense.

Q169 **Lord Morgan:** We have heard evidence suggesting that the Government have been tabling more amendments to their own Bills. My impression over the last few years is that one could look at two possible explanations. One might be that parliamentary scrutiny is so effective that it produces a superabundance of second thoughts on the part of the Government. The other might be that it implies that the legislation is poorly devised in the first place. Which of those views do you think is right?

Lord Lisvane: Both. Without a forensic examination of the origin and life of each amendment, you cannot be certain, but there are competing pressures. One, of course, is the huge pressure that there is across the other side of the road to get a Bill ready in all respects, one hopes, for introduction into one House or the other. It may be that the business managers say, "Hang on, the best is the enemy of the good. Let us go with what we have", so that you actually need a whole lot of amendments after the event. Equally, there may be a response to parliamentary criticism, and compromises may be offered, but without following the threads through you cannot arrive at a percentage for which one or the other phenomenon is responsible.

Sir David Beamish: I agree with all that and will add two things. First, it is nothing new. It was over 30 years ago, when I was Private Secretary to the Leader of the House and Chief Whip, that I was directly involved in this sort of thing. Departments bid for places in the legislative programme. They did not get any drafting resource until their bid had been accepted by the relevant Cabinet Committee and there was then, as Lord Lisvane said, a great rush to get the Bill ready.

Even if you could have a perfectly drafted Bill, I think you would all agree that it is important for Ministers to have some concessions up their sleeve to get a Bill through, so I do not think you need to castigate a Bill as

badly prepared just because there is scope for making changes. Of course, if a Bill has not had pre-legislative scrutiny, people outside Parliament may come up with things after it has been published that the Government want to take on board.

Lord Lisvane: Yes. I used to call them “crumple zones”.

Q170 **Baroness Corston:** To what degree do you think the timetabling of Bills through the usual channels affects the quality of scrutiny in both Houses?

Sir David Beamish: I will start on the Lords. It is not a big factor. I mentioned earlier that one benefit of the Lords procedures, or perhaps lack of them, is that everybody can table amendments and have them debated. By their nature, timetabling agreements have to be conducted between the Front Benches, who do not know what might be coming from the Cross-Benchers or Back-Benchers, so you need a bit of flexibility.

The danger is that, if you get too clever with the timetabling in the Lords, you lose that. It perhaps did not matter so much long ago when family-friendly hours had not been thought about, and you could always plough on into the night to get to wherever you wanted to get to, but there may be a tension between people being able to manage their diaries and retaining the benefit of freedom of opportunity to table amendments. In my experience, I would not say that better timetabling would make a difference, at least in the Lords. Of course, it is already the case that it is rather less easy to fast-track a Bill in the Lords than in the Commons.

Lord Lisvane: Programming, as you all know very well, came in for selected Bills in the Commons in 1997-98. The original intention was that it should be consensual. That broke down quite rapidly. By about the second Session it was not working quite as originally intended. Now, some Bills can be highly contentious but it is routinely done for all of them. Real problems arise, and one has only to look at yesterday's proceedings in the Commons on the EU withdrawal Bill to see how a slot in the programme is almost entirely taken up by Divisions and only a few minutes are available for debate.

If there are multiple serious and complex issues, it is very difficult to reduce them to a form in which they can be contained within three, six or even 12 hours. That is certainly a problem. Historically, there was a sort of Faustian compact between the business managers wanting to get their business and, in a predictable way for which they can be answerable to the higher reaches of Government; and Members of Parliament—I am just talking about the Commons—perhaps suppressing some of their concerns in order to have a more predictable life.

Lord Wallace of Tankerness: I was thinking of yesterday, which was an extreme case. When it comes to Commons consideration of Lords amendments, how typical is that sort of recurring problem, when ample time is not made available, particularly when there are a number of Lords amendments?

Lord Lisvane: There has been a pattern of that. It is recognised as an end game that needs to be accommodated within quite narrow parameters. Earlier in the stages of programming, there was the possibility of split committals, for which I was always an enthusiast, whereby you identified the big things and dealt with them in a Committee of the whole House, leaving the Public Bill Committee to do the bulk of the Bill—but that never caught on. The classic is a Finance Bill, which is almost always a split committal. I think that would ameliorate some of the more constraining aspects of programming.

Baroness Corston: Would you say that in the Commons it would be preferable for the process of timetabling to be more transparent?

Lord Lisvane: It is quite difficult to achieve. In a sense, we are so far downstream with the exchanges we are having now that dies are cast in all directions, and perhaps one has to look a long way upstream for quality of legislation and scrutiny. For example, both David and I are great enthusiasts for draft Bills, where Ministers do not have the political capital engaged that they do in “their” Bill. The allergy to amendments, of which I was an observer at the other end and have suffered from at this end, is as alive and well as it has ever been over the decades.

In a sense, timetabling is about dealing in a pragmatic way with where you are and what you have, but, if you are really to make fundamental improvements to the system, you will need to go quite a long way upstream. If there is an opportunity, I have a couple of hobbyhorses on purposive clauses and motions for leave to bring in Bills. Perhaps if we have a moment later, I might ride them briefly.

The Chairman: In that case, we will park that for the moment and move on.

Lord Beith: Do we not need to be realistic about the fact that, whatever system is in operation in the Commons, over roughly the same period, whether it is the old guillotine system or the modern timetable system, it will be overtaken by the desire to make major political points at the expense of anything else in the Bill, however important, and sometimes perhaps to create a crisis so that it looks better for the Bill actually to be guillotined, or to reach a timetable point, than to have achieved good programming of it? That being the case, are there not very serious implications for what the House of Lords has to do arising from the political nature of the Commons and how it is likely to remain?

Lord Lisvane: That is absolutely right. To an extent, it can be coped with by the complementarity I mentioned earlier. If the two Houses are applying themselves to a piece of legislation, but are doing it with different tools and in different ways, the totality of what Parliament is doing ought to be enhanced, but there is no doubt that crises are an important weapon for business managers. Indeed, we might even have seen a whiff of that yesterday in order to concentrate minds and rally votes.

The Chairman: But we are working in a political context; we are passing legislation in a political context, so you cannot make it an academic exercise.

Lord Lisvane: Exactly. That is a really important thing to keep in mind, if I may say so. This is an absolutely political exercise from start to finish. It is particularly obvious after a general election. A new Administration comes in and is not interested in the niceties of scrutiny. They want to tick items off their legislative agenda one by one.

There is, of course, a less attractive aspect, which is using legislation when you do not need to. In the last Parliament, the National Citizen Service Bill, for example, could have been done entirely administratively; there was no reason at all for legislation. I lost count, in my previous life, of the members of the Cabinet who said to me, "This Bill is going to send a message", and of having to fight back the retort, "If you want to send a message, find somebody who can semaphore". That underlines the political nature that has to live with, one hopes, the professional and technical excellence of what Parliament does to the Government of the day's proposals.

The Chairman: Absolutely.

Q171 **Lord Norton of Louth:** You have both already touched on the relationship between the two Houses, and Lord Lisvane stressed the need for complementarity rather than for the two to work in competition with one another. Presumably it is important as well to avoid duplicating the work of the two Houses. You have already commented or touched on co-ordination between the clerks, but is there more that the two Houses could do to enhance complementarity? Is there scope for greater co-ordination?

Sir David Beamish: Going back to the discussion on the previous question, if there is a very political Bill, not only do the Government want to get it through, but inevitably the Opposition want to make political points, so in a sense you have automatic complementarity, in that it is only when the Bill gets to the Lords that you can do the more detailed scrutiny. Because of the political backdrop we have just been talking about, on the idea of creating some system to make that work better, personally I am a believer in getting things done by getting on with them. The appointment of the Delegated Powers Committee back in 1992 was a good example of something that emerged from a review of procedures. The Lords got on with it and that has worked very well.

It is not germane to this inquiry, but what started out as the Merits of Statutory Instruments Committee and is now the Secondary Legislation Scrutiny Committee was another advance of that sort. My own view is that you should do what you can in this House to improve it rather than being clever with systems.

Lord Lisvane: At the moment, both Houses make a pretty good fist of the support framework for legislation. If you look at the Bill pages on the

website, for example, they are very comprehensive and they are quickly updated, which is essential. Nobody will ever help the outside observer intuitively to understand Commons consideration of Lords amendments or Lords consideration of Commons amendments, but I think that is very good.

The other thing is that the outreach efforts made by both Houses are encouraging engagement with the political process. That is never risk-free, because, if you encourage engagement, you have to deliver, otherwise you may end up in a much worse place, with a lot of disappointed people, than where you were to begin with. A great deal of expertise and commitment is being deployed on that.

Lord Norton of Louth: Do you think there is a case, particularly at the Lords end, for formal recognition of deficiencies in scrutiny in the Commons? Obviously we are aware that certain clauses and parts of some Bills have not been debated at all in the Commons, and now, as Lord Lisvane has just touched on, we can see that; it is on the record. Should that be flagged up somewhere in the Lords or just left to Members to be aware of, and to fill in for the deficiencies where those parts have not been considered already?

Lord Lisvane: Last year, Lord Butler of Brockwell initiated a Question for Short Debate in which he made the suggestion that included in the Explanatory Notes for the second House would be a summary of the time spent on each part of the Bill in the first House. That would probably not surprise many people if the Bill was moving in one direction, but it might be quite a good thing to do; it might concentrate minds.

Sir David Beamish: The members of the Committee will know better than I do, but somehow I do not imagine Members reading through Bills and thinking, "Has this been looked at properly?" They will follow the Bills that interest them and the bits of Bills that interest them, so I am not sure that that would make much difference. As Lord Lisvane said, on texts and so forth, the website is terrific in having everything there very quickly.

Lord Norton of Louth: Is that not possibly an argument for making more formal notes? If Members are just following what interests them, there is the danger that parts of the Bill not discussed in the Commons may not be discussed here. If Members just follow their own interests, they are not focusing on what may have been neglected at the other end.

Lord Lisvane: That implies a rather Stalinist approach to how legislation might be examined in the second House. One thing, of course, is that in the second House there will be Library briefings about the passage of the legislation in the first House. That is often an extremely good pointer to areas that deserve consideration but may not have had it.

Sir David Beamish: That is a very good point. In recent years, the House of Lords Library has been very good at providing briefing notes on Bills going through. As a way of focusing on the issues rather than doing

it mechanistically, I am sure that is how to do it.

The Chairman: Many people think that the Library produces really helpful material at that time.

Q172 **Lord Pannick:** You have already mentioned the degree of knowledge among Commons clerks of House of Lords procedure. How would you describe the degree of knowledge and understanding among Members of the House of Commons of House of Lords procedure, and indeed our role generally?

Lord Lisvane: I must be careful to preserve a degree of comity. I think it has declined over recent years. There are two things I would pick out. One is the distinction between resentment—apparent resentment—of the House of Lords passing amendments and resentment of the House of Lords passing amendments of which somebody does not approve. It is quite important to maintain that distinction. As to what the House does, there is a great deal of scope for spreading a very positive message.

The other thing that has rather disappointed me in recent exchanges is that there has been a great deal of rubbish talked about the Salisbury convention. It has been elevated almost into a rule of life about the relations between the two Houses. My own view is that it was first developed 73 years ago for a Labour manifesto, which I think was seven pages long and was very clearly a legislative agenda. Just to take one at random, the 2015 Conservative manifesto was 82 pages long, with 32,500 words. “Philosophical tract” probably better describes a modern manifesto than “legislative agenda”.

Digressing slightly, for which I hope you will forgive me, the Salisbury convention has been replaced by what I think is a deep-seated cultural understanding that the House of Lords will not vote down a Bill at Second or Third Reading and will not vexatiously delay consideration of a Bill to achieve the same end. It simply is not going to happen, and quoting the Salisbury convention, or whatever else, is not relevant to that understanding.

Sir David Beamish: I suspect the length of recent manifestos may have something to do with the belief that putting everything in the manifesto will hamper the Lords’ ability to amend it, which seems a pity.

Obviously, it is a good thing if more MPs understand what the Lords are trying to do and do not resent the Lords making amendments, whatever they are, so education in that respect is probably worth looking at. Otherwise, I am not sure that MPs need to know the detail of procedures in the Lords.

It might be more interesting to focus on ensuring that those who advise Ministers are well briefed, because it is important to be aware, if you are in a Bill team, let us say, that the way to get your Bill through is not to do clever procedures but to have a Minister who is in a position to listen, to be emollient and to make concessions. It is when nobody working on a

Bill understands those aspects of the Lords that you can get combative situations, and not a good outcome for the Government either.

Lord Pannick: Are there practical steps that we can take to enhance understanding, either by Members of the House of Commons or indeed by Ministers and their civil servants?

Sir David Beamish: I defer to Lord Lisvane on the House of Commons. On Ministers and civil servants, we started an initiative before I retired. I spoke to a gathering of well over 100 very senior civil servants with the then Cabinet Secretary. We started a process of trying to educate those concerned to understand better. I do not know how it has been going since, but I felt it was worth doing and I hope it will continue.

Lord Lisvane: With the Civil Service, there is a real need, and it is just as relevant as specifically a Lords point. Lord Norton's amendment to CRAG of course is on the statute book, but it is very difficult to enforce. Certainly I approached the Cabinet Secretary very early in my previous role and said, "This really is something on which you have to get a grip, because, unless your officials understand Parliament and understand what makes it tick, you cannot serve Ministers as you would wish". Of course, Jeremy Heywood was very quick to take the point; he would have taken it even if I had not made it.

Like David, I spoke to a number of gatherings of civil servants, but of course the speed at which people move through key jobs in the Civil Service is now a serious barrier to developing some sort of embodied knowledge about Parliament. Both the Executive and Parliament suffer from that phenomenon.

Q173 **Lord Judge:** Moving to slightly more mundane matters, does the administrative system of either House or both Houses enhance the quality of legislative scrutiny? Should we have different administrative support, either as individuals or indeed as committees, as we are sitting today? Do you have views about that? I am sure you do. Could you tell us what they are, please?

Sir David Beamish: I have spoken positively about committees that get involved in this sort of thing and I hope that the administration provides them with the support they need to do their job properly, and that in so far as it does not Members will say so. I have mentioned the work that the Library does in briefing Members. I got the impression that people are happy with that.

Beyond that, because some things are quite political and Members will be interested in different things, it is difficult to think how the administration could do things differently to enhance the quality of scrutiny. For me, the main way of supporting it is things such as the Cranborne money, which enables the opposition parties to employ their own teams to support them; they can choose how to spend the money and which Bills to interest themselves in and so forth. Partly because of the requirement for House officials to remain totally non-political, I do not immediately think

that some kind of official administrative action would make the difference. It depends on the procedures.

An interesting development some years ago in the Commons was the creation of the Scrutiny Unit, partly to support pre-legislative scrutiny. If the House wanted to go that way, I am sure the administration could do its bit.

Lord Lisvane: I would not differ from David on any of that, but I put a slightly different complexion on it. Speaking from my experience in the Commons, in any highly politically contentious situation you can assist all sides without losing your impartiality. There is a barrister/client relationship, if I can describe it as that. What you are doing, in a sentence, is helping Members to achieve most nearly in parliamentary terms what they want to achieve in political terms. By doing that, you do not taint your impartiality in any way whatever.

I have had less experience of the Public Bill Office in the Lords because I paddle my own canoe to a certain extent. The Public Bill Office in the Commons does a terrific job of support, and the Government have the big battalions. To give you an example, when an opposition spokesperson and an opposition team go to see the clerk in charge of a Bill in the Public Bill Office in the Commons, the dialogue will be, "What is really important to you in this Bill? What do you want to see changed?" Then the process of supporting their campaign to have things changed, and supporting it in a professional and technical way—mind, not heart—starts to take shape. In my experience of having seen that and taken part in it at first hand, it contributes to the quality of scrutiny and challenge that then takes place in Committee and on the Floor of the House.

Sir David Beamish: Within available resources, the House of Lords administration would certainly offer the same service. Whether it is good enough would be for Members to judge.

Q174 **Lord Hunt of Wirral:** How useful are Explanatory Notes and other materials that accompany Bills? In what ways might they be improved to assist parliamentarians' scrutiny?

In view of Lord Lisvane's comments about 70 years ago, I slightly diffidently mention a memorandum from 80 years ago that the MP for Twickenham submitted to the then Prime Minister, which is now known as the Keeling schedules. Sir Edward Herbert Keeling, Military Cross, actually put forward the very sensible case that you ought to show what the impact of a Bill will be on existing legislation. As a lawyer, that is something I do for clients quite often; it is so obviously necessary. Sir David, why does the Clerk of the Parliaments not insist that it should be done on every Bill?

Sir David Beamish: I cannot speak for my successor, but we are in Members' hands on that. Certainly the concept of the Keeling schedules survived and was familiar to me throughout my career, but perhaps not very often used. If Members think that is the way forward these days, with text being in electronic form it would probably be much easier than

it would have been long ago to produce one. If it is a Bill that largely works by amending existing legislation, yes, I would agree with you.

On your more general question, I have to say that personally I always found government Explanatory Memorandums a bit formulaic and that things such as Library briefing notes were likely to be much more helpful—but, again, Members are the intended recipients, so you can perhaps judge for yourselves.

Lord Hunt of Wirral: What is your view on purposive clauses, Sir David? Lord Lisvane has expressed detailed views on the subject, so we wondered what your approach was.

Sir David Beamish: I am not sure that I have a particular view on purpose clauses. Knowing that you are a member of the legal profession, I apologise for this: my view is that you should try to draft a Bill so that it will deliver what it is intended to deliver without enriching a lot of lawyers arguing about what it means. If a purpose clause helps that, because a court interpreting it will look at it to decide the mischief that is being addressed, then that is great. Each Bill needs to be suited to its subject, and Bills cover a very diverse range of subject matters, so there may be some where it is less useful; in what one might call a miscellaneous provisions Bill, a purpose clause would not add very much.

Lord Hunt of Wirral: Lord Lisvane, you delivered a wonderful lecture in 2015 to the Constitution Unit on this very subject. Would you like to bring us up to date on your views?

Lord Lisvane: Could I first deal briefly with Keeling? Being in my late 60s, I should be very careful to disagree with any assertion that something 73 years old would be useless. In Salisbury convention terms, yes; on Keeling schedules, no. They are brilliant, and I have been a career-long supporter of them. They are really important not just when there is legislation by reference but when there is legislation by double reference, which is hideously complex and has been a feature of legislation relating to Northern Ireland over the last 10 years or so. A Keeling schedule that operates through the medium of two referential statutes is really valuable.

As to Explanatory Notes, you have to look behind the curtain on those and see how they are prepared. They are the very last thought of a department before a Bill is introduced. They come over to the Clerk of Legislation in one House or the other, sometimes beautifully—more rarely—and sometimes in chaotic form. It is a midnight-oil job where you have to try to put them in some sort of order and take out advocacy, because, of course, they have to be phrased in entirely objective terms. They very often state the absolutely obvious and they do not really explain. There is an element of caution, of course, because Explanatory Notes are *Pepper v Hart*-able and departments do not want to say something that they might later regret. The only way of dealing with that, I think, is the downstream/upstream argument.

You were very kind to give me an opportunity to ride the purposive clause hobbyhorse. One difficulty about debate is the way that it brings together the political principle and the political contention, and the way in which it is expressed on the page as putative black-letter law. It is perfectly orderly and it has been used very little, the Banking (Temporary Provisions) Bill being one example.

It has always seemed to me that if you start a part of a Bill, which may be a single clause or a group, a family of clauses, by saying, "This is what this is intended to achieve", you do two things. First, you make debate much easier, because Members do not have to go through the clockwork of what may be extremely complex provision; they can focus on what is intended to be achieved thereby. The other thing—here I am looking out of the corner of my eye at Lord Judge—is that when the judiciary has to interpret that will-o'-the-wisp, the will of Parliament, there really is no such thing. It can be deduced from what Parliament does, but, if there is a purposive clause that has become a purposive section, you can read the subsequent provisions in the light of what Parliament has actually approved should be attempted to be achieved.

Lord Morgan: We have been talking fascinatingly about purposive clauses. I wonder whether we could extend the discussion to the point of particular words. We spent a lot of time, for example, in the devolution parts of the Europe Bill discussing the meaning of the word "normally". That took up a great deal of time. It was almost deprived of meaning by the end. Could any purposive interpretation be put there, do you think?

Lord Lisvane: That is a dangerous one. Parliamentary counsel are extremely good at putting instructions into legislative language. Parliamentary drafting is of a very high standard, but, of course, draftsmen need clear instructions. The original incorporation in the Scotland Act 2016 of "normally" turned up the other day. To my mind, it flew against every sort of drafting criterion. How on earth is it to be interpreted? When you start to use legislation as a means of negotiation, you lose sight of what should be the excellence of the finished product.

Lord Beith: On formulaic processes, is any legislative purpose served by the Reasons Committee?

Sir David Beamish: That is a very good question. My answer is pretty close to a straight no, from what I saw of it at the Lords end. Lord Lisvane can speak for what happens at the Commons end. When a reason was needed, the Public Bill Office would draft an anodyne set of words that nobody could really argue with—because, after all, the Members who voted in favour of the amendment did not all get consulted. They would get together the mover, the Minister and somebody else and get them to rubber-stamp it in the Prince's Chamber, and that was it. It is an archaic and not remotely helpful procedure, in my view.

Lord Lisvane: The other day I thought I had a reason why the Reasons Committee should not be abolished, but, a bit like the Schleswig-Holstein question, I am afraid I have forgotten what it was. However, I can tell

you that, after many years of involvement in Reasons Committees in one way and another, I cannot think of a single example of when a Reasons Committee has put together a convincing reason for anything.

The Chairman: Nor can I, I have to admit.

Lord Wallace of Tankerness: Regarding purposive clauses in Bills, but more along the lines of sending the message, there has been a tendency over the last 10 or 15 years to have even Bills themselves setting targets that do not really have any executive power if the targets are missed. Do you have a view as to the purpose, or the good legislative quality, of target Bills?

Sir David Beamish: Lord Lisvane was talking about using Bills to send a message. There is politics in this, and there is obviously tension between putting a respectable Act on the statute book and getting something through Parliament. Indeed, another tension is the need, in order to get as far as an Act, to persuade Members of both House to pass the Bill, so you may want to draft the Bill with that in mind as well. My own preference is to focus on not putting on the statute book things that do not deserve to be there. If you are suggesting that that sort of thing is an inappropriate use of primary legislation, I can only agree.

Lord Lisvane: I certainly agree with that. There is another issue, which is how on earth you deal with infraction. How on earth do you make something justiciable? If it is not to be an offence, how is not doing whatever the Act says you should do possibly to be dealt with? Once you have applied that test, it becomes a purely demonstrative legislative exercise.

Q175 **Baroness Drake:** Could I go to public engagement in the process of scrutiny? How far is scrutiny in each House informed by the views of stakeholders, and to what extent does it differ between the two Houses?

Sir David Beamish: In a way, the members of this Committee would know better than I do from their postbags what is going on out there. We have talked about pre-legislative scrutiny. If the Government start a formal consultation process, it provides an opportunity for people outside to feed stuff in. Perhaps because of lack of knowledge of the channels available, it may not happen to a very great extent, but before one gets too worried about that one needs to heed Lord Lisvane's warning that you do not want to create false expectations.

I imagine that most Members already have pretty big postbags or, should I say, full email in-boxes. It would be a pity to encourage more writing in by people with an interest if there were not the resource to handle it sensibly. Move carefully before you go too far in that direction. There are already in the Commons petitioning procedures whereby you can at least get a debate on a matter of wide public interest, and maybe that is the safer way to go.

Lord Lisvane: Again, this is an issue that is hugely more effectively deployed at a much earlier stage in the legislative process. If you wait

until a Bill that is not a draft Bill is introduced in one House or the other, it will be word for word what the Government of the day want to see on the statute book, if I could be slightly irreverent. The subsequent proceedings may convince them in this or that particular to change their mind, but basically that is the case. If you are to make a difference, you probably have to deploy extra-parliamentary influence. Most of the savvy organisations and stakeholders are pretty well aware of that and do their best to try to exercise influence in that way.

Once a Bill is in one House or the other, a question arises. You may have in mind Public Bill Committees and the way in which the front end has had a Select Committee stage bolted on to it. That was a good move, but it was only half a loaf, because originally there was a suggestion that they should be a bit like Special Standing Committees, free to take evidence of whatever sort and then morph into a debating forum. One of the downsides has been that the selection of witnesses is very much a matter for the usual channels, which often means the Government of the day, so that access to the legislative process by that means is not as effective as it otherwise might be.

If you are dealing with a broad canvas, I would look at the possibility we have already talked about of draft Bills, which are a perfect opportunity for people outside Parliament to engage with the legislative process. Almost everything else that Parliament does takes place in a parliamentary bubble. Both conventional Select Committees, and certainly those dealing with any sort of legislation, prick that bubble and allow people outside to introduce their expertise and knowledge of what a proposed provision might mean for them.

I would not limit it to draft Bills. Both Houses have procedures for a Select Committee on a Bill. With a tough out-date, one is never going to convince business managers, who always want the belt and the braces, but a Select Committee treatment, not necessarily for a whole Bill but perhaps for part of it, could be a very good way of engaging stakeholders in a much more effective way—I am trying to avoid the word “meaningful”—than simply bombarding with briefings those who are taking part in debates.

Lord Dunlop: To build on that, I take the cautionary note about a deluge of representations. Lord Lisvane touched on a very important point about savvy organisations. How do we ensure that we are getting a full range and diversity of interested views? Is there more we can do to make the process more accessible so that those who have a legitimate point of view and could help the legislative process are engaged in a meaningful way?

Lord Lisvane: I think there is, provided you have an institutional platform. If it is simply individual Members, they can pursue their own course; they know this or that person who might have useful views on which they would like to draw, but if it is a matter of going on to the highways and byways to find people who are not the usual suspects, and

may not automatically think they have something to contribute to parliamentary consideration of a Bill, you need that platform.

It does not matter that much whether it is a Select Committee, or even better a Joint Committee, examining a draft Bill, or the public evidence-taking stage of a Public Bill Committee; there is a forum to encourage it institutionally, through the website and by other means, and to deal directly with individuals who may find it very nerve-racking if they have had nothing to do with Parliament. You have to take that into account. It does not mean their views are any the less to be considered, but they need to be encouraged, and in a way nurtured. That is much easier to do if there is a process in place.

Baroness Drake: Taking your argument that you need an institutional platform to deal with the blizzard effect and give structured access, how does one improve with efficiency people invited through that institutional platform to engage in public scrutiny? How would you do that? How could you improve that? Who does the selection? Who satisfies themselves that the people given access to the institutional platforms are the right ones to raise the level of public engagement?

Lord Lisvane: To an extent, you have to work with what you have. I may be misunderstanding you. I have in mind a scenario in which there is, let us say, a draft Bill where the Committee staff run the website and there is a call for evidence. There are lots of other ways—social media and others—of making it clear that the Committee wants to hear views not just from the big battalions but from anybody who wants to give evidence. In these days of handling evidence electronically, although there is a staff element, it has hugely reduced the resource requirement. I remember 30 or 40 years ago in the Commons, when one printed everything and vast volumes of evidence came out. It is now a much less formal and much more flexible process, but, as always, you judge a submission on its quality and relevance.

Sir David Beamish: For that reason, the issue is not that worrying. The House will take note of it not because it has been said but because it is persuasive.

Lord Lisvane: Exactly.

Sir David Beamish: The worst you will do is waste a bit of time if you have a witness who does not have much to say.

The Chairman: Thank you for all of that. If you could say in one sentence what your priority would be for improving this situation, what would it be?

Sir David Beamish: When you say “this situation”, are you following on from the last question?

The Chairman: I am referring to improving the way Parliament fulfils its responsibilities in scrutinising legislation.

Sir David Beamish: I suppose there are two things. There can be issues that fail to get picked up. Therefore, looking at whether there is anything that could be done on that would be one thing; it may be to do with better outreach so that people with views find their way in.

Secondly, perhaps one could make the process of legislation better understood. We talked about resentment at the Lords making amendments, which annoys me sometimes. I did a blog post on it only yesterday. Selling the message of the role of the Lords in scrutinising legislation so that at least people understand it would be good. They may reject it but they would not dispute the appropriateness of the Lords doing what it does.

The Chairman: Do you mean asking the Commons to think again rather than overturning the Commons?

Sir David Beamish: Absolutely, and my blog post said as much.

Lord Lisvane: My answer is in three words: be more demanding.

The Chairman: Thank you very much for your expertise and evidence today. It was very interesting to hear what you had to say.