



Select Committee on the Constitution

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

Wednesday 5 September 2018

11.05 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 MacGregor of Pulham Market; Lord Morgan; Lord Norton of Louth; Lord Pannick; Lord Wallace of Tankerness.

Evidence Session No. 5

Heard in Public

Questions 183 - 192

Witnesses

[I](#): The Rt Hon Lord Newby, Leader of Liberal Democrat Peers; The Rt Hon Lord Hope of Craighead, Convenor of Crossbench Peers.

Examination of Witnesses

Lord Newby and Lord Hope of Craighead.

Q183 The Chairman: Welcome and thank you for coming. Sorry we are starting a few minutes late. As you know, we are looking at the legislative process, something we come back to every few years, and the actual passage of legislation through Parliament. Everybody around this table has been involved with that process in one way or another. I will start with a pretty basic question that will allow you to set the scene in terms of your views, by asking how effective you think Parliament is, but particularly the House of Lords in terms of our responsibilities. Can the shortcomings that no doubt are there be addressed? It is just a general feel of how you think things are at the present time.

Lord Newby: I would probably give Parliament as a whole a beta in terms of the way it scrutinises legislation. For those of us who have not been in the Commons, when we look at the way the Commons do it, it looks pretty poor in some respects. It was particularly interesting to me, reading all the stuff on the withdrawal Bill, that they would take a whole selection of amendments that were unrelated and have a general debate about them over a relatively small period of time. The Minister then summing up had a very easy ride because he or she had such a wide field. They were not having to justify government policy on specific things with the same degree of precision that you do here when you have to deal with amendments. I can understand why that is the case with the Commons, but from a House of Lords perspective it does not look wholly impressive.

The way we deal with scrutiny is often extraordinarily impressive, in terms of the amount of effort that individual Members of the Lords put in it. I know some members of my group devote days to working on amendments and then working on speeches on amendments. That process is, or can be, extremely impressive. Sometimes, of course, debates in Committee and on Report are very long and discursive, but, frankly, that is probably a price that is worth paying for the fact that on many other things they may be reasonably long but they are very focused and detailed.

On what we could do better, we do not have any tradition of formally seeking outside evidence from stakeholders on legislation. There is an argument that we could do that. It is a bit random if you are a spokesperson or on a Bill as to who gets in touch with you if you are not an absolute expert on everything. Doing a bit more of that would be helpful. Pre-legislative scrutiny generally, which would precede not just the Lords stage but the Commons stage, is a good idea. Although some Bills, such as the withdrawal Bill, are intensely political, a lot of Bills are not. They are trying to update and refine legislation and just make it better. For example, some years ago under the Labour Government the statistics Bill was completely rewritten by the Lords because the evidence we got suggested it could be improved, and it was, but it was not a political thing.

Lord Hope of Craighead: Thank goodness we have a second Chamber. I really feel if we were left with the House of Commons in the way it organises itself for the present we would be in serious trouble because so much is left untouched. The withdrawal Bill is a very good example. Because of the huge political debate that went on at every stage in the Chamber in the Commons, huge chunks of the amendments were never touched on and others were superficially touched on but never got to. Of course, we come in with much greater ability to deal with the detail. That fills gaps that had to be filled and this was effectively done.

I have a particular problem with this, because, coming from Scotland, I was concerned that the Scottish nationalists' amendments should be considered and almost all of them were not. The question is how I, as an independent non-political person with an interest in Scotland, deal with that. I felt I had to put forward Scottish government amendments to get them considered. Fortunately, because of our system, I was able to do that, we were able to have them debated and some progress was made by prodding in a way that just was not possible in the House of Commons. If one takes the two together, I would agree with Lord Newby's marking that B is probably about right.

There is an interesting comparison with the Scottish Parliament. I do not know whether you have been looking at the way the devolved assemblies work but that is a single Chamber. They have a Committee stage at the beginning, which is not pre-legislative scrutiny because the Bill already exists, but the idea of the first stage is to consider in Committee the policy background for the Bill. Evidence can be taken then, and there is a report made to the whole Parliament, which can then, having seen what the report says, either bring the Bill to an end immediately or send it further forward for discussion of amendments. That is the way in which they can engage people at the beginning on policy. The website, which is well worth looking at, is very user-friendly; it says what the stages are, and there is a little box saying, "Get involved", so members of the public can come in at an early stage, if they want to, and make representations, knowing what the procedure is going to be.

I chaired a pre-legislative scrutiny committee on the protection of charities Bill and it was very interesting to do that. It was pre-legislative stuff. The Bill was then finalised, having been available in draft, and the passage of the Bill through Parliament was greatly assisted by it, but it took up quite a lot of time. I am not sure that we could possibly do that for every Bill. If one is going to do that kind of thing it has to be pick and mix, really. There are two Bills waiting for that that we have been told about that obviously would benefit from it. One has to be aware of the system, but I do not think it would work for every Bill.

Q184 **Lord Beith:** In dealing with any Bill, in both Houses of Parliament, you get amendments that seek to add things to the Bill or flag up issues of importance which probably will not succeed and will not change the effectiveness or quality of the Bill to do the job it originally sets out to do. There will then be amendments that seek to make the Bill effective in

terms of its purpose. Should the balance of those two elements be different in the House of Lords? I imagine the answer is yes. If so, how do we ensure that is the case?

Lord Newby: I am not sure that it is a problem in reality. I am just thinking of Bills that I took through on financial services and other things when I was a Minister. Some of the amendments were, to put it mildly, probing. They went some way away from anything we were going to do, but in a way it gives Parliament an opportunity to get a better understanding of government thinking across the whole subject area, rather than just the narrow focus of the Bill sometimes. I do not think it is a particularly practical problem.

Lord Hope of Craighead: I am not sure it is easy to distinguish between the two. In my experience, a lot of amendments are prompted by people coming from outside—interest groups—and suggesting that points should be taken forward. They want these to be considered and they are actually trying to get amendments. It is not just fishing; it is actually to try to get progress. Take the Civil Liability Bill, where people were concerned about the effect of the whiplash measures. Obviously, there were amendments that were directed at how the Bill worked, but there were more fundamental points that they wanted to be taken on board. If one is interested in allowing the public to engage with legislation, you have to be perhaps broader in allowing amendments. It would be a pity to cut them off simply because they are not directly relevant to the wording of the Bill as it stands. There is a value in being broad enough to take them on board and have them debated.

The Chairman: In the Commons the actual scope of any amendment would be limited by the Long Title of the Bill, whereas in the Lords there is much more leeway for that. The problem with getting people involved in what seems a bit of an open-ended way is you are raising expectations that might then not be deliverable.

Lord Hope of Craighead: Lord Wallace will correct me if I am wrong, but I think when it gets to the amendment stage in the Scottish Parliament the Presiding Officer has control over what amendments can be debated.

The Chairman: As does the Speaker.

Lord Hope of Craighead: There is a protection there against spurious ones, which I suppose saves time. I am not sure it is a problem for us in the House of Lords.

Lord Beith: I am interested that you do not think it is a problem, because I can recall rather a lot of conversations in which colleagues have said, "None of that was anything much to do with what was in the Bill".

Lord Newby: No, but they were often putting it forward themselves.

Q185 **Lord Beith:** To turn to another matter about relations between the two

Houses, should the ping-pong process be changed or improved in any way?

Lord Hope of Craighead: It has to exist. From our point of view, if we carry amendments they have to go back to the House of Commons. The Cross-Benchers, on the whole, are fairly conservative about the constitutional propriety of going further. The House has to be careful not to ping-pong too often. Twice might just be justified but three times would be undesirable, and I think people appreciate that. But it has to be there. Obviously, we have to send things back and the Commons has to send things back to us if MPs disagree.

Lord Newby: The interesting thing about ping-pong is just how often the Government concede at ping-pong. Even on the withdrawal Bill, I think of the 14 amendments we passed, half of them were accepted either in whole or part; it was probably slightly more, actually. The ability of the Lords to influence things through ping-pong is greater than is sometimes realised. On how many times you could do ping-pong, we are slightly more belligerent than most people on the Cross Benches in how often you might do it. We remember doing it quite a number of times during the Labour Government on the house arrest provisions, for example. In the end, it just took quite a while to reach a compromise on that, but it was a compromise of sorts. We did not agree with it but a compromise was reached.

From the outside, it looks very messy. It sometimes is a bit messy, but I suspect there is not much of an appetite for setting up a US kind of joint committee to negotiate things. The Lords is relatively restrained in defeating the Government at points when it has them at its mercy, which we, at some level, did on the withdrawal Bill. If we had pushed we could have probably got 20 or 30 amendments through. We had the votes, but the Lords does operate a self-restraint in that. That means that the process, by and large, in a curious way, works relatively well and does not delay the passage of legislation very much.

Lord Hope of Craighead: There is a practical issue for party Whips, from my knowledge of discussing things with them. How many votes can you have in an evening? They are frightened that if they go on too long their voting power is going to disappear. On the whole, the working rule, I think, is no more than three—would that be right?—to press to a vote, so that controls the amount that actually gets to the stage of possible ping-pong.

The Chairman: That is the self-imposed restraint in that respect.

Lord Newby: It is a self-imposed restraint, reinforced by the peculiarities of when you can realistically have a vote here, which is a wonderful unwritten part of the constitution, and evolves.

The Chairman: It is how the constitution works, yes.

Lord Wallace of Tankerness: Can I ask what value, if any, you think there is to the legislative process in the reasons that are given when

amendments go backwards and forwards?

Lord Newby: None.

Lord Hope of Craighead: It is very frustrating, particularly if there is a financial point where you are able to not give any reasons at all but simply say it is a financial issue. I do not get anything out of the reasons either, but maybe it is asking too much, because there is not really time to engage in any detailed reasoning. Sometimes the reasoning is so brief that it cuts off further debate.

The Chairman: I think those people who have been on reasons committees in the Commons, as Alan and John have, will reinforce the fact that it is a token gesture.

Lord Newby: Yes, it is a token gesture.

The Chairman: Yes, that is all.

Q186 **Baroness Corston:** Lord Newby referred to the situation where legislation arrives in the Lords from the Commons where the Commons have not given consideration to clauses or indeed even parts of a Bill. In that situation, should we have a different procedure to look at those parts of a Bill?

Lord Newby: I do not think you need to, because we treat every part of the Bill seriously. Even for those parts of the Bill that have been debated by the Commons, very often there has not been a vote or even a detailed debate. We make the argument sometimes, "This was not even debated in the Commons", but I would not do anything special. I do not think you need to in order to make sure that the bits that might not have been debated in the Commons are debated fully here, because there is plenty of scope for that to happen.

Lord Hope of Craighead: I am not quite sure what alternative procedure one could devise. That is one of the problems. It is better to try to build it into the existing procedure. There is some continuity in the fact that there is a Bill team behind the Minister and the Bill team, I presume, has been thinking about the Bill all the way through. Even though the matter has not been fully debated, it may have been the subject of an amendment that was simply not taken, which they would have had to consider at some earlier stage, so the thing works reasonably well. At the end of the day, what happens is really in the hands of the Minister unless we actually get to the point of defeating the Government. It depends on the Minister, and what the Minister is able to achieve with the Bill team and the Secretary of State.

Baroness Corston: In the event that the Government add large amounts of new material part way through a Bill's consideration—I remember about a quarter of a century ago being on a criminal justice Bill and we suddenly had an amendment on sea fishing—is there a case for a greater use of recommittals in situations like that?

Lord Hope of Craighead: It would depend on the scale of it. If it is a major change, where the Bill has largely been redrafted, there might be a case for that, but most times it is not as big as that. It is not as extreme. What one finds, which is troubling, is that Bills come to us that have not been properly thought through in the House of Commons and we are faced with major amendments scattered throughout the Bill, so it is difficult to separate them out in a logical way. If it got to the point of a major recasting because there has been a complete shift in policy, there might be a case for recommitment. It is a question of degree, really.

Lord Newby: I agree with that, but if there is a policy change you need recommitment, really, because Report stage is not a time for the kind of discursive discussion that you might want if it is a big new policy development. On any one day on Report, not least because of potential votes and timing of votes, there is a lot of pressure to keep debate very short. Recommitment where there is a big policy change is only sensible.

Lord Hope of Craighead: We had a good example of that in the withdrawal Bill when the Government were trying to meet the objections of the Scottish National Party on Clause 11, as it was. It changed its number as time went on. The redrafting of Clause 11 was held back because it was hoped that discussions behind the scenes would resolve the dispute between the two parties. Eventually, it was not possible, so the final version came very late on in the Bill. One has to recognise that that was justifiable against the background of trying to sort it out by agreement, rather than sort it out by pushing legislation through on the Floor of the Chamber.

Lord Morgan: I was just thinking about what was said by Lord Newby about things that have not been discussed in the Commons. Would it be helpful in some way to flag these up beforehand, because they have been very numerous on occasions, through the role of the Whips in the Commons? I vividly recall the discussion of the parliamentary boundaries Bill, large chunks of which, relating to large parts of the British Isles, had not been discussed at all, and yet they obviously affected not just the composition of Parliament but the course of policy in the years to come. Some of us were criticised for speaking rather late at night but we were not filibustering. There was simply no other opportunity for discussing these changes. Do you think anything else might be done there?

Lord Newby: It is a very little thing: most people in the Lords, other than the absolute specialists who had trawled through the Commons Committee stages, would not know. You could put a little asterisk against clauses that had not been debated in the Commons when the Bill came here. At least you would know. As I said earlier, we have plenty of scope for doing that kind of debate. It becomes a debating point: "This was not even debated in the Commons, therefore we need to". That is proportionate.

Q187 **Lord Wallace of Tankerness:** Lord Newby said in an earlier answer, talking about debate, that sometimes at Report stage timing is important. From your respective experiences as part of the usual channels, how well

do you think the process of scheduling business works in the Lords? Does it enable sufficient scrutiny?

Lord Newby: The way the usual channels work is wonderfully British in a way, particularly in the Lords. There are debates about opposition spokespeople's skiing holidays and how that might affect the timing of Committee stage, or all kinds of curious reasons why debates are scheduled when they are. Things such as Royal Ascot tend to intrude a bit on the scheduling of business. It is legislative timetabling by gentleman's agreement really, or gentlewoman's agreement. I do not think I have ever felt that there has been a successful attempt by Government to constrain the length of debate. There is a bit of negotiation about how many days there will be in Committee.

Bearing in mind that Committee can go on very late—we went on until 2.15 am in the withdrawal Bill—a combination of the negotiations that take place in the usual channels about the length of time there is for a Bill and the flexibility on the day to extend it means that there are very few cases, if any I can specify, where there has not been a proper opportunity to debate anything. Indeed, the House gets very shirty if the Government Chief Whip attends at any point to constrain debate, as happened in the withdrawal Bill, where, unusually, once or twice John Taylor's patience had clearly been tested beyond measure and he came in and said, "I think it is time we moved on", and everybody said, "No, it is not. We are enjoying it. We are happy". I do not mean that, but, "We have not finished". Sometimes elements of the timing have irritated me, as Lib Dem Chief Whip, but they have tended to be because of the convenience of the timing for my spokespeople, rather than the overall quantum of timing.

Lord Hope of Craighead: I want to make the point that the Convenor is not part of the usual channels for this purpose, I think partly because we do not have spokespersons, so the kind of problem that Lord Newby has referred to does not arise in our case. I meet the Chief Whip after everything has been sorted out. I am told what the agreement is. I may express some surprise, but it is not for me to interfere with what has already been decided, but in my experience it works reasonably well. I then hear back from the other Chief Whips as to why things have worked out as they have, but really I have no point to make on availability of people.

Q188 **Lord MacGregor of Pulham Market:** On a completely separate point, I think we are all struck by the pressures of time on us all the time. I was struck by a point in the Law Society of Scotland's written evidence to us. It is not a new point, but I thought it was very well put. It is worth reading it: "Nevertheless we advocate the adoption of electronic voting in both Houses of Parliament. This is well tried and tested in the Scottish Parliament. In that Parliament electronic voting takes a matter of seconds. MSPs are also able to lobby or speak to colleagues but this takes place at a time other than 'decision time' which is the time designated for voting in the Scottish Parliament". I know there is always the argument that you can discuss things with colleagues or Ministers,

but there are other opportunities for doing that. Most of the discussion during voting is pretty well just conversation, I think. Do you think we will ever get to the stage where we can adopt this?

Lord Hope of Craighead: There is an interesting feature about electronic voting. I think where it happens everybody is expected to press a button one way or the other. We are not like that. A lot of people are just not in the building at all. Certainly in the case of my group, there are people who are in no position to exercise an electronic vote because they are probably not aware that the matter is being debated at all. On the other hand, I have some people in my group who are concerned that they would like it to be known that they had abstained, and I think, in the case of the kind of electronic voting system that one imagines in other places, the fact that you do not record a vote is, in effect, an abstention, which would then be noted.

Not being involved in the way that Whips are, I am not really in a position to express a view one way or the other as to whether electronic voting is a good idea in our system. We have to be aware of the fact that it is very different from a case where you have everybody sitting there who have heard the debate and then can press a button immediately.

Lord MacGregor of Pulham Market: Or not sitting there but sitting in their offices.

Lord Hope of Craighead: Or in their offices, but at least in the building. Because we are not like that, not paid to be there, it is rather different. I am not sure it would work, really.

Lord Newby: I would hope that we could move in that direction. We were talking about how often you can vote on Report. It is physically impossible to get many votes through if the House is busy and it takes 20 minutes or so to get a vote through. We are not in the position of most parliaments, where people have a desk and can come in and sit, and we are not going to be. There are other models; for example, having points in and around the Chamber, or possibly in some of the outlying buildings, where you could tap your card in, which would save time. That is in the absence of having, first, named desks, and, secondly, times at which you know votes are going to take place, which you could do, although that is quite difficult.

On Report, there is an awful lot to do with the momentum and the priority of those that might be difficult if you did them all in one go. You would still have to give a certain amount of time. I was in Estonia last week, where they give people 20 seconds to vote because they are all sitting at their desks in the chamber, and if they are not sitting at their desk they do not get a vote. We could not do that. Even if you limited it or kept the eight minutes, that is eight minutes, not 20 minutes. Certainly, if you had electronic voting points in some of the outlying buildings, you could do it within five minutes and save a lot of time. I would very much like us to look at doing something along those lines.

We looked at having a halfway house of going through the Lobbies and tapping in, rather than having an individual. In the end, there was not a consensus to do that. One of the benefits of the current system was to speed up voting but it has not had that impact because you still need individuals in the Lobby who can recognise Peers to find them on a screen, rather than write it down. I hope we have not got to the endpoint on that.

Lord Hope of Craighead: One has to be careful about the effect of being able to put more votes through. We were talking a little earlier about the self-restraint of possibly three votes on Report. If you adopt an electronic system, that could double and then you could have the Government being defeated six times and not three, increased ping-pong, and all the rest of it. If one is considering it, you have to look at the round and see what the effects would be, as well as the practicality.

Q189 **Baroness Drake:** In your view, how useful are the various explanatory materials accompanying Bills for parliamentarians and the public? Are there any ways in which you think they could be improved?

Lord Hope of Craighead: In the material we get—I have one here—you have the Bill and you have the Explanatory Notes. The first part of the Explanatory Notes I try to read because it gives you the policy background and the legal background as well. The latter part is just a summary of what is in the Bill itself. There is value in getting some indication of the background for a Bill in an area that you are completely unfamiliar with. I was not sure about this particular Bill, which is the one being discussed today in Grand Committee, the Crime (Overseas Production Orders) Bill. It is a very quick way into the Bill and into understanding what the target being aimed at by the Government is. The way it is drafted is as good as one can get. One does not want it too long. There could perhaps possibly be a little more policy, but it is in the hands of the department from which the Bill comes. It is good. We also have our own Library, which is immensely helpful in providing background on what these Bills are dealing with, so I think we are quite well informed.

Lord Newby: We have probably got a bit better at it. The underlying problem is that very often what you are doing is really technically complicated, because you are amending the words. The problem is, as a layperson reading a heck of a lot of legislation, that it is literally meaningless because it is referring to other bits of legislation that are not explained in that piece of legislation, perfectly understandably. Inevitably, for people who get involved in the debates on amending Bills, there is going to be, on many Bills, the necessity to put a wet towel round your head and really concentrate on complicated technical stuff. It is impossible for a non-specialist to get into that, so the question is how we can make that process as intelligible as possible.

The Explanatory Memorandum statements are a lot better than they were. We are experimenting with having explanatory statements alongside amendments, which is very important, because a large part of the Committee stage is around those. For those people involved, where

you can produce Keeling schedules just so that you can see what is going on, that is a good technical thing. Frankly, members of the public are not going to get into Keeling schedules, by and large. It is sometimes hard to know that you have everything that is relevant, including relevant Committee reports. The DPRRC may have done a report the day before something is debated and unless you are really up with it you might miss that. It is possible that you could do a bit more on the Parliament website.

One very specific thing that has been suggested to me is that during the course of a Bill Ministers often say they are going to write and they do write, but finding the letters is not all that easy. It may be that you could either print them in *Hansard* or give a notification somewhere as to where they are to be found. It is extremely irritating if you are on a Bill and a letter has been sent the previous day, as sometimes happens, and you have not seen it. Then the Minister refers to it and it makes it a bit more difficult. The underlying challenge more generally is how to simplify for people outside what is often a very technical debate about language and a cascading effect of an amendment here on a whole raft of other legislation.

The Chairman: Seeing the big picture.

Lord Newby: Yes.

Lord Hope of Craighead: Could I just comment about letters? We are told sometimes that a letter will be put into the Library and I do not know where to find them. It would be much easier if they were, as Lord Newby suggests, actually put on the website in connection with a thing where the Bill is. Then they are all in the place where one can get access to them immediately and also see past letters, so you have the course of correspondence that is properly and easily researched.

Baroness Drake: Do you think there are any elements of the explanatory materials that are not sufficiently scrutinised by parliamentarians? I am thinking particularly of the impact assessments. Are the scope of the impact assessment and the conclusions drawn too readily taken as a given? Do we give them enough attention?

Lord Hope of Craighead: I have found that quite troublesome because—you are absolutely right—we get told there is an impact assessment, you see it, but quite how you grapple with it, given that it is not in the legislation and you cannot table an amendment and get it amended, has escaped me. I am not quite sure what one can do with it except possibly complain about it, but you cannot do anything with it because it is there as a package. Maybe there is some room for some kind of procedure if somebody really wants to challenge it. It would be better if the impact assessment was available early on. Sometimes I am aware of them rather late on in the Bill, which is a pity.

Baroness Drake: Yes, or even during.

Lord Hope of Craighead: Yes. I would really want to be able to talk about it at Second Reading actually, if it is an important point.

Q190 **Lord Norton of Louth:** Just mentioning the letters from Ministers, as you say, they might go in the Library. You might not be able to find them. The problem you touched on is that people outside cannot see them. The public do not have any access to what is going on, even if there is a reference to them. Earlier on, both of you made reference to the importance of contact with outside groups and with the public when the Bill is going through. Do you think there is more we can do in terms of actual process to enable greater engagement with people outside—different organisations, members of the public? We criticise the process in the Commons, but they do have Public Bill Committees so people can actually submit evidence to a committee considering a Bill. We do not do that. Do you think there might be scope for referring Bills to a Select Committee for taking evidence before we take the normal Committee stage?

Lord Hope of Craighead: I have already mentioned the way the Scottish Parliament deals with this. I encourage Members of this Committee to look at the Scottish Parliament website, because it is easily researched and it encourages people to come in and make representations if they want to. It tells you what the steps are and the procedure. Our own website is actually quite good if you follow through the amount of stuff that is there about legislation and progress, and it would be quite easy to add letters from Ministers into that list of things. You would scroll down and find them as a box that was dealing with that particular chapter. There are things that we could improve on simply by improving the access the public have through the website, without altering our procedures.

Lord Norton of Louth: Do you think there is a case for altering our procedures? The advantage of a Select Committee would be that it would be open and transparent and Members would get the benefit of outside groups feeding in their comments. There might be a report from the committee before we actually go into normal Committee stage.

Lord Hope of Craighead: If you have pre-legislative scrutiny of course it works there, but I have already said that I am doubtful as to whether we can do that for every Bill. It is simply a matter of parliamentary time.

Lord Norton of Louth: Even if you have pre-legislative scrutiny, you may still need to have a stage to see whether the Government have actually acted on the recommendations that were made. In pre-legislative scrutiny you are making recommendations. It is then up to the Government whether they act on them.

Lord Hope of Craighead: Our Committee stages are a rather different animal from the Scottish Parliament's Committee stage, where they can take evidence. I am not quite sure how we could manage that if we had a Committee in the House or even in Grand Committee. We are not

equipped to take evidence on these occasions. We are rather stuck with the way our procedures are organised.

Lord Norton of Louth: There are precedents where we have occasionally sent a Bill to a Select Committee. It happened with the Constitutional Reform Bill. There are occasions where we have sent a Bill to a Select Committee so we have the benefit of the report before considering amendments to the Bill.

Lord Hope of Craighead: In a case like that—which is a very good example, if I may say so—where, for obvious reasons, the implications were so substantial that it was thought necessary to take evidence, I can see value in that. I suppose that shows we can do it if it is necessary. Somebody will put down a Motion and the matter can be then sent off to a Select Committee to look at it.

Lord Newby: I would be in favour of more of it, but I personally think there is a lot to be said for doing quite a lot of it in Joint Committee, rather than replicating a process. My experience of that was that it happened with some of the legislation of financial services, which meant that, in reality, quite a number of the people who were going to be taking a lead on the Bill when it got here had heard all the arguments—we had had the Chancellor in, we had had the people from the Bank of England—rather than delay things here, the Bill having been through the Commons. I like that. There may be other Bills where it may be appropriate that we do it if the Bill is starting here, or possibly if the Commons has dealt with it without having any earlier scrutiny. It would mean not only that people could interact more but that it was less haphazard as to whether particular things were scrutinised. At the moment, an awful lot depends on whether one or two individuals take seriously the more or less random set of lobbying they get in advance of a Bill starting.

Lord Norton of Louth: You could ensure consistencies, because one of the problems if the Bill starts here is it does not have the equivalent of Public Bill consideration. It goes to the Commons and it is not sent to a Public Bill Committee because it has already been through the Lords. One way of perhaps getting to your point as well is this Committee, in its 2004 report on Parliament and the legislative process, recommended that each Bill, during its passage, should at least at some point be subject to scrutiny through a Select Committee, of either House.

Lord Newby: I agree with that. Just on your point about how you make sure that Ministers follow up on what is said, the way that it worked on the financial services legislation was that when legislation came to the House if Ministers had not there were amendments put down to bring them back to what had been discussed in the Select Committee. Of course, that happened on the Parliamentary Commission on Banking Standards, where amendments were tabled to bring the government legislation into line with what that commission had proposed.

Lord Norton of Louth: Do you think there are any other ways—I am

talking about process—that we might encourage more engagement with people outside? Lord Hope has referred to the Scottish example where you press your “Get involved” link and feed something in. Is there anything more we should be doing that is the equivalent of that, which would encourage people to think about what we are doing and submit their views on a Bill when it is going through?

Lord Hope of Craighead: I have been wondering about that point. We get a tremendous amount of stuff coming through on email from interest groups. Those who are involved with interest groups are quite well represented. It is the other people who are not, which worries me—what means do individuals have of getting access? We are not very good at that. The example I have given of the Scottish Parliament is that that is addressed to individuals. Anybody can respond to that and there will be a response somewhere to guide them as to whether the point is worth taking further.

Lord Newby: I wonder whether we could do more to explain to people what is going on, almost on a day-to-day basis. A Bill comes up for Committee stage and there are 10 days in Committee. What does that mean to somebody outside? What are the issues? When are the issues coming up? We, as the group, send out notes to our people in advance, saying, “These are the issues that are coming up. These are the things we think are going to be contentious”. I do not see why Parliament could not do the same, because it is known what the contentious issues are likely to be, particularly in the Lords. If people were worried about making political statements we could just say, “When this came up in the Commons, these were the issues then. They are likely to be the issues here”. At the moment I do not know, unless you were really into it, how you would know on a day-to-day basis quite where you were and what was going to be happening. Members of our group and the other groups sometimes are pretty vague as to what is happening when, so it is not surprising the public are.

The Chairman: That relates back to a previous conversation we were having.

Q191 **Lord Morgan:** We have discussed, in various ways, legislative scrutiny and public understanding of it. Commonly, public understanding finds its way through the press. In terms of the level of knowledge or interest among the press in, shall we say, the constitutional, legal or historical background of many of the things that we discuss—although, as we heard in the previous session, excellent work is done by the parliamentary communicators—the messengers who have to transmit their message are flawed. Is there anything that can be done about making the press more aware?

Lord Hope of Craighead: We tried to do something along these lines in permitting the television cameras to come in to make a programme about the work of the House of Lords. You can see that the trouble is that these things run away with themselves and they do not do what you are hoping they are going to do because they have their own agenda. That is the

trouble with the press, some in particular. If you look at the Brexit situation, some newspapers have a very strong line and they plug it every time. The procedural background really disappears behind the political message. I am doubtful that we can get more out of the press, really. They are not prepared to be told what to do and one can do one's best through the communications people, who do as good a job as they can be expected to do, but I do not think one can have much confidence that the result is going to be helpful to us.

Lord Morgan: In years gone by, the press were very much more effective because they were concerned primarily with reporting what happens in this House. The press is now largely a series of organs of opinion, very frequently from people who have no particular competence at all, in my view. I speak as a *Guardian* reader. *The Guardian* was a far better paper in days gone by, in the era of editors such as Wadsworth and so on. Now it is just an organ of off-the-cuff opinions. Is this not a real problem: that there is no other disciplined way of getting information through?

One connected thought is that our agendas are always very long and it would be good if the press could indicate when a Bill comes in with 500 amendments from the House of Commons that 450 of them are fairly marginal and judgment is needed to assess this.

Lord Hope of Craighead: I imagine that the press speak to people, particularly in the House of Commons. Members of Parliament are quite ready to speak to the press and they will get their own information one way or another, possibly rather angled along political lines, just through discussions with people. I wonder how, as an institution, we can really get into this system with any confidence that what we are saying will actually be reproduced in the newspaper. I entirely share your experience. When I was Lord President in Scotland, we were very interested in press reporting of what goes on in the courts. In my early days, there were very accurate reports of what happened at a trial, but nowadays the amount of time given to that sort of reporting is minimal and the people who come and do it are not experienced in court processes. We have lost a great deal of the accuracy in reporting simply by the way modern life is lived. As Parliament, we are in the same position.

Lord Newby: Young people do not read the press, so the question really is how we use social media to get messages across. Hundreds of thousands of children come here. Young people who are interested in an issue, such as the environment, think, "I want to follow what Parliament is doing on the environment", because that is the way people get engaged, is it not? Very few people are interested in everything we do, so with a bit of luck they might be interested in one thing we do, or one area—animal welfare or whatever. Suppose they are. If I was a 10 year-old and came to the Education Centre and was really interested in the environment and said to the teacher or the PR people, "How do I keep up with what Parliament is doing on the environment?", what would the answer be? There may be an answer, but it would be perfectly possible to

have a Parliament environment stream and a Parliament animal welfare stream, so that people just know what is going on, even if they are not at all interested in the technicalities of how we do stuff.

It would be possible to do something about what we do that would be really interesting. A lot of what we do is dry. The dryness often obscures issues of major significance to individuals, does it not? It is very difficult for them to get to that just looking at the documents. There may be something that could be thought of there.

Lord Hope of Craighead: We should not forget about the value of ad hoc committees in opening up things that are not directly related to legislation but may lead to informing the Government about things they need to take further forward. The ad hocs that have been going on in the past two or three years cover interesting subjects and members of the public are invited to engage. Evidence is given and it is one way of involving them in what Parliament does on a broader basis and could lead to a better understanding of legislation as well.

Lord Pannick: I just wanted to follow up on what Lord Newby said, because the evidence we have heard is that if we wish to communicate with people outside we have to use social media; we have to use the internet. We have heard evidence that the only effective way of doing that is for our website to address controversial issues—in an impartial way, of course. We have to tell people about the controversial issues that we are addressing. At the moment, the website is rather bland. Do you agree? What are your comments on that?

Lord Newby: That is right. People are interested in the controversial bits, are they not? Equally, the reason they are controversial is that people are interested in them and have different views. I would have thought there was a lot of scope for expanding what you say. For example, as I said earlier, the website could say, “Today these are the controversies. We are going to have a real row about this”. That should not be controversial. We know, usually, when we are going to have a row. You might miss some, but when they are predictable, as they certainly were on the withdrawal Bill, I wonder how you would have known that we are going to have a row on those things on those days.

Lord Hope of Craighead: I cannot see why we should not advertise things that are controversial. The only problem may be who does the advertisement. Who decides what to advertise? There may be some reluctance on the part of officials to take that kind of line when they are not sure how the House as a whole will react. There may be a sense of outrage of things being raised that some people think should not be raised in public. There is quite a difficult line there in knowing just how much editorial freedom should be given to the people in the departments. It may be possible to have the Lord Speaker involved and his department could be referred to for guidance. That would be at least some kind of protection for people who want to put these things on the website.

Lord Pannick: One suggestion that has been made to us is that the

officials may be more willing to address the controversial issues in an impartial manner if they were answerable not to the House authorities but rather to a committee of this House—an all-party committee, of course.

Lord Hope of Craighead: That is another alternative. The House authority I was referring to was the Lord Speaker, who is impartial and his department already exists. These things can come up in a hurry and the Lord Speaker is available pretty well all the time, whereas if it is a committee you have to convene the committee and it may slow things down. I suggest the Lord Speaker as a working alternative.

Lord Newby: The advantage of a committee, though, is that, in an ideal world, the people who were on it would be advocates of openness. They would be more dynamic in encouraging officials to do things, rather than having a defensive mindset.

Lord Pannick: They may include journalists as well.

Lord Newby: Yes, you could have outsiders.

Q192 **Lord Judge:** I was disappointed, but not altogether surprised, that in relation to parliamentary scrutiny, each of you gave me a B. Assuming that I am ambitious to get an A next time round, would you like to tell the Committee what your priorities would be and your advice to me: "Lord Judge, please do this and do that"? I ask the question in the context of both primary and secondary legislation. How should we reform the processes?

Lord Newby: On secondary legislation, unless you get to a point where secondary legislation can be amended in some form, the whole thing is a pretty fair charade. I have thought that for a long time and as a Minister it certainly was. Unfortunately, unless the Commons deals with legislation in a different way, what seems from the outside to be a confused debate on a large number of things all in one go is going to continue, and we cannot do anything about that. From our point of view, both pre-legislative scrutiny and Joint Committees looking at legislation early on would help.

Also, overall we are still pretty poor at post-legislative scrutiny. We pass stuff and then, although we now do one Bill a year on our Select Committee, most legislation just lies there and people do not look at it. The whole mentality should be that getting a piece of legislation through is not just the end of it. The point of legislation is to allow a new policy to be developed. We are very bad at making sure that what happens to that policy over time still performs the functions that we wanted; or, if we think the functions or the purposes should change in the light of circumstances, it is very difficult to change it. That area merits quite a lot of further work.

Lord Hope of Craighead: We are constrained by resources and time. I sit on the committee that looks each year at the possibility of setting up ad hoc committees and post-legislative scrutiny. We are invited to

identify one measure for post-legislative scrutiny. Suggestions come in and there are often three or four, all of which are really quite good candidates for this, but we are stuck with only one. I do not see why we should not be able to expand to look at more than one in post-legislative scrutiny, but then the answer will come from the authorities, "That means more clerks required and more committee days and more Committee Rooms and so on". It is a question of whether we can expand enough to do that.

On delegated legislation, I am with Lord Newby in that I think without a power to amend delegated legislation much of these debates are really just empty shadowboxing. It is disappointing to spend time in the Grand Committee making points about a measure when you realise the Government are not going to do anything about what you are saying. That seems very unsatisfactory. The more that comes through that system, the more important it is to be able to be quite constructive in how these orders are dealt with.

Lord Judge: I shall aim for an A next time.

Lord Pannick: Must try harder.

Lord Judge: We are trying very hard.

The Chairman: Yes, some things are very trying. Thank you both very much indeed for giving us so much time. It has been interesting and I hope you think it was worth coming. We will take on board what you have said. Thank you.