

The Constitution Society – Written Evidence (EOS0005)

Institutional response to House of Lords Select Committee on the Constitution inquiry: 'Executive oversight and responsibility for the UK Constitution'

1. The Constitution Society is a charity for the promotion of awareness of the UK constitution. We do not normally take positions on specific subjects. But we do promote the view that constitutional matters, including those involving change to the arrangements of the political system, should be approached in a considered fashion.
2. Given this outlook, the way in which the executive handles constitutional matters is a subject of considerable importance. In this submission, we propose a set of standards that should apply when considering the appropriate configurations and practices for the task.
3. Our standards derive from the 'Statement of Principles' employed by the UK Constitution Monitoring Group (UKCMG), a body comprising constitutional experts and practitioners for which the Constitution Society provides administrative support. The UKCMG Statement is based mainly on official publications from various governmental and other official organs setting out constitutional norms and rules in their various spheres of operations. These documents include, for instance, the *Ministerial Code* and the *Seven Principles of Public Life*. In this sense, the UKCMG Statement is a means of assessing the operation of public bodies against their own standards.
4. The Society judges that the following stipulations from the UKCMG Statement should apply to the executive in the way it approaches constitutional matters:
5. *It is essential that the constitutional arrangements of the UK are clear and knowable...and that they should as far as possible command consensus.*

Arrangements for the executive approach to the constitution should be devised with these principles in mind. They should be intended to make the processes involved clear and as far as possible consensual.

6. *Ministers are accountable, individually or collectively, to their legislatures for the exercise of their ministerial responsibilities, and for the activities of the publicly-funded bodies within their remits.*

There should be a clear means of accountability to Parliament for executive engagement with the constitution.

- 7. Ministers are under an overarching duty to comply with the law, including international law and treaty obligations, uphold the administration of justice and protect the integrity of public life.*

Discussions of constitutional matters within the executive should take place with careful regard to the rule of law. It may be that the alteration of the role of Lord Chancellor under the *Constitutional Reform Act 2005* has made it harder to achieve this end, since there is not a figure at Cabinet level who can speak for the judiciary in the same way as they once could.

- 8. Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice in reaching policy decisions, and should have regard to the Principles of Scientific Advice to Government.*

Mechanisms for constitutionally-related decision-making within the executive should be devised in a way that allows for full and meaningful input from officials, and other sources of advice.

- 9. The devolved institutions have the right to legislative and executive autonomy in their respective spheres of operation. The UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. (See, e.g., Scotland Act 2016, section 2; Wales Act 2017, section 2). The devolved institutions have a proper interest in decisions taken at UK level that impact upon them.*

Accommodating devolution is a clear necessity for the approach taken within the UK executive to the constitution. As the stipulation below requires, specific mechanisms are needed to achieve this end.

- 10. Appropriate structures, regulations and practices should exist to ensure that the principles set out in paragraphs 10 and 11 above are fully realised. They should allow in particular for liaison, coordination and genuine co-decision-making between devolved and UK executives; and between devolved and UK legislatures.*

- 11. The monarchy should not be drawn into party political controversy. The powers formally attached to the monarchy should not be deployed in ways that undermine the principles outlined in this text.*

Any executive constitutional mechanisms must be designed and operated with the need to safeguard the status of the monarchy in mind.

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